G. Chennaiah and anr. Vs. State of Andhra Pradesh and ors.

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Court : Andhra Pradesh

Decided On : Aug-31-1982

Reported in : AIR1983AP34

Judge : Ramachandra Rao and ;Sreeramulu, JJ.

Acts : Constitution of India - Articles 38, 39 and 246; Andhra Pradesh (Andhra Area) Tenancy and Agricultural Lands Act, 1950 - Sections 19, 19(1), 38-E, 38-E(1), 38-E(2), 97 and 99

Appeal No. : W.P. Nos. 5257 of 1979 etc.

Appellant : G. Chennaiah and anr.

Respondent : State of Andhra Pradesh and ors.

Advocate for Def. : Government Pleader, ;Murali Narayan Bhung, ;M. Chandra Sekhara Rao, ;C.R. Pratap Reddy, ;Mohd. Azizullah Khan, ;P. Sobhanadri Babu, ;G. Haridhatha Reddy, ;C. Narasimhacharya, ;G. Srisama Rao, ;O.P. Mi

Advocate for Pet/Ap. : V. Rajendra Babu, ;G. Haridatha Reddy, ;R.V. Subbarao, ;T. Dasaratha Ramayya, ;G. Ramakrishnayya, ;G. Dharma Rao, ;B. Subhashan Reddy, ;M.P. Ugle and ;B.G. Paropkari, Advs.

Judgement :

Ramachandra Rao, J.

1. In this batch of writ petitions two common questions arise for consideration:

(1) whether the proviso to S. 38-E (2) introduced by the Andhra pradesh (telengana Area) Tenancy and Agricultural Lands Amendment Act 2/79 is unconstitutional?

(2) whether the said proviso which came into force on 11-1-1979 has no retrospective operation?

In order to decide the said questions, it is necessary to notice the facts which have led to the passing of the said Amendment Act 2/79 The Andhra pradesh (Andhra Area) Tenancy and Agricultural Lands Act 21/50 was enacted to amend the law relating to relations of landholders and tenants of agricultural land and the alienation of such land to enable landholders to prevent the excessive sub-division of agricultural holdings, to empower Government to assume in certain circumstances the management of agricultural lands to provide for the registration of co-operative Farms and to make further provision for matters incidental to the aforesaid purposes. The said Act came into force on 10th June 1950 and it extends to the whole of the Telengana area of the state of Andhra pradesh.

2. Section 2, the definition section, defines various words and expressions occurring in the several provisions of the Act 'Tenancy' is defined in S. 2 (u) as meaning the relationship of landholder and tenant. 'Protected' is defined in S. 2 (r) as meaning a person who is deemed to be the protected tenant under the provisions of the

Act. The section also contains definitions of the words 'Agriculture' 'Agriculturists' 'land' 'lease' 'permanent lienation' andother words or expressions which it may not be necessary to refer in detail for the purpose of this case Ss. 34 to 46 in Chapter IV contain provisions relating to protected tenants. Chapter V contains provisions relating to restrictions provisions relating to restrictions on transfe of agricultural land, and the other chapters VI, VII, VIII and IX deal with management of land, prevention of fragmentation and consolication of holdings, co-operative Farms Constitution of tribunals procedure and power of authorities under the Act chapter X Provides for offences and penalties and chapter XI contintoution were cellaneou provisons. But are mainly concerned with the provisions in chapter IV relating to protected tenants.

3. Section 34 defines protected tenants'. Claims relating to protected tenancy are decided by the Tahsildar under S. 35 (1) and against the decision of the Tahsildar, a first appeal lies to the collector and a second appeal to the board of Revenue under S. 35 (2) and the declaration given by the Tahsildar shall be conclusive that a person is a protected tenant and his rights as such shall be recorded in the record of rights and where there is no record of rights in such village record as may be prescribed. The validity or correctness of a tenancy certificate issued pursuant to a decision under S. 35 cannot be questioned in any civil or criminal Court by reason of the provisions of S. 99 of the Act, which bars the jurisdiction of a civil Court to settle decide or deal with any question which is by or under the Act S. 36 enables the protected tenant to recover possession of the land on complying with the requirements of the said section s. 38 confers a right on the protected tenant to purchase the land-holder's interest in the land held by him as a protected tenant subject to the provisions of sub-sec. (7) and other provisions of the said section.

