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(1999) 07 AP CK 0170

Andhra Pradesh High Court

Case No: Writ Petition No. 12301 of 1989

K. Sreenivasachari		APPELLANT
	Vs	
Custodian of Evacuee Property and Secy. to Commissioner, Survey, Settlements and Land Records, Hyd. and others		RESPONDENT

Date of Decision: July 27, 1999

Acts Referred:

- Administration of Evacuee Property Act, 1950 - Section 10, 12, 4, 7, 8
- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 145

Citation: (1999) 5 ALD 206

Hon'ble Judges: A.S. Bhate, J

Bench: Single Bench

Advocate: Mr. M. Krishnamohana Rao, for the Appellant; Government Pleader for Survey and Land Records and Mr. Omprakash Misra, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner feels aggrieved by refusal of respondent No.1 to order delivery of the land, which is subject-matter of the writ petition, admeasuring Ac.1-00 of area from Survey No.364 of Gowdavalli village. Identity of the land does not appear to be in dispute. The said land is admittedly in possession of original respondent No.2, who has expired and now is being represented by his legal representatives.

2. The petitioner''s grievance is that one Quazi Faizuddin was owner of Sy. No.364 which was admeasuring more than Ac.29.00. The said Qauzi Faizuddin was declared as evacuee in the year 1950 by the appropriate authority i.e., the Custodian of Evacuee property. Due to declaration of the property as Evacuee property, the said property vested in the Custodian. Prior to the property being declared as Evacuee

property, it was allegedly in possession of Court of wards. It is contended that the Court of Wards used to auction the lease hold rights of the property every year on Ek-sal basis. The petitioner further contends that after declaration of the property as Evacuee property, the said property was put for sale by public auction by the Custodian. The petitioner purchased the Evacuee property and obtained and sale certificate in his favour in 1969 from the competent authority. The petitioner then made several applications to obtain possession of the purchased property. The Custodian gave possession of Ac.28.24 gts. out of Sy. No.364 but the Ac. 1.00 which is disputed land, was not put in his possession right from 1969. It is alleged that respondent No.2 is occupying the said land since beginning. Respondent No.1-Custodian having failed to give possession of that one acre of land to the petitioner, the petitioner went on making his requests. Ultimately the first respondent held enquiry and found that respondent No.2 was recorded as a ''tenant'' since long time. The Tenancy Register maintained by the Tenancy Commissioner in 1950 showed that respondent No.2 as the registered tenant of the said portion. By the impugned orderdated 14-5-1989, the Custodian held that respondent No.2 being a statutory tenant in the disputed land could not be evicted and possession could not be given to the petitioner. It was held that the Mandal Revenue Officer may fix the rent and take necessary steps under the Tenancy Act.

3. The contention of the petitioner is that once the property was declared as ''Evacuee property'' it vested absolutely in the Custodian free from all encumbrances and therefore, the Custodian was bound to put the petitioner, who was the purchaser ofEvacuee property, in possession of the whole of it. In the first place there was no material to show that respondent No.2 was a tenant. Secondly even if he was a tenant in view of Section 9 of the Administration of the Evacuee Property Act, 1950 (hereafter referred to as ''the Act''), the Custodian was bound to evict respondent No.2 and put the petitioner in possession of the property. It is further argued that respondent No.2 had never set up his claim as a tenant at any point of time. He had participated in the auction but was unsuccessful bidder. At that time he did not disclose that he was a tenant of any portion of the property. Further, it is said that 2nd respondent had admitted that he was a servant of Quazi Faizuddin, the evacuee. He being a servant could not be a tenant in the said property. Thus the petitioner''s challenge the factum of respondent No.2 being a tenant in the property in the alternate even if he is tenant, in view of Section 9 read with Section 4 of the Act, the Custodian is bound to remove respondent No.2 from the land and put the petitioner in possession.

4. Respondent No.1 as well as respondent No,2 have seriously contested the claim of the petitioner. It is pointed out that respondent No.2 was a long standing tenant in the property. In fact he was shown as a ''protected tenant'' over an area of Ac.2.31 gts. It is further stated that the'' petitioner slept over for almost twenty years after purchase of the property and then suddenly made a claim for possession of the disputed portion of the Ac. 1.00. It is next contended that the petitioner cannot ask

the Custodian to take illegal step of evicting respondent No.2, who is a statutory tenant.

5. The learned Counsel for respondent No.2 has urged that Section 4 of the Act has no application in respect of statutory tenancies. Further more, even if Section 4 has application, it must yield to the provisions of the A.P. Tenancy Act. Non obstante clause in Section 4 cannot over reach the non obstante clause in the Tenancy Act of the State. It is therefore, contended that the petitioner cannot get any thing more than what vested in the Central Government on declaration of the property as ''Evacuee Property'' under the provisions of the Act. Even though the property vested in the Central Government free from encumbrance, the statutory rights of any one could not be divested. The encumbrances referred to are the contractual encumbrance or rights arising from any other.

