

(2007) 09 AP CK 0025

Andhra Pradesh High Court

Case No: C.R.P. No. 1753 of 1995

Pamanagundla Venkulu

APPELLANT

Vs

Nerella Yellaiah and Others

RESPONDENT

Date of Decision: Sept. 14, 2007

Acts Referred:

- Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 - Section 17, 19, 19(2), 19(3), 2

Citation: (2008) 1 ALD 702 : (2008) 1 ALT 275

Hon'ble Judges: B. Prakash Rao, J

Bench: Single Bench

Advocate: K. Mahipathy Rao, for the Appellant; K. Durga Prasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Prakash Rao, J.

The petitioner herein claiming to be the landlord filed this revision u/s 91 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short "the Act") assailing the orders of the appellate authority, the Joint Collector, Nalgonda in Case No. C3/JC/TA/6/92, dated 26.04.1993 allowing the appeal at the instance of the first respondent who claims to be the protected tenant, and setting aside the order of the Additional Revenue Divisional Officer (LR), dated 28.04.1992, in Case No. E/8295/99, cancelling the tenancy rights of the first respondent.

2. Briefly stated the facts of the case which give rise to this revision are that the petitioner claims to be the purchaser of the land in question which is to an extent of Ac. 10.02 gnts. in Survey No. 97, situated at Chepur Village, Gurrampode Mandal, Nalgonda district, in pursuance of the purchase made on 28.07.1954 and according to him, he has been in possession all along ever since. However, according to the petitioner, the primary authority, namely, the Additional Revenue Divisional Officer,

Miryalaguda, by order dated 23.02.1976, in file No. E/283/75 issued ownership certificate in favour of the deceased first respondent granting ownership certificate u/s 38-E of the Act. On appeal by the petitioner, the said certificate was cancelled by the order of the District Revenue Officer in file No. A7/DRO/173/76, dated 29.06.1976. Thereafter, in the year 1991, the petitioner filed an application before the Collector, Nalgonda on 04.04.1991 to record his name as pattedar in terms of the above said judgment, dated 29.06.1976. In pursuance of the said application, the Collector by his order, dated 09.04.1992, in File No.C3/8260/91, directed the Mandal Revenue Officer, Gurrampode to take action as per law. Thereupon, the said Mandal Revenue Officer sought permission from the Collector to delete the name of the first respondent and record the name of the petitioner in the revenue records.

3. Again, the Collector, as per the order, dated 15.05.1991, in file No. B1/13724/91, dated 22.06.1991 directed the Mandal Revenue Officer to implement the order dated, 29.06.1976, passed in the aforesaid appeal by the District Revenue Officer, in the Jamabandi and to rectify the entries in pahanies prior to 15.08.1976, in the light of the instructions contained in the Government Memo No. 1661-N1/81-3, dated 21.11.1984. Thereafter, the petitioner himself filed an application, once again, before the Revenue Divisional Officer, on 30.12.1991, seeking to set aside the certificate issued u/s 38-E of the Act in favour of the first respondent in terms of the judgment in appeal, dated 29.06.1976. Accordingly, the Revenue Divisional Officer, as per the order in file No. E/8295/75, dated 28.03.1991, cancelled the certificate issued in favour of the first respondent and directed the Mandal Revenue Officer to take appropriate action. It appears that the Additional Revenue Divisional Officer (LR) passed another order on 28.04.1992, modifying his earlier order and holding that the protected tenant's rights of the first respondent are seized (sic. ceased) and directed the Mandal Revenue Officer to round off the name of the first respondent in Protected Tenants' Register. It is against the said order, the deceased first respondent filed the appeal before the appellate authority viz., the Joint Collector, Nalgonda and the same was allowed. Hence, the revision.

4. The main contention urged on behalf of the petitioner is to the effect that having regard to the orders already passed in appeal as long back as on 29.06.1976 by the appellate authority viz., the then District Revenue Officer, the first respondent cannot claim any tenancy rights and since the certificate issued u/s 38-E of the Act stood cancelled and further that the order in the appeal, dated 29.06.1976, have remained unchallenged by the respondents and hence, it has become final, conclusive and binding.

5. On behalf of the first respondent, the aforesaid submission was sought to be repelled on the ground that though the order in the aforesaid appeal has not been challenged, the fact remains that the deceased first respondent continues to be the (sic) and whose rights were protected, which cannot be disturbed and it is only on this ground the appellate authority upheld the claim of the first respondent and

therefore, it does not warrant any interference.

6. On all these and other detailed submissions made across the Bar from both sides, the question which falls for consideration is as to, on the facts and circumstances, the deceased first respondent herein can claim any rights as a tenant having regard to the cancellation of the certificate issued u/s 38-E of the Act in an appeal filed by the petitioner landlord and the same having become final.