4. While so, by Amendment Act No. 3/54 which received the assent of the president on 31st January 1954 a number of amendments were made to the Act including the insertion of s. 38-E.Under S. 38-E, the Government may declare by notification in the Andhra pradesh gazette that ownership of all lands held by protected tenants which tehy are entitled to purchase from their land holders in such area under any provision of chapter IV shall stand transferred to, and vest in the protected tenants holding them, and from such date the protected tenants shall be deemed to be the full owners of such lands.

5. Under the proviso to the said section 38-E, where in respect of any such land any proceeding under S. 19 or S. 32 or S. 44 is pending on the notified date, the transfer of ownership shall take effect on the date on which such proceeding is finally decided and when the tenant retains possession of the land in accordance with the decision in such proceeding. The explanation to the said S. 38-E (1) reads as follows:-

Explanation:- If a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of hte Tahsildar as provided in S. 32 is not in possession of the land on the date of the notification issued hereunder then for the purpose of the sub-section, such protected tenant shall, notwithstanding any judgment decree or order of any Court or the order of the Board of Revenue or Tribunal or other of any Court or the order of the Board of Revenue or Tribunal or other authority, be deemed to have been holding the land on the date of the notification; and accordingly, the Tahsildar shall notwithstanding anything contained in the said 32. Either suo motu or on the application of the protected tenant hold a summary enquiry and direct that such land in possession of the landholder or any person claiming through or under him in that area, shall be taken from the possession of the landholder or such person as the case may be and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the protected tenant had held the land on the date of such notification.'

6. Under this provision, a protected tenant who has been otherwise than in the manner and by order of the Tahsildar as provided in S. 32 is not in possession of the land on the notified date for the purpose of the sub-section, such protected tenant shall be deemed to have been holding the land on the notified date. Further the Tahsildar is empowered under the said explanation either suo motu or on the application of such protected tenant to hold a summary enquiry and direct that the possession of such land in the possession of landholder or any person claiming through or under him shall be taken from the landholder or such person and restore tot he protected tenant and the provisions of s. 38-E apply to such protected tenant as if he had

held the land on the date of such notification.

7. Sub-section (2) of S. 38 -E provides for issue of a certificate in the prescribed from by the Tribunal after holding an enquiry as may be prescribed, declaring the protected tenant to be the owner and the certificate shall be conclusive evidence of the protected tenant having become the owner with effect from the date of the certificate shall be conclusive evidence of the protected tenant having become the owner with effect from the date of the certificate as against the landholder and all other persons having any interest therein. Sub-ss. (3) and (4) provide for determination of the reasonable price of the Landholder's interest in the land in respect of which ownership stands transferred to the protected tenant under S. 38-E (1) and recovery of the price on default of payment by the protected tenant.

8. While so, two writ petitions W. P. Nos. 3279 and 3280/77 were filed in this Court by the petitioners therein alleging that they had entered into agreements of sale from the landholder in the years 1963 and 1964 on payment of the entire consideration, and that they were put in possession of the same, and that they were in possession of the lands for over 12 years. On 20-8-1977 they received a notice from the patwari stating that the Tahsildar had passed an order for dispossessing them from the lands as the revenue Divisional officer granted a patta certificate under S. 38-E in respect of the said lands in favour of the respondents 4 to 9 therein who claimed to be protected tenants.

The said notices were challenged in both the writ petitions on the ground that the order for dispossession was passed by the Revenue Divisional officer without notice to the petitioners that they were in possession of the lands at the time the certificate under section 38-E were issued to the respondents, but they were not issued any notice of the said proceedings, that the respondents protected tenants on the issue of the patta certificates became owners of the land, and therefore the revenue authorities were no more competent to pass orders directing dispossession of the petitioners under the provisions of the Act as the question relating to possession arose between two rival owners and not between a landholder and a protected tenant and that even otherwise the rights of the tenants stood extinguished on account of their being out of possession for more than the statutory period of 12 years prior to the agreements of sale in favour of the petitioners and that the protected tenants had also abandoned their possession over the lands and they were not dispossessed and therefore, the revenue authorities had no power to restore possession of the said lands tot he tenants, and that even otherwise, the power to restore possession could only be exercised before the patta certificate under S. 38-E was issued, but not subsequent to its issuance.