6. The teamed Counsel for the petitioner submits that Section 8 of the Act reads with Section 12 and Section 4 of the Act are relevant. Section 4 runs as follows:

"(1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

(2) For the removal of doubts, it is hereby declared that nothing in any other law controlling the rents of, or evictions from, any property shall apply, or be deemed ever to have applied, to evacuee property."

Section 8 states that any property which is declared to be evacuee property under the provisions of the Act shall be deemed to have vested in the Custodian for the State. It further states that where immediately before the commencement of the Act any property in a State had vested as evacuee property in any person exercising the powers of the Custodian under any law repealed hereby the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of the Act. Section 9 of the Act empowers the Custodian to take possession of Evacuee Property vested in him. Section 10 deals with the powers and duties of the Custodian. Section 12 refers to the power to vary or cancel leases of evacuee property. It states that notwithstanding anything contained in any other law for the time being in force, the Custodian has power to cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property was held or occupied by a person whether such allotment, lease or agreement was granted or entered into before or after the commencement of the Act. Under the proviso, when the lease was granted to the occupant before 14th day of August, 1947, the Custodian is debarred from exercising powers of cancelling or terminating or amending the terms of the lease unless the conditions stated in the proviso are fulfilled. They are sub-letting of the property or using it for the purpose other than the one for which it was leased or failure to pay rent in

accordance with the terms of the lease. Clause (2) of Section 12 says that when any person ceases to be entitled to possession shall on demand by the Custodian surrender the possession of the property to the Custodian. Sub-section (3) refers to the procedure when a person fails to surrender possession of the property of demand by the Custodian. It will thus be seen that the provisions of the Act are quite comprehensive in respect of the evacuee property.

7. The learned Counsel for the petitioner argues that as the whole property comprising survey No.364 was declared as evacuee property, the same vested in the Custodian u/s 8 of the Act. u/s 9 the Custodian has powers to take possession of the evacuee property vested in him and Section 12 gives power to cancel any lease even if it was subsisting on the evacuee property. All these provisions read together, empower the Custodian to cancel the lease granted in favour of respondent No.2 and the Custodian was duty bound to give possession of the property to the petitioner, who was admittedly the auction-purchaser of the whole evacuee property comprising in Sy. No.364. As against this, the learned Counsel for respondent No.2 supported by the learned Government Pleader for the State, contended that respondent No.2 was a protected tenant under the relevant provisions of A.P. Agricultural Tenancy Act and therefore, what vested in the Custodian u/s 8 was the evacuee''s property along with tenancy rights of respondent No.2. The tenancy being a statutory one and respondent No.2 having been found to be a protected tenant, he could not be evicted by the Custodian inspite of the powers u/s 9 or Section 12 of the Act.

8. I feel that there can be no doubt that what vested in the Custodian on the property being declared as the evacuee property u/s 7 of the Act was the property along with the rights of respondent No.2, under the statute. Therefore, unless the Custodian had power under the Act to take possession of the property from respondent No.2, the petitioner cannot claim from his possession of Ac. 1.00 property in dispute. If the Custodian himself is prohibited under law to take possession, obviously he cannot pass on possession to the petitioner.

9. The learned Counsel for the petitioner in response to the respondent''s argument refers to Section 4 of the Act. Then careful reading of Section 4 shows existence of non obstante clause in it and it states that notwithstanding anything inconsistent contained in any other law for the time being in force, the provisions of the Act and all the Rules and the Orders shall prevail. Sub-section (2) declares that laws controlling the rents of, or evictions from any property shall apply or deemed ever to have applied to evacuee property. It is therefore, urged by the learned Counsel for the petitioner that in view of Section 4 the provisions of the A.P. Tenancy Act under which respondent No.2 is claiming to be a protected tenant must yield and give way to the provisions under the Act. Coupled with Section 4, Section 12 of the Act is also referred to for contending that notwithstanding anything contained in any other law, the Custodian has a right and power to cancel or terminate any lease

under which any evacuee property is held. It maybe pointed out that Section 12 has no application because the proviso itself shows that in cases of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise powers conferred upon him for terminating the lease unless the three clauses in the proviso are satisfied. The lease in the instant case is old one and therefore, Section 12 by any stretch of imagination will not empower the custodian to cancel the lease and consequently enable him to take possession of the land from respondent No.2.

