

The Executive Officer, Sri Kanaka Mahalakshmi Ammavaru Devasthanam Vs The Bokka Venkata Rao (died) per L.Rs. and Others

Court: Andhra Pradesh High Court

Date of Decision: Aug. 4, 2010

Acts Referred: Andhra Pradesh (Andhra Area) Tenancy Act, 1956 â€” Section 18(1)

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 â€” Section 38, 82, 82(1), 82(5)

Constitution of India, 1950 â€” Article 14

Land Acquisition Act, 1894 â€” Section 11, 3, 31(2), 4(1)

Hon'ble Judges: V. Eswaraiiah, J; Noushad Ali, J

Bench: Division Bench

Advocate: V.T.M. Prasad, for the Appellant; E.V.V.S. Ravi Kumar and V.L.N.G.K. Murthy for Respondents 3 to 5, for the Respondent

Final Decision: Allowed

Judgement

V. Eswaraiiah, J.

This appeal is filed aggrieved by the order, dated 29-07-1997 passed in O.P. No. 14 of 1994, by the Subordinate

Judge, Razole, East Godavari District.

2. The said O.P. arises under reference made by the Special Deputy Collector, Land Acquisition Officer, O.N.G.C., Rajahmundry-2nd

Respondent herein u/s 31(2) of the Land Acquisition Act, 1894 (for short ""the Act"") to decide the dispute as to the title and to pay the

compensation fixed by the Land Acquisition Officer.

3. The Reference Court by the aforesaid order held that the land in question belongs to the Appellant-Temple and the 1st Respondent herein is a

cultivating tenant and therefore, the 1st Respondent is entitled for 40% of the compensation and the Appellant Temple is entitled for 60% of the

compensation deposited by the Land Acquisition Officer into the court along with proportionate benefits accrued thereon. Aggrieved thereby, the

present writ petition is filed.

4. Heard both the counsel. This Court appreciates the argument advanced by Sri E.V.V.S. Ravi Kumar, learned Counsel representing Sri

V.L.N.G.K. Murthy, learned Counsel appearing for the 1st Respondent.

5. The Appellant hereinafter would be referred to as the Temple and the 1st Respondent herein as a tenant.

6. Learned Counsel appearing for the Temple submits that the tenant has failed to discharge his burden to prove that he was a cultivating tenant by

adducing any relevant material before the Reference court and at the same time, the court erroneously observed that the Temple failed to produce

DCB register before the court below. Ex.B-1 bunch of rent and land revenue receipts and Ex.B-2 certified copy of order in ATC No. 31/86 have

no relevance to decide the issue that the tenant is a cultivating tenant, so as to enable him to claim any compensation.

7. On the other hand, the learned Counsel appearing for the tenant submits that as per Ex.B-1 bunch of rent and land revenue receipts and Ex.B-

2-certified copy of order in ATC No. 31 of 86, there cannot be any dispute that the tenant was a cultivating tenant and the Temple is the landlord

of the land acquired. It is further stated that he is a tenant within the meaning of Andhra Pradesh (Andhra Area) Tenancy Act, 1956 and as per the

Amendment Act 39/74 relating to the A.P. Tenancy Act, 56, the statutory tenant is entitled for 40% of the compensation and the landlord is

entitled for 60% of the compensation. Therefore, the counsel would submit that the tenant is entitled for 40% of the compensation as held by the

Reference Court, therefore, there are no grounds to interfere with the order passed by the Reference court.

8. We have perused the records.

9. The admitted facts are that the land admeasuring Ac.0-44 cents in R.S. No. 346/1B and 346/1C situated at Kadali village, Razole Mandal, East

Godavari District, was acquired pursuant to 4(1) Notification published on 16-05-1992 and after conducting enquiry u/s 11 of the Act, Award

No. 10 of 1983 was passed on 20-02-1993. The total land acquired was Ac.5-02 cents, but the subject matter of the reference u/s 31(2) of the

Act is only in respect of the land admeasuring Ac.0-44 cents i.e., in R.S. No. 346/1B an extent of Ac.0-43 cents and R.S. No. 346/1C an extent

of Ac.0-01 cents.