9. The said writ petitions were contested by the respondents denying the truth and validity of the agreements to sell set up by the petitioners and also their being in possession pursuant to the agreements to sell alleging that their claim was based on some bogus village records and that the respondents being protected tenants. The ownership stood transferred to them in respect of the lands held by them on the coming into force of S. 38-E of the Act, and that the patta certificate under S. 38-E was issued as the requirement of S. 38 (7) was fulfilled, and that notices to all persons were issued at that stage, but the petitioners therein did not put forward any objections with regard to the grant of certificate and that the revenue records disclosed that the 3rd respondent alone was the owner and possessor and not the petitioners therein, and that the possession of the petitioners was unauthorised and the Revenue Authorities had powers to dispossess such persons in unauthorised occupation and restore possession of the lands to the protected tenants and that the patta certificates issued were final and conclusive as they were issued after following the procedure prescribed by S. 38-E read with the relevant rules.

10. The writ petitions were heard and disposed of by jeevan Reddy, J. Holding as follows:-

(1) the provisions of S. 38-E of the Act are special beneficial provisions.

(2) proceedings for restoration of possession could be taken before or after the issue of the patta certificate inasmuch as the protected tenants are conferred ownership rights from the notified date.

(3) The Explanation to S. 38-E (1) empowers the revenue authorities to take proceedings for restoration of possession of the lands before or after the issue of patta certificate under section 38-E (2).

(4) The petitioner did not establish by any record that they were in actual possession and therefore no individual notices to them was necessary.

(5) the procedure prescribed under R. 4 by Affixture of a provisional list and the notice on the village chavdi or at a conspicuous place in the village, and a communication of the said notice to the landholder and the protected tenants was valid and that any person having interest in the land could approach the Tribunal with objections which the tribunal would hear and dispose of and if the persons were interested in the land an opportunity wa available for them to raise all their objections.

(6) The provisions of the Limitation Act were not applicable to proceedings before the Tribunal or to the provisions of the Tenancy Act and therefore the contention of the petitioners that the protected tenants being out of possession for more than 12 years their rights stood extinguished was not tenable.

(7) Section 38-E (1) of the Act empowers the revenue authorities to issue certificates of ownership to the protected tenants and to restore possession of the lands to the tenants if they were out of possession of the said lands even if they were dispossessed otherwise than in accordance with the provisions of S. 32 of the Act.

On those findings, the learned Judge dismissed the Writ petitions.

11. Against the said Judgment, appeals were preferred under Cl. 15 of the letters patent and the appeals were heard and disposed of by Madhava Reddy, J. (As he then was) and Narasinga Rao J. In c. Narasaiah v. Tahsildar, Mahabubabad, (1978) 2 APLJ (High Court) 36. Before the learned judges, the following points set out in para 9 of the judgment, were raised:

(1) After issue of a certificate under S. 38-E of the Act, there is no jurisdiction in the Tahsildar to restore the possession. Particularly so, when possession is found to be with a third person.

(2) Even assuming that such a jurisdiction is vested in the Tribunal or the Tahsildar, a notice was required to be issued to the person in possession before an order for restoration of possession to the protected tenant is passed.

(3) The rights of protected tenant, who is out of possession for more than 12 years stand extinguished, in view of S. 27 of the Limitation Act, 1963.

(4) The proceedings for restoration of possession under the Explanation to S. 38-E of the Act can only be taken where a protected tenant was dispossessed, but not when he voluntarily surrenders possession.

(5) At any rate, without an order of eviction of the appellants the notice issued by the patwari in question is illegal.

11-A. The learned judges held on each of the aforesaid points as follows:

(1) once an ownership certificate is issued, the protected tenant himself becomes the owner and the question of restoration of possession to such owner is no more within the province of the Tahsildar be that proceeding against a trespasser or against a rival claimant.

(2) Any order passed by the Tahsildar restoring the possession without notice to the person in possession of the land is invalid, illegal and violative of the principles of natural justice.

(3) The provisions of section 27 of the Limitation Act with regard to the extinguishment of the right of tenancy are held applicable to a tenant, who is out of possession for the statutory period and the right of such a tenant to bring a suit would be barred and he cannot be restored to possession either on his applicationor

otherwise by the authorities under the Tenancy Act.

