

(2001) 03 AP CK 0022

Andhra Pradesh High Court

Case No: C.R.P. No. 4351 of 1997

T. Yadagiri Reddy and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision: March 20, 2001

Acts Referred:

- Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 - Section 2, 32B, 38, 38(6), 38(7)
- Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 - Section 10, 13, 13(2), 21, 9

Citation: (2001) 4 ALD 590 : (2001) 4 ALT 392 : (2001) 2 APLJ 35

Hon'ble Judges: B. Prakash Rao, J

Bench: Single Bench

Advocate: V. Tulasi Reddy, for the Appellant; Govt. Pleader for Land Ceiling for Respondent Nos. 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B. Prakash Rao, J.

The petitioners in this revision, filed u/s 21 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, (for short "the Land Ceiling Act") who are the third parties, are aggrieved against the orders in L.R.A. No. 34 of 1996 dated 9-9-1997 on the file of the Land Reforms Appellate Tribunal, Ranga Reddy District.

2. The petitioners claim to be the protected tenants in respect of Survey Nos. 18 to 24 (old) equivalent to new survey Nos. 24,30 and 39 situate at Meerpet village, Saroornagar Mandal, Ranga Reddy District. The main grievance of the petitioners is that even though they themselves had filed separate declarations and the very same lands having been included in their holding and declared non-surplus holders, the Tribunal has once again included those lands in the present proceedings arising out

of individual declarations filed by the respondents 3 and 4, showing a large extent of land of more than 2,000 acres before the Land Reforms Tribunal in CC Nos. 2476, 2477 and 2478 of 1975. However, due to intervening proceedings, the enquiry in these declarations could not be completed earlier. Ultimately as per the orders dated 2-3-1996 it was held that separate orders would be passed in respect of Survey Nos. 24,30 and 39 to an extent of Ac.123-17 cents and also directing the said declarants to surrender 17.9766 S.H as excess. Consequently, the Tribunal sought to proceed for suo motu selection in the absence of any proposals forthcoming from the said declarants.

3. The petitioners claim that their father late T. Papi Reddy was the protected tenant and all of them have filed independent declarations in CC. Nos. 1006, 439, 440, 801, 1009 and 1143 of 1975 showing these lands, claiming themselves as the protected tenants. Accepting the plea, the Tribunal after verification, by orders dated 27-10-1975 and also 14-8-1975 as evidenced by Exs.A-4 to 6, 8 and 12 held that the petitioners viz., the declarants therein are entitled to 1/6th share each and thus are non-surplus holders. Now the complaint of the petitioners is that in spite of the said inclusion of these very same lands in their holding, the Tribunal sought to proceed for the surrender of the same in pursuance of the orders holding the respondents 3 and 4 as the surplus land holders on computation of these very lands again. The case of the petitioners is that once they are accepted as the protected tenants and supported by ample evidence on record, and not seriously disputed, the question of inclusion of the said lands in the holdings of the respondents 3 and 4 does not arise more so when the lands are already included in the petitioners' holding.

4. On appeal filed as against both the orders of the Primary Tribunal under Sections 9 and 10 of the Land Ceilings Act, in pursuance of the declarations filed by the respondents 3 and 4, the lower appellate Tribunal partly allowed the appeal accepting the plea of the petitioners to the extent of Ac.33-12 guntas for which ownership certificates were granted u/s 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act (for short "the Tenancy Act") as evidenced by Ex.A-2 and dismissed the appeal to the extent of Ac.96-12 cents out of the said survey numbers on the ground that the later lands are not covered u/s 38-E of the Tenancy Act but for which certificate u/s 38-B was issued under Ex.A-1 and sale in pursuance of an agreement Ex.A-10 dated 25-2-1956 with the landholder needs permission under Sections 47 and 48 of the Tenancy Act, which is absent.

5. After hearing Sri K. Pratap Reddy, Senior Counsel and the learned Government Pleader for Land Ceiling, the only question which remains to be considered in this revision is as to whether the lands held by a protected tenant and covered u/s 38-B of the Tenancy Act are liable to be excluded u/s 13 of the Land Ceiling Act?

6. Admittedly, the petitioners were not parties to these proceedings made in pursuance of the declarations filed by the respondents 3 and 4 herein in CC Nos. 2476, 2477 and 2478 of 1975 showing these lands in their holding. Further, the