10. During the course of enquiry of the award proceedings, the Executive Officer of the Temple claimed that the Temple is the owner of the said

land. However, reference was made u/s 31(2) of the Act on the ground that the Executive Officer of the Temple having attended for the award

enquiry, on behalf of the Temple, filed a statement in support of the ownership of the land claiming total compensation, but did not produce any

documentary evidence in support of his claim. Therefore, the compensation awarded by the Land Acquisition Officer was ordered to be deposited

into the Court u/s 31(2) of the Act for payment after adjudication. Pursuant to the reference by the Referring Officer, the matter was registered as

O.P. No. 14 of 1994 and the amount of Rs. 60,618/-was deposited into the Court.

11. The Temple filed a claim statement on 06-11-1995 stating that the Temple is the absolute owner of the land acquired by O.N.G.C. Authorities

and the said land was endowed u/s 38 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the

Endowments Act") and the revenue records also show that the Temple is the owner of the property. The registers clearly show that the said land

absolutely belongs to the Temple. Previously, the land was leased out to the tenant for the purpose of cultivation. The lease period was over long

back and no one is a protected tenant of the said land and therefore, the Temple alone is entitled for the entire compensation. D.C.B. of the year

1993-94 clearly shows that the land admeasuring Ac.0-44 cents was handed over in favour of O.N.G.C. and the O.N.G.C. was alone paying

compensation regularly to the Temple and the tenant never made any claim over the said property and he never claimed any compensation for the

said land. It is stated that possession was taken by the O.N.G.C. directly from the Temple and thus it is stated that the tenant is not entitled for any

compensation for the acquired land. It is stated that O.N.G.C. took possession of the said land from the Temple and the so called right of the

tenant was not at all recognized by the Temple or the O.N.G.C. and the tenant also failed to prove his tenancy over the said property and,

therefore, he is not entitled for the said compensation.

12. During pendency of the proceedings, the tenant came on record as the 2nd claimant as per the orders in I.A. No. 255 of 1994 and filed his

claim statement. As per his claim statement, it is accepted by the tenant that during the award proceedings, ownership and the title as notified under

the Land Acquisition Proceedings was not disputed by any person, but it is stated that he is a tenant and the Temple is the landlord and he was

dispossessed pursuant to the land acquisition proceedings but not otherwise and, therefore, he is entitled for 75% of the compensation and the

Temple is entitled for 25% of the compensation.

13. It is further stated that his possession in respect of the said land was established by order, dated 14-02-1990, in ATC No. 31 of 1986 before

the Special Officer under the Andhra Pradesh Tenancy Act, wherein he claimed remission of rent for the year 1986-87 and that payment of rent

and land revenue receipts would establish that he is a cultivating tenant under the provisions of the Act. The O.N.G.C. took possession of the land

in the year 1986 on lease basis. The Executive Officer of the said Temple accepted the rents from him and, therefore, he is entitled for

compensation.

14. On behalf of the Temple, its Executive Officer was examined as RW.1 and stated that the Temple is the owner of the said land and the tenant

was a cultivating tenant. Before acquisition, the O.N.G.C. took possession of the said land on lease. The tenant did not raise any objection for the

same. The name of O.N.G.C. as possessor of the land in question on lease was entered in the DCB register since 1993, though O.N.G.C. took

the said land on lease in 1992. Therefore, the Temple alone is entitled for compensation.

15. However, in the cross-examination, he stated that as per 1993 DCB register, the name of the tenant was entered as a cultivating tenant for the

remaining land of the said survey number.

16. The tenant was examined as RW.2 and stated that he has been cultivating the said land as tenant. The total extent of the land is Ac.1-17 cents

out of which, Ac.0-44 cents was acquired. It is stated that his father used to cultivate the said land and after his demise, he has been cultivating the

said land and out of Ac.1-17 cents, Ac.0-44 cents only acquired when it was in his possession. He has been paying the rents regularly. He filed

A.T.C. No. 31 of 86 seeking remission for the year 1986-87 and the same was allowed by order, dated 14-02-90. He admitted that the officials

of ONGC took possession of Ac.0-44 cents on lease before acquisition and he did not raise any objection.

17. On the aforesaid pleadings, the questions that arise for consideration are:

(1) Whether the tenant is entitled for any benefit or right under the Act as on the date of acquisition?