(4) The proceedings for restoration of possession under the Explanation to section 38-E of the Act could only be taken in favour of a protected tanant who was dispossessed in contravention of S. 32 of the Act and not in favour of one who had surrendered or abandoned possession, and that the question whether a protected tenant was dispossessed or he had surrendered or abandoned is a question of fact.

(5) The order of the Tahsildar restoring possession without notice to the person in possession being invalid illegal and violative of the principles of natural justice, the notice issued by the Patwari in pursuance of the order of the Tahsildar for dispossession of the appellant was equally liable to be quashed on the same grounds.

12. Subsequent to the aforesaid decision rendered on 7-4-1978, the Governor of Andhra pradesh promulgated the ordinance No. 2/79 on 11-1-1979 for amending the andhra pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and the Andhra pradesh (Andhra Area) Tenancy Act, 1956. The said ordinance has since been replaced by the Andhra pradesh Tenancy Laws (Amendment) Act, No. 2/79. Section 1 (2) of the Act says that the said Act shall be deemed to have come into force on 11th January, 1979. The proviso to sec. 38-E (2) has been replaced by following proviso:-

'Provided that where the land the ownership of which has been transferred to the protected tenant under subsection (10, is in the occupation of a person other than the protected tenant or holder of the certificate issued under that sub-section it shall be lawful for the Tahsildar to restore the possession of the said land to the protected tenant or holder of the certificate, after giving notice of eviction to the occupant there of in the prescribed manner'.

12A. After sub-section (4) of section 38-E. The following sub-section has been inserted;-

(5) Notwithstanding anything contained in this section or sec. 19 the collector may, suo motu at any time hold an enquiry with a view to ascertain the genuiness of the surrender of the right made by the protected tenant under clause (a0 of sub-section (1) of S. 19, for the purpose of effecting the transfer of ownership under this section, and pass such order in relation thereto as he may think fit;

provided that no order adversely affecting any person shall be passed under this sub-section unless such person has had an opportunity of making his representation thereto'.

12B. In section 93, for the expression and the provisions of the Limitation Act,1908, shall apply for the purposes of the computation of the said period,' the following has been substituted:

'and the provisions of section 5 and sections 12 to 24 of the Limitation Act, 1963 shall apply for the purposes of extension and computation of the said period'.

13. Now under the proviso to sub-section (2) of section 38-E introduced by the amendment Act 2/79 a procedure has been prescribed for restoration of possession of lands to the protected tenant or holder of the ownership certificate under section 38-E. Under this proviso, where the land, the ownership of which has been transferred to a protected tenant or holder of the certificate issued under sub-sec. (2) the Tahsildar is empowered to restore possession of the said land to the protected tenant or the holder of the certificate, after giving notice of eviction tot he occupant thereof in the prescribed manner.

14. In G.O. Ms. No. 2064 revenue (F) dated 7-5-1980 Rules have been framed by the Government in exercise of the powers conferred by section 97 read with section 38-E prescribing the manner for restoration of possession to the protected tenant or the certificate holder. Rule 1 empowers the Tahsildar to restore possession of the land to a protected tenant or holder of the certificate after giving notice of eviction to the occupant thereof in the form appended to the Rules, giving 15 days time Under R. 2, the Tahsildar has to examine any valid and acceptable objections offered and pass suitable order of eviction after recording the

reasons therefore. Under Rule 3, if no representation is made within the given time of 15 days the Tahsildar shall forthwith proceed with the eviction of occupation upon whom notice has been served and restore possession of the land to the protected tenant or the holder of the certificate as the case may be.