petitioners have filed separate declarations in CC Nos. 1006, 439, 440, 801, 1009 and 1143 of 1975 wherein the Primary Tribunal after an enquiry has passed orders dated 27-10-1975 and 14-8-1975 in Exs. A-12, and 4 to 6 and 8 holding that the petitioners are entitled to 1/6th share and they are non-surplus holders based on the claim of the petitioners as protected tenants. The said orders have become final. However, in the proceedings in pursuance of the declarations filed by respondents 3 and 4 herein, these lands were once again included and the said declarants were held to be surplus holders and suo motu surrender proceedings were initiated. It is at this stage that the petitioners objected to the same which stood rejected by the Primary Tribunal. However, on appeal, the appellate Tribunal has partly allowed the claim of the petitioners to the extent of the lands covered u/s 38-E of the Tenancy Act wherein a certificate was granted and rejected to the extent of the lands covered u/s 38-B of the Tenancy Act. The main reason shown by the lower appellate Tribunal is that the claim as made by the petitioners as protected tenants and also in pursuance of an agreement with the landlord is quite contradictory and further even if any such certificate is granted, the sale is without prior permission under Sections 47 and 48 of the Tenancy Act and therefore, not valid. With this background, there is no dispute as to the primary fact that the petitioners' father viz., T. Papi Reddy was the protected tenant in respect of the lands i.e., the lands to which the certificate u/s 38-E was issued and also the one falling u/s 38-B. No doubt, the procedure as contemplated for both these provisions is different but however, the fact remains that for entitling any such certificate or absolute ownership rights, one has to be a protected tenant without which neither of the said provisions comes into operation. Under the provisions of the Tenancy Act, protected tenant is defined both under the definition clause u/s 2(r) and explained in the subsequent provisions in Chapter III and Chapter IV. It is not anybody's case that the petitioners are total strangers or trespassers in respect of the lands covered u/s 38-B. For both the types of lands falling u/s 38-E and 38-B, they are the protected tenants. Section 13 of the Land Ceiling Act contemplates the exclusion of the lands held by a protected tenant. The said provision does not in any way restrict or make exclusion of any one type of protected tenants nor makes any distinction amongst the protected tenants. The incidents which follow in respect of a certificate granted u/s 38-E or u/s 38-B are one and the same i.e., conferring absolute ownership rights in favour of a protected tenant. The purpose u/s 13 of the Land Ceiling Act is to exclude the lands held by the protected tenants who are ultimately entitled to become absolute owners as per Sec. 38-E or Section 38-B.

7. Section 13 of the Land Ceiling Act reads as follows:

"13. Special provisions for protected tenant: (1) Where the holding of any owner includes any land held by a protected tenant, the Tribunal shall in the first instance determine whether such land or part thereof stands transferred to the protected tenant u/s 38-E of the A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950 (Act XXI of 1950) and if so the extent of land so transferred; and such extent of land shall

thereupon be excluded from the holding of such owner and included in the holding of such tenant, as if the tenant was the owner of such land for the purposes of this Act.

(2) Subject to the provisions of subsection (1), the relevant provisions of the Act aforesaid shall apply in the matter of purchases of such land by such protected tenant."

8. u/s 38-B, the certificate is to be granted in favour of a protected tenant where the landholder concerned relinquishes his. interest in the land in favour of a protected tenant and the provisions of Sub-section (7) of Section 38 are held to be not applicable to such cases. As per Sub-section (2) of Section 38-B, subject to Sub-section (1) which takes in cases where ownership rights are conferred u/s 38-E, the provisions relevant to and applicable to cases where the protected tenant purchases are squarely made applicable. Thus, the necessary corollary is that the certificate as issued u/s 38-B is on par with the certificate that would be granted u/s 38(6) of the Tenancy Act. Conferment of absolute rights is an incidental benefit to the protected tenants under a social beneficial legislation. In these circumstances, the question of applicability of Section 47 or 48 of the Tenancy Act requiring prior permission does not arise and further in the circumstances of the case, the said question does not arise. What has to be seen for the purpose of Section 13 of the Land Ceiling Act is whether a person is a protected tenant. In *B. Shankarayya v. Land Reforms Tribunal, Kamareddy*, 1976 ALT 171 this Court held:

"Once it is admitted or proved that lands are held by the protected tenants they will acquire ownership rights u/s 38 of the Tenancy Act, in which case, u/s 13 of the Ceiling Act, the same would stand excluded from the holding of the owner."

9. Again in *Gade Suresh v. Government of A.P.*, 1977 (1) An.W.R. 291 it was reiterated:

"The issue of a certificate u/s 38-E, Sub-section (2) arises after the Tribunal determines the extent of the land in respect of which ownership rights stand transferred to the protected tenant. The non-issue of a certificate u/s 38-E(2) does not postpone or prevent the operation of Section 38-E, Sub-section (1) under which the ownership rights " statutorily stand transferred to and vest in the protected tenants in respect of the land held by them as protected tenants subject to the conditions laid down in Section 38(7)."

10. Even where the ownership rights or such certificate is not granted, the exemption under land ceilings is held to apply. Therefore, it has to be seen as to whether the protected tenant is entitled to such absolute rights. Whereas in this case, the ultimate certificate is already granted in favour of late T. Papi Reddy u/s 32B (sic. 38-B) of the Tenancy Act. Therefore, in these circumstances, the protected tenant has become absolute owner himself and the landholders cannot be said to have any iota of right, title or interest. Further, it also cannot be said that the land is

held by the said landholders anymore in any capacity more so in view of Sub-section (2) of Section 13 of the Land Ceiling Act, which puts the land purchased by the protected tenant on par with the other, for which certificate u/s 38-E of the Tenancy Act is issued. Either way, the concerned protected tenant becomes an absolute owner. In these circumstances, it has to be held that the petitioners are also entitled to similar such exclusion in respect of the lands covered u/s 38-B of the Tenancy Act on par with the lands in respect of which certificate is granted u/s 38-E. There shall be an order accordingly.

11. The revision is allowed. No costs.