(2) Whether the tenant is entitled for any compensation under the Land Acquisition proceedings?

18. It is not in dispute that admittedly the acquired land belongs to the Temple and the only claim of the tenant is that he was a cultivating tenant

and, therefore, the person interested within the meaning of Section 3(b) of the Act, is entitled to claim compensation deposited by the Land

Acquisition Officer on account of acquisition of the land under the provisions of the Act.

19. Now, the question that arises for consideration is as to whether the tenant continued to be a cultivating tenant as on the date of acquisition of

the land, pursuant to the 4(1) Notification published on 16-05-1992.

20. According to the version of the Temple as well as the tenant, the O.N.G.C. took possession of the said land much prior to the acquisition of

the said land. According to the tenant, the O.N.G.C. took possession of the said land in the year 1986 on lease basis. According to the Temple,

the O.N.G.C. took possession of the said land on lease basis from the Temple and used to pay lease amount. But, according to the tenant, the

O.N.G.C. took the said land on lease but there is no evidence adduced by the tenant that O.N.G.C. used to pay any lease amount to the Temple.

There is also no evidence adduced by the tenant with regard to payment of lease amount for the said acquired land from 1986 till the date of draft

notification issued u/s 4(1) of the Act. It is also admitted that the tenant is in possession of the remaining land and he is paying lease amount for the

remaining land of Ac.0-73 cents continuously under Ex.B-1 receipts. In fact, the tenant has not made any claim before the Land Acquisition

Officer during the course of award proceedings. Only on the plea that the Temple has not filed any document showing its ownership, the matter

was referred u/s 31(2) of the Act. The Reference Court mainly basing on Exs.B-1 and B-2 held that the tenant is a cultivating tenant in respect of

the acquired land and, therefore, he is entitled for 40% of the compensation for the acquired land.

21. We are of the opinion that the evidence adduced by the tenant would not establish that he continued as a cultivating tenant as on the date of

acquisition in respect of the land of Ac.0-44 cents and in fact there was no protest or objection by the tenant for taking possession of the said land

by O.N.G.C. in 1986 itself i.e., 6 years prior to the Notification issued u/s 4(1) of the Act. Even, according to the claim statement of the tenant, the

O.N.G.C. took possession in the year 1986 and in his deposition also, he stated that the O.N.G.C. took possession much prior to the acquisition

proceedings. Therefore, it cannot be said that the claimant has continued in possession as a cultivating tenant and that he is a person interested

within the meaning of Section 3(b) of the Act.

22. However, as per Section 82 of the Endowments Act, any lease of agricultural land belonging to or given or endowed for the purpose of any

institution or endowment subsisting on the date of commencement of the said Act, which came into force with effect from 15-05-1987 shall,

notwithstanding anything in any other law for the time being in force, held by a person, who is not a landless poor person, stands cancelled.

23. The validity of Section 82 of the Endowments Act was questioned before this Court and this Court held that Section 82(1) of the Act is

unconstitutional and declared void as violative of Article 14 of the Constitution of India, which was the subject matter of Civil Appeal before the

Apex Court and the Apex Court in State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others, while finding fault with the

judgment of this Court, set aside the judgment of this Court upholding, the validity of Section 82(1) of the Act. Thus, it is not in dispute that

provision of Section 82(1) of the Act was upheld by the Apex Court. According to the said Section, all the existing leases stood cancelled with

effect from 15-05-1987. As the lease granted either under the A.P. (Andhra Area) Tenancy Act, 1956 or under the A.P. (Telangana Area)

Tenancy and Agricultural Lands Act, 1950 stands cancelled with effect from 15-05-1987, it cannot be said that the tenant is a cultivating tenant

under the A.P. (Andhra Area) Tenancy Act, 1956.

24. After the aforesaid judgment passed by the Apex Court, the State of Andhra Pradesh has added Sub-section (5) to Section 82 of the

Endowments Act by Amendment Act 27 of 2002 and also added Clause (f) to Section 18(1) of the A.P. (Andhra Area) Tenancy Act, 1956 by

Amendment Act 28 of 2002.