7. It is to be noticed that there is no dispute to the basic facts to the effect that the first respondent herein claimed to be the tenant and in pursuance of which the ownership certificate u/s 38-E of the Act was issued by the primary authority on 23.02.1976 and the said order, on challenge, was varied with and the appeal of the petitioner who claimed to be the purchaser from the land owner on 20.07.1954 and being in possession, was allowed as per the order of the appellate authority viz., District Revenue Officer, on 29.06.1976. This order, admittedly, has not been challenged by the first respondent and thus, it has become final.

8. However, on the face of the aforesaid order, dated 29.06.1976, for setting aside the ownership certificate issued u/s 38-E of the said Act, the petitioner initiated the proceedings, as evident from the above narrated facts, for the purpose of carrying out the entries in his name as pattedar and replacement of any entries in favour of the first respondent. It is the proceedings which are initiated by the petitioner himself by filing application on 04.04.1991, which gave rise to the present proceedings. Initially, the entire endeavour on the part of the petitioner is in pursuance of the application filed on 04.04.1991 or even another application filed by the petitioner before the primary authority on 30.12.1991, which are for the purpose of carrying out his name and cancelling the certificate issued u/s 38-E of the Act. In this context, the primary authority has gone into the merits once again and passed the order on 28.04.1992, where briefly it passed the order to the following effect:

Proceedings of The Land Reforms Tribunal, Nalgonda.

CC NO. 3473/3475/3477/75/DVK,

Sub:- Tenancy Act, 1950 - Chepoor village Gurrampode Mandal-Cancellation of 38-E Certificate Sy. No. 97 Ac 10.82 orders issued Reg.

Ref:- This office Process No.E/8295/89, dt.28.3.92

ORDER:

In the modification of the orders issued vide reference cited, it is hereby ordered that due to cancellation of 38-E Certificate issued to Sri Naralla Yellaiah and 4 others for Sy. No. 97 to an extent of Acre 10-82 Cts the rights of their protected Tenancy also seized.

The Mandal Revenue Officer, Gurrampode is hereby ordered to round the name of Sri Naralla Yellaiah in protected Tenancy Register and send the compliance report at

once.

9. From the above, it is quite evident that the proceedings as taken up by the primary authority and passing of the orders on 28.04.1992, prima facie, does not appear to be a comprehensive one and after regular enquiry. Even otherwise, it does not amount to initiation of any fresh proceedings to grant or to go into entitlement of ownership certificate u/s 38-E of the Act. It only reiterates that in modification of the earlier orders issued on 28.03.1992 and due to the cancellation of the certificate u/s 38-E, the rights of the first respondent as a protected tenant ceases (sic. ceases) and therefore, directed to round off the name of the first respondent in the protected tenancy register. On appeal by the first respondent, the lower appellate authority, in a well considered order, went into the entire chequered events, and had drawn a distinction amongst the rights as conferred under the provisions of the Act and held that merely because the ownership certificate, which is issued u/s 38-E is cancelled, it does not divest any rights of the first respondent herein as a tenant which continue to remain unhindered and unaffected as long as no appropriate proceedings, as contemplated under law, under the Act, are initiated either by termination or otherwise. Admittedly, in this case, no other proceedings u/s 19 of the Act to terminate the tenancy or otherwise have been taken up by the petitioner. What all the efforts the petitioner has made on the earlier occasion is only in regard to the cancellation of certificate issued u/s 38-E of the Act in the proceedings, dated 23.02.1976, which are challenged and the same was set aside in appeal by the appellate authority on 29.06.1976. Therefore, as rightly pointed out by the appellate authority, this itself is not enough to divest a person's basic right which existed as a tenant since there is no proceedings of termination u/s 19 nor any surrender as contemplated thereunder. Even, in this revision, nothing has been pointed out on behalf of the petitioner to the effect that there were any such proceedings whereby tenancy rights have been terminated in any manner as contemplated under law. Even otherwise, it has been pointed out by the appellate authority that the proceedings, dated 28.04.1992, by the primary authority which also were in flagrant violation of the principles of natural justice since no notice nor any opportunity was given and no enquiry was held in presence of both sides. Be that as it may, apart from the absence of any regular enquiry and a notice to the first respondent before primary authority, the approach of the appellate authority is perfectly well within the scope, objects and the rights which are protected under the provisions of the said Act. At this juncture, it is necessary to refer to Section 2(v) of the said Act, which defines "tenant" as, Tenant means an asami shikmi who holds land on lease and includes a person who is deemed to be a tenant under the provisions of this Act

10. Further Section 2(r) defines "protected", which means, a person who is deemed to be a protected tenant under the provisions of this Act.