15. The first contention argued on behalf of the petitioners is that the Andhra pradesh (telangana Area) tenancy and Agricultural Lands Act, 1950 was enacted mainly to amend the law relating to regulation of relations of landholders and tenants of agricultural land, and not with regard to matters rlating to transfer, possession or restoration of possession of lands as between owners of the lands and once the owner ship has been transferred to protected tenants and/or certificates issued to them under section 38-E (1) or (2) of the Act, the protected tenants cease to be tenants and the jural relationship of landholder and tenant ceases and restoration of possession of lands to protected tenants or certificate holders from the erstwhile landholder or a third person in occupation of the lands would not fall within the scope of a legislation relating to landlord and tenant and, therefore, the proviso introduced to section 38-E (2) by amendment Act 2/79 is ultra vires the powers of state legislature we do not find any merit in this contention. The legislative competence of the state legislature to pass the impugned amendment Act is beyond doubt the main Act as well as the amendment Act squrely fall within Entry 18 of List II of the seventh Sch. To the Constitution, which reads as follows:-

'Land that is to say, rights in or over alnd land tenures including the relation of landlord and tenant and the collection of rents; transfer and alienation of agricultural land; and improvement and agricultural loans; colonization.'

16. This legislation is a measure of agrarian reform enacted by the state legislature for achieving the objective of establishing a socialistic pattern of society in the state within the meaning of Articles 38 and 39 of the Constitution. A legislation falling under Entry 18 of List II may cover not only matters relating to relationship of landlord and tenant; but all other matters relating to rights in or over land, transfer and alienation of agricultural lands and other matters mentioned therein. 'Restoration of possession' of lands to a tenant or a protected tenant or to a protected tanant to whom ownership stands transferred under section 38-E (1) or to whom certificate has been issued under S. 38-E (2) falls within the expression 'transfer of agricultural land' or at any rate it is a matter falling within the expression 'land' that is to say 'rights' in or over the land'. It is well established that the various entries in the three lists in the seventh schedule of the Constitution are not powers of legislation but fields of legislation and the said entries are mere legislative heads and are of enabling character, the power to legislate being conferred by Article 246 and other Articles of the Constitution. It is equally well established that the language of the entries should be given widest scope and each general head of legislation would extend to all ancillary and subsidiary matters which can reasonably be comprehended in it. We have earlier referred broadly to the general scheme and the several provisions of the Act and mentioned that the main Act has been enacted not only to regulate the relationship of landholders and tenants of agricultural lands, but also various other matters relating to transfers of land, management of the said land or prevention of fragmentation and consolidation of holdings and formation of co-operative farms. The amedment Act 2/79 also deals with matters relating to agricultural land falling within entry 18 of List II of the seventh schedule and, therefore there is absolutely no merit in the submission of the learned counsel for the petitioners that the A.P. Amending Act 2/79 is ultra vires the powers of the state legislature.

17. Further the decision of he Supreme Court in sri Ram Ram narain v. State of Bambay, : AIR1959SC459 is a complete answer to this contention. In that case the constitutional validity of the Bombay tenancy and Agricultural Lands (Amendment) Act, 1956 for amending the Bombay tenancy and Agricultural lands Act, 1948 was challenged. His lordship N.H. Bhagwati, J. Speaking for the Court held that the object of the 1948 Act was to bring about such distribution of the ownership and control of agricultural lands as best to subserve the common good, and that that object was sought to be achieved by fixing ceiling areas of lands which could be held by a person equitable distribution of lands between landholders and tenants, transfer of lands by way of compulsory purchase by tenants in possession of the lands, disposal of balance of the lands after purchase by tenants, prevention of concentration of agricultural lands in the hands of landholders, bringing the tiller or the cultivator into direct contact with the state, his lordship further observed that:

'the enactment thus affected the relation between landlord and tenant, provided for the transfer and alienation of agricultural lands, aimed at land improvement and was broadly stated a legislation in regard to the rights in or over land: Categories specifically referred to in Entry 18 in List I of hte seventh Schedule to the Constitution'. His Lordship further held that the heads of legislation should not be construed in a narrow and pedantic sense but it should be given a large and liberal interpretation, and that applying the said principle of construction, it was clear that the Act impugned there was covered by Entry 18 in List II, and was a legislation with reference to 'land' and accordingly negatived the plea of want of legislative competence of the state legislature'.

18. The aforesaid ruling of the Supreme Court Court directly applies tot he impugned amendment Act 2/79 which is also a legislation with reference to 'land' falling in entry 18 of List II of the seventh Schedule to the Constitution and the said Act is therefore within the competence of state legislature.