25. As per Sub-section (5) of Section 82 of the Act, the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 and the Andhra

Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 shall not apply to any lease of land belonging to or given or endowed for the

purpose of any charitable or religious institutions or endowment. Section 18(1)(f) of the A.P. (Andhra Area) Tenancy Act, 1956, reads as follows:

18(1) Nothing contained in this Act shall apply-

(f) to any agricultural land belonging to or given or endowed for the purpose of any charitable or Hindu religious institutions or endowment as

defined by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act.

26. As per the said clause, with retrospective effect, the Act shall not apply to any agricultural lands belonging to the charitable or religious

institutions of the Endowments Department. Therefore, it cannot be said that the tenant is a cultivating tenant within the meaning of the A.P.

(Andhra Area) Tenancy Act, 1956, as the tenancy Act itself has no application to the lands belonging to the Religious Institutions or the

Endowments Department.

27. When the said Amendment Acts 27 of 2002 and 28 of 2002 are questioned, this Court in Saithana Nageswara Rao and Others Vs. State of

A.P. and Another, held that lease in favour of the cultivating tenants stood extinguished by operation of Section 82(1) of the Endowments Act, as

per the judgment of the Apex Court in Nallamilli Rami Reddy's case (1 supra) and the tenants of the agricultural lands have to go only for the other

remedies available under the Endowments Act alone.

28. The Division Bench further held that since the tenants have no legal right to continue as tenants by virtue of operation of Section 82 of the

Endowments Act, there cannot be any direction either to treat them as tenants or to allow them to continue as such. In the light of the validation of

Section 82 of the Act, the framers, with a view to rule out any possibility of inconsistency with the provisions of the Tenancy Act, brought Act No.

28 of 2002 i.e., A.P. Tenancy Laws (Amendment) Act, 2002. It is in consonance with the spirit of Section 82 of the Act. Accordingly, upheld the

amended provisions of Sections 27 and 28 of 2002.

29. In view of the aforesaid law declared by the Apex Court upholding Section 82(1) of the Endowments Act and in view of the aforesaid

Amendment Acts 27 and 28 of 2002, which was preceded by the Ordinances 7 and 8 of 2002, a learned Single Judge of this Court in Gopisetti

Venkaiah Vs. Chavali Brahmabhotlu and Others, held that since Act 37 of 1987 came into force with effect from 28-05-1987 and Section 82 of

the Act was upheld by the Apex Court, the proceedings initiated before the Tenancy Act are not maintainable and non est in law and the remedy

available to the tenants, if any, is only under the Endowments Act.

30. Another learned Single of this Court in Ch. Satyanarayana and Others Vs. Land Acquisition Officer-cum-Sub-Collector and Another, in

similar facts and situation, where the endowed agricultural land was acquired by the Government for providing house sites, the tenants claimed

60% of the compensation contending that they are persons interested within the meaning of the Act and therefore, they are entitled to challenge the

acquisition proceedings and also claim appropriate share in the compensation, held that if a tenant is able to show either under common law, statute

law or constitutional law that he has sufficient subsisting enforceable interest to claim compensation, there cannot be any objection for considering

such claim. A tenant can succeed if it is shown that he has right under a lease deed or in common law or under Constitution. It is further observed

that if Tenancy Act applies in respect of a lease by a charitable institution governed by the Endowments Act, certainly tenant of religious institution

can claim a share. Section 82 of the Endowments Act rendered all the tenancies of temple lands given by charitable and religious institutions invalid

from the date of coming into force of Section 82(1) of the Endowments Act and lease in respect of temple lands stands cancelled. The said

provision was also upheld by the Apex Court in Nallamilli Rami Reddi's case (1 supra). Accordingly, it was held that when the Tenancy Act has

no application, the tenant of the Temple agricultural land is not entitled to any share in the compensation.

31. We are of the opinion that the tenant is not entitled for any right or benefit under the Act and it cannot be said that he is a tenant in respect of

the Temple land under the Act, as his tenancy stood cancelled with effect from 28-05-1987 by operation of law and, therefore, the judgment of

the Reference Court holding that the tenant is a cultivating tenant within the meaning of the Act and he is entitled for 40% compensation is illegal

and unsustainable. The impugned order is accordingly liable to be set aside.

32. Accordingly, the appeal is allowed setting aside the order, dated 29-07-1997 passed by the Subordinate Judge, Razole, East Godavari

District. There shall be no order as to costs.