10. Turning to the effect of Section 4 of the Act, it will have to be seen as to whether the effect of that section is to override the provisions of A.P. State Agricultural Tenancy Act. No doubt the wording of the section says that notwithstanding anything inconsistent from that contained in any other law for the time being in force, the provisions of the Act shall prevail. Referring to this provision, the learned Counsel for the petitioner refers to certain decisions for advancing his argument. Firstly he refers to the decision in Sayed Salahuddin Ahmad Vs. Janki Mahton and Others, , wherein a Division Bench of Patna High Court held that the vesting of the evacuee property in the Custodian dates from the date of declaration of properly as evacuee-property and not from the date of publication u/s 7 of the Act. Further, it was found that once the property was declared as evacuee property Section 145 of the Code of Criminal Procedure (''Cr.PC'') cannot be attracted and proceedings initiated u/s 145 of the Cr.PC are not tenable. This case has no application to the facts of the present case.

10A. The learned Counsel then refers to the decision in Abdul Sattar v. Custodian Evacuee Property, AIR 1958 AP 317. The case undoubtedly supports the contention of the petitioner. A learned single Judge of this Court held in that case that Section 4 has an over-riding effect over the provisions of the Hyderabad Tenancy and Agricultural Lands Act and even if the property of evacuee has vested in the Custodian, the petitioner, who was a lessee of the evacuee could not set up any rights against the Custodian as the property vested in the Custodian and the provisions of the Act had come into operation. I will presently show that this judgment has been impliedly over-ruled by a subsequent Supreme Court judgment. The learned Counsel then refers to the decision in Manohar Lal Vs. Rent Control and Eviction Officer, Bareilly, . It was held in that case that in view of Section 4 of the Act and the powers of the Custodian contained in Section 10, the provisions of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 could not apply to the evacuee property. It may be borne in mind that the Rent Control Act referred to in this case was not regarding the agricultural lands but regarding the urban houses. The learned Counsel then refers to the decision in Regional Settlement Commissioner Evacuee Property, Bombay and Another Vs. Golla Pentiah and Others, . The ration of the said case is that civil Court cannot question the validity of notification issued under the provisions of the Act. It was also held that validity of notification if involved mixed question of fact and law cannot be raised in a petition under Article 226 of the Constitution of India. I do not think that this case has any

relevance to the present dispute. Lastly the learned Counsel referred to the decision in Tar Mohammad v. Union of India, AIR 1977 SC 3679. The brief facts in that case were that a firm was carrying on business. One of the partners of the firm migrated to Pakistan. His share was declared as evacuee property under the provisions of the Act. The Custodian directed other partners to surrender the possession of the property. The other partners took a plea that they were in possession of the evacuee property as tenants since prior to 14-8-1947 and their tenancy could not be terminated. It was held in that case that there was no material to show that tenancy existed since prior to August, 1947. That was the main ground on which the case was decided. The Court also observed that in addition, by virtue of non-obstante clause in Section 4 of the Act tenancy rights stood extinguished and the partners could not resist taking over possession. It may be seen that in this case also like in Manohar Lal''s case (supra) the property in question was a house property and the concerned Rent Control Statute was not in regard to agricultural land or tenancy/leases of agricultural land. This aspect assumes importance in view of the Supreme Court authority cited by the learned Counsel for respondent No,2 to which reference will be made at appropriate place.

11. The learned Counsel for the respondents first referred to the decision in P.R. Nayak Vs. Bejen Dadiba Bharucha, , which is a Division Bench judgment presided over by the Hon''ble Chief Justice Sri Chagla. In the said case the Court held that u/s 12 of the Act the power conferred upon the Custodian cannot be exercised with regard to lease granted or agreement made prior to 14-8-1947. It is also pointed out that before the Custodian can requisition the assistance of Section 4 of the Act, he must satisfy the Court that there is any provision in the Act which entitles the Custodian to eject a person in possession of the evacuee-property which possession is not unauthorised possession. It may be stated that this decision was rendered before amendment of Section 12 of the Act. The amendment came into force on 6-5-1953 and by the amendment, the Legislature enlarged the scope of powers of the Custodian. Before the amendment only the property which was allotted or leased or agreement had been granted or entered into after 14th day of August, 1947 was capable of being dealt with by the Custodian. The leases etc., entered into prior to 14th day of August, 1947 were beyond the reach of the Custodian''s power. After amendment, the Legislature enlarged the powers and stated that whether the allotment, lease or agreement was granted or entered into, before or after the commencement of the Act, the powers of the Custodian could be exercised subject to the proviso which was also added. Therefore, this judgment though apparently is in favour of respondent No.2 is not applicable in view of subsequent amendment in 1953. Similarly the second decision relied upon by the learned Counsel for the respondents is in Moola Vs. Financial Commissioner, Revenue, Chandigarh and Others, , also need not be considered because the lease granted in that case in respect of the evacuee property, was one which was prior to the property having been declared as evacuee property. It was held that in such circumstances the

Custodian was not empowered to demand surrender of the property by referring to powers u/s 8 read with Section 9. Section 12 was referred to but that was the un-amended Section prior to 1953.