19. The validity of S. 38-E was challenged in inamdars of sulhnagar v. Government of Andhra pradesh, : AIR1961AP523 on the ground that the presidential assent was not obtained as required by art. 31 (30 of the Constitution and the same was upheld by a Bench of this Court thereafter the andhra pradesh (Telengana Area) tenancy and Agricultural Land (validation) Act, 1961 was enacted after obtaining the assent of the president retrospectively validating all the Acts mentioned therein. The said validation Act of 1961 has been included in the Ninth Schedule to the Constitution.

20. The vires of S. 38-E was again challenged in this Court in M. Shoukat Khan v. State ILR (1970) Andh Pra 1151 Where the learned Judges Jaganmohan reddy C. J. And Sambasiva Rao, J (as he then was) observed that:

'A spate of legislation was under taken in respect of alnd reforms and the relationship between landlord and tenant in order to ameliorate the condition of the mass of people who lived, laboured. Toiled and tilled the land from the status of serfdom, and unprotected tenancy, to the conferment on them of an interest in that land with the ultimate object of making them owners of the land. Land belongs to the people who till the land had become the policy of the state'.

21. The learned Judges then referred to the observations of the Supreme Court in Sri Ram Ram Narain v. State of Bombay : AIR1959SC459 (supra) and observed as follows:

'In furtherance of this policy, the erstwhile Hyderabad state also has passed a similar legislation which followed up the previous legislation that Government the relationship of landlord and tenant but in a more comprehensive way to keep in tune with the changed policy of the state in respect of agricultural holdings'.

22. The learned Judges then repelled the contention urged on behalf of the petitioners therein that S. 38-E infringed the fundamental rights, and that it was also beyond challenge by reason of the provisions of Art. 31-B of the Constitution as the validation Act has been included in the Ninth Schedule. The division Bench, however struck down section 38-E and the Rules made there under on another ground, Viz that section 38-E as it stood then suffered from several infirmities pointed out by them and was vague and unworkable. Particularly having regard to the fact that it was being given effect to 15 years after it was enacted. But the point to be noticed for the purpose of this case is that the provisions of S. 38-E as amended, were construed as provisions relating to agrarian reform falling within the legislative competence of the state as held by the Supreme Court in Sri Ram Ram narain v. State of bombay, supra and it was also not open to challenge as affecting the fundamental rights in part III of the Constitution having regard to the provisions of Art. 31-B and inclusion of validating Act in the Ninth schedule it may be incidentally mentioned that the main Act, the Hyderabad tenancy and Agricultural lands Act XXI of 1950 has been included in the Ninth Schedule as item 36 in the year 1964.

23. Sri Subhashan reddy contended that the proviso to S. 38-E (2) introduced by the Andhra pradesh Amendment Act 2/79 seeks to overrule the judicial pronouncement of this Court in C. Narasaiah v. Tahsildar mahabubabad, (1978 (2) ApLJ (High Court) 36) supra, and that the legislature has no power to make such a

provision. In support of this contention he relies upon a decision of the Supreme Court in state of Tamil Nadu v. Rayappa : AIR1971SC231 . In that case, the Entertainment Tax Officer, after making a surprise inspection of a theatre and finding that unauthorised tickets with forged seals were being sold, and after giving notice to the assessee, levied entertainment tax and surcharge on the price of the tickets which has escaped assessment. The assessment was challenged by way of a writ petition under Art. 226 of the Constitution. The Madras High Court held in sundararaja Naidu v. Entertainments Tax Act, 1939, had no power to reassess the receipts that had escaped assessment. By S. 7 introduced by the Amendment Act XX of 1966, the state legislature enacted among other provisions S. 7 for validation of assessment and collection of taxes. The reassessments in the case before the High Court were made prior to the coming into force of the amendment Act. 1966.