11. Thus, there is a clear distinction in between a tenant ordinarily and a tenant who has been protected in a given circumstance. Chapter III of the Act, from Section 5 onwards takes in and defines the tenants, their rights and mutual obligations even in regard to the payment of rents etc., Section 19 thereof in the very same Chapter contemplates specific provision for termination of the tenancy, both on notice and also by surrender, which reads as follows:

19. Termination of tenancy:

(1) Notwithstanding any agreement or usage or any decree or order of a Court of law, but subject to the provisions of Sub-section (3), no tenancy of land shall be terminated before the expiration of the period for which the land is leased or deemed to be leased otherwise than-

(a) by the tenant by surrender of his rights to the landholder at least a month before the commencement of the year:

Provided that such surrender is made by the tenant in writing and is admitted by him before and is made in good faith to the satisfaction of the Tahsildar; or

Provided further that where the land is cultivated, jointly by joint tenants or members of an undivided Hindu family, unless the surrender is made by all of them, it shall be ineffective in respect of such joint tenants as have not joined in the application for surrender, irrespective of the fact that the names of all the joint tenants are not mentioned in the certificate;

(b) by the landholder on a ground specified in Sub-section (2).

(2) The landholder may terminate a tenancy on the ground that the tenant-

(i) has failed to pay in any year, within fifteen days from the day fixed under the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F. for the payment of the last instalment of land revenue due for the land concerned in that year, the rent of such land for that year; or

(ii) if an application for the determination of reasonable rent is pending before the Tribunal or the Collector u/s 17, has failed to deposit within 15 days from the aforesaid date with the Tribunal or the Collector, as the case may be, a sum equal to the amount of rent which he would have been liable to pay for that year if no such application had been made; or

(iii) in case the reasonable rent determined u/s 17 is higher than the sum deposited by him, has failed to pay the balance due from him within two months from the date of the decision of the Tribunal or the Collector, as the case may be; or

(b) has done any act which is destructive or permanently injurious to the land; or

(c) has sub-divided the land; or

(d) has sub-let the land or failed to cultivate the land personally, or has assigned any interest therein; or

(e) has used such land for a purpose other than agriculture:

Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the landholder gives six months, notice in writing intimating his decision to terminate the tenancy and the grounds for such termination: and

Provided further that the tenant of a tenant who-

(a) is a female or a minor; or

(b) is subject to physical or mental disability; or

(c) is serving in the Naval, Military or Air Forces of India

shall not be determined on the ground only that the land comprised in the tenancy has been sub-let by or on behalf of such tenant.

(3) The tenancy of a tenant holding a lease to which Section (7) or 8 applies shall terminate-

(4) (a) Omitted

(b) where the landholder is a person who, having served in the Naval, Military or Air Forces of India, in good faith requires the land for personal cultivation on the termination of such service, on the expiration of the year in which such person gives notice in writing to the tenant that the tenancy is terminated; or

(c) on the first day of march, 1951 in a case in which a person deemed u/s 34 to be a protected tenant is entitled u/s 36 to recover possession of the land on that day.

12. From the above it is quite evident that as long as no such proceedings are initiated for termination or surrender, the tenancy rights continue to exist.

13. In contrast, Chapter IV contemplates the rights of the protected tenants and it gets defined u/s 34 thereof. u/s 35 of the Act, power is conferred on the concerned primary authorities to go into the question as to whether any person shall be deemed to be a protected tenant or not. Even u/s 37-A thereof, in a different context, certain persons are held to be protected tenants. u/s 38, a specific right is conferred on the protected tenant to purchase the land and ultimately, u/s 38-E of the Act, a specific provision is made for issuing a notification by the Government on the basis of which, ownership rights have been conferred on the protected tenants and consequently, a certificate is to be issued. From the above specific provisions, procedure and also the rights as conferred independently and distinctly in two different contexts, one as a tenant ordinarily and another as a tenant protected, there is a demarcation and one cannot take away or have any effect on the other.

Therefore, a tenant, in a given circumstance, may not be a protected tenant, but a protected tenant necessarily can be basically a tenant irrespective of fact whether his right of tenancy might not have been protected well within the parameters contemplated under the law or held to be existing or not. Therefore, merely because an ownership certificate, which has been issued to a tenant, was cancelled, he does not cease (sic cease) to be a tenant and necessarily it only follows that his right as a tenant is sufficiently protected under the provisions of the Act. The only remedy open for the landlord is to take proceedings for termination u/s 19 of the Act or by way of surrender voluntarily as contemplated thereunder. Therefore, it is to be held that the contention of the petitioner that having regard to the cancellation of the ownership certificate issued u/s 38-E of the Act, the first respondent ceased (sic. ceased) to be on all angles, Is not correct and unsustainable. The tenant thus ultimately continues to be protected from all interdictions in respect of the said right, including possession.

For the aforesaid circumstances, the revision is dismissed, however, in the circumstances no costs.