12. The learned Counsel then referred to the decision in Moola Vs. Financial Commissioner, Revenue, Chandigarh and Others, . In the said case a suit for acquisition of occupancy rights against a displaced person was initiated. The plaintiff claimed that he was a lessee since prior to 14-8-1947. The property was declared as evacuee property subsequently. The Supreme Court held that it clearly transpired from the proviso to Section 12 that if the lease in favour of the lessee was from a date prior to August, 1947, the Custodian will have no power to cancel the lease and hence it was necessary to determine as to whether the lessee or his predecessor was on the land of the lessee since prior to 14th August, 1947. In the present case the occupation of respondent No.2 is found to be since prior to August, 1947.

13. The most important decision for deciding the case is Gram Panchayat of Village Jamalpur Vs. Malwinder Singh and Others, . This is a decision of Five Judges Bench of the Apex Court presided over by the then Chief Justice His Lordship Sri Y.V. Chandrachud. It was held in that case that if there was repugnancy between the Central Act and the State Act but if the State Act is in relation to ''agricultural land'' which falls under Entry No. 18 of the State List under the Constitution of India, then the provisions of the State Act will prevail. Meaning thereby that the non-obstante clause employed in the Central Act cannot be pressed into service if there is repugnancy between the Central Act and a State Act where the subject of State Act falls within the State List only. As agricultural land is subject exclusively within the jurisdiction of State the laws enacted in respect of agricultural land cannot be subject to any non-obstante clause employee in the Central Act. The Centre has no power to make any Legislation in respect of agricultural. lands. It was therefore held that the provisions of the Land Regulation Act of Punjab State would not yield to the provisions of the Act inspite of the non-obstante clause employed in the Act. In the present case also respondent No.2 is found to be a protected tenant of agricultural land under the provisions of State enactment concerning agricultural lands by the authorities. Therefore, the rights of respondent No.2 will be protected as per the provisions of the State Act. The non-obstante clause in the Act will not override the provisions of the State Tenancy Act. In this view of the matter, the contention of the petitioner''s Counsel will have to be rejected.

14. In view of the decision in Jamalpur Gram Panchayat''s case (supra), the view taken by a learned single Judge of this Court in Abdul Satiar''s case (supra) is deemed to have been overruled. Before the learned single Judge this aspect dealt by Apex Court was not brought to the notice. Similarly the decision in Tar Mohammad''s case (supra) referred to by the learned Counsel for the petitioner does not lay down any thing contrary to the decision in Jamalpur Gram Panchayat''s case (supra). The decision in Tar Mohammad''s case (supra) relates to the Urban

property which is a subject covered by List III in the VII Schedule of the Constitution of India and falls in Sl. No.6 in the Concurrent List. As the subject of the State Law there is in the Concurrent List the non-obstante clause in the Act which is a Central Act will prevail over the State Act. The ratio of the decision in Jamalpur Gram Panchayat''s case (supra) is not shaken in any way. Moreover, the decision in Jamalpur Gram Panchayat''s case (supra) is of a larger Bench and the decision in Tar Mohammad''s case (supra) is of a Bench consisting of lesser number of Judges. The main reason is that the decision in Tar Mohammad''s case (supra) is relating to property covered by the State Act, the subject of which is not in the second list which is meant for the subjects exclusively of the State.

15. In view of all the foregoing discussion, I have no doubt whatsoever in rejecting the petitioner''s contention that the provisions of the Act empower and mandate the Custodian, to dispossess respondent No.2 even if he is a statutory tenant of agricultural land and put the petitioner in possession of the same.

16. The learned Counsel for the petitioner then made an attempt to contend that there is no proof that respondent No.2 was the statutory-tenant of the land in question. The contention is that in the impugned order the respondent No.1 did not take into consideration that respondent No.2 had never raised the issue that he was the statutory tenant of any part of the evacuee property. It is further urged that there is no decision of Tenancy Court showing that respondent No.2 was a protected tenant of any part of land bearing Sy. No.364. I do not think that this argument can be accepted. A very specific finding has been reached by respondent No.1 in the impugned order that the Tenancy Extract Register clearly described respondent No,2 as a protected tenant in respect of Sy. No.364. This entry was as per the decision of Tenancy Commissioner. It is not open for the petitioner to challenge the question of fact now in this writ petition. Therefore, the second limb of the argument of the petitioner must also fail.

17. In the circumstances, the writ petition is meritless and deserves to be dismissed. It is dismissed. Rule discharged.