It was contended that those reassessments were validly protected by S. 7 of the amendment Act. The High Court of madras allowed the writ petition and quashed the assessment on the ground that the power to reassess under S. 7 (B) introduced by the Amendment Act was incomplete and was not exercisable in the absence of a prescription as to limitation contemplated by the section and hence S.7 of the validation Act failed to validate the assessments in question. The Government of Tamil Nadu went up in appeal to the Supreme Court on a special leave. Their Lordships of Supreme Court did not go into the ground on which the reassessments were quashed by the madras High Court as their lordships were of the opinion that S. 7 of the Amendment Act was invalid in so far as it attmpted to validate invalid assessments without removing the basis of its invalidity. But that case has no application to the facts of the present case. In C. Narasaiah v. Tahsildar mahabubabad (1978 (2) APLJ (High Court) 36) supra, it was observed by the learned Judges that once there was transfer to the protected tenant or a certificate was issued to him under S. 38-E, the ownership vests in him, and that:

'Having regard to the language of the Explanation to S. 38-E (1) there cannot be any doubt that the possession to a protected tenant out of possession could be restored only before a certificate of ownership is issued to him. If the intention of the legislature was that the restoration of possession was to be in favour of a person to whom a certificate was already issued, nothing prevented it from making sucha provision in that regard. It could have said that the restoration ofpossession could be in favour of the holder of the ownership certificate issued under sub-sec. (2) of S. 38-E of the Act. It is altogether a different matter whether the legislature could itself confer a power on the Tahsildar to decide questions of possession between an owner so declared and a trespasser which obviously is not the scope and the object of the Tenancy Act'.

So far as the power of the Legislature to enact the Amendment Act is concerned, we haave already held that the legislation is with respect to 'Land falling in Entry 18 of List II of the seventh Schedule to the Constitution and, therefore, the Legislature is competent to enact the Amendment Act 2/79.

24. In order to fill up the lacuna mentioned in narasaiah's case (supra) with regard to the absence of a provision for restoration of possession of lands to a protected tenant to whom ownership was transferred under section 38-E the state legislature enacted by Amendment Act 2/79 the proviso to sub-section (2) of S. 38-E of the Act. Thus the proviso does not seek to or have the effect of overruling the decision in narasaiah's case supra but only makes a provision for restoration of possession of land to a protected tenant or a holder of the ownership certificate where the land is in the occupation of a person other than the protected tenant or the holder of the certificate.

25. In the same case state of Tamil Nadu v. Rayappa : AIR1971SC231 (supra) it was observed in para 6 as follows:-

'The legislatures under our Constitution have within the prescribed limits, power to make laws prospectively as well as retorspectively. By exercise of those powers the legislature can remove the basis of a decision rendered by a competent Court thereby rendering that decision ineffective'.

26. In Shri P. C. Mills v. Broach Municipality, : [1971]79ITR136(SC) it was observed that 'validation of a tax'

declared illegally by a Court:-

'may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before sometimes this is done by reenacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the reenacted law'.

27. It was observed in Narasaih's case (1978 (2) APLJ (High Court) 36) (supra) that there was no provision in the Act conferring jurisdiction on the Tahsildar to restore possession of land to a protected tenant to whom ownership has been transferred or certificate has been issued under S. 38-E and in order to provide for such a machinery the state Legislature intervened and enacted the proviso by the Amendment Act 2/79 conferring such a jurisdiction on the Tahsildar Therefore the proviso introduced by the Amendment Act is well within the competence of state legislature being a legislation falling under Entry 18 of List II of the seventh schedule to the Constitution.

28. In janapada sabha v. C.P. Syndicate ltd, : [1970]3SCR745 their Lordships held as follows (para 10) :-

'It is open to the legislature within certain limits to amedn the provisions of an Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the legislature to say that Judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court'.

29. In the instant case, as already held by us, the Amendment Act does not seek to overrule the judgment in Narasaiah's case (1978 (2) APLJ (High Court) 36) (supra) but the amendment has been made with a view to make a provision conferring jurisdiction on the Tahsildar, which the Bench in Narasaiah's case (supra) held was absent in the unamended provisions of S. 38-E.

30. For all the foregoing reasons. We are unable to hold that the proviso introduced by the amending Act 2/79 to S. 38-E (2) of the Andhra pradesh (Telengan Area) Tenancy and Agricultural lands, Act, 1950 is ultra vires the powers of the state legislature.

31. The second contention urged on behalf of the petitioners is, that by virtue of the provisions of sub-sec. (2) of S. 1 of the Amendment Act, the amendment Act shall be deemed to have come into force on 11th January. 1979 and therefore it has no retrospective operation and the proviso to S. 38-E (2) introduced by the Amendment Act does not empower the Tahsildar to restore possession of lands to protected tenants, where transfer of ownership under section 38-E (1) or issue of certificates under S. 38-E (2) took place prior to 11-1-1979. The submission on behalf of the petitioners is, that the expression in the proviso 'where the land the ownership of which has been transferred to the protected tenant under sub-sec. (1)' shows that the proviso is prospective in operation and applies to cases where ownership has been transferred subsequent to the coming into force of the said proviso.

32. Sri Subhashan Reddy the learned counsel has invited our attention to a Ful Bench decision of the Bombay High Court in saraswati bai v. Bhikshachand, : AIR1967Bom158 , where the learned judges construing the provisions of Ss. 52 and 132 of the Bombay Tenancy and Agricultural Lands (Vidarabha Region and Kutch Area) Act, held that on a reading of the sub-sections together. It appeared that the draftsmen had used the three expressions has taken possession, has recovered and has failed in the sense takes possession recovers and fails. But, that construction was arrived at by the learned judges on a consideration of the relevant provisions of the said Act. The said ruling does not therefore render much assistance in deciding the question that falls for consideration here. The question has to be determined primarily with reference to the scheme and object of the Act and the language employed by the amendment Act.

33. In principles of Statutory interpretation by G.P. singh, 2nd Edition, it was observed at page 287 as follows:-

'In decisding the question of applicability of a particular statute to past events, the language used is no doubt

the most important factor to be taken into account, but it cannot be stated as an inflexible rule that use of present tense or present perfect tense is decisive of the matter that the statute does not draw upon past events for its operation. Thus, the words 'as debtor commits an Act of bankruptcy committed before the operation of the Act. As has been noticed before the words if a person has been convicted' were construed to include anterior convictions. The words has made'. Has ceased', 'has failed' and has become may denote events happening before or after coming into force of the statute and all that is necessary is that the event must have taken place at the time when action on that account is taken under the statute. The words dying intestate were interpreted by the Judicial committee not as connoting the future tense but as a mere description of the status of the deceased person without any reference to the time of his death. So the words 'held on lease', may be only descriptive land and may apply to lands held on lease prior to or after the coming into force of the Act. And the words 'when a person dies', may include a person who died prior to the coming into force of the Act. And the words 'when a person dies', may include a person who died prior to the coming into force of the Act. The real issue in each case is as to the dominant intention of the legislature to be gathered from the language used, the object indicated, the nature of rights affected and the circumstances under which the statute is passed'.

34. Sri subba Reddy has invited our attention to a decision in T. K. Lakshmana v. State of madras, : [1968]3SCR542 , where the provisions of Ss. 44-B (2) (a) of the Madras Hindu religious Endowments Act fell for construction. S. 44-B (2) (a) conferred a power on the collector to resume to the whole or any part of any inam granted for the support or maintenance of a math or temple or for the purpose of charity or service connected therewith on one or more of the following grounds:-

'(i) that the holder of such inam or part has made an exchange, gift sale or mortgage of the same or any portion thereof or has granted a lease of the same or any portion thereof for term exceeding five years, or

(ii) that the holder of such inam or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of such math or temple, the charity or service for performing which the inam had been made, confirmed or recognised by the British Government or any part of the said charity or service as the case may be or

(iii) that the math or temple has ceased to exist or the charity or service in question has if any way become imposible of performance'.

35. His Lordship Bachawat, J. Speaking for the Court held as follows (at P. 1494):-

'The words ' has made' in sub-sec. (2) (a) (I) take in all alienations past and future and not only future alienations or alienations made after the section came into force. If there has been any alienation at any time the first ground exists and the inam may be resumed under S. 44-B. The words has failed in sub-sec (2) (a) (ii) and the words 'has ceased' and has become' in subsec. (2) (a) (iii) similarly authorise resumption of the inam if the other grounds exist though they may have arisen earlier. Section 44-B (2) is in its direct operation prospective as it auhorises only future resumption after it came into force. It is not properly called retrospective because a part of the requisites for its action is drawn from a time antecedent to its passing'.

36. Applying the principle laid down in the aforesaid ruling the expression 'has been transferred' occurring in the amended proviso must be construed as applying to transfers which took place both prior and subsequent to the coming into force of the amended proviso.

37. Moreover, the amended proviso provides only a remedy for the enforcement of an existing right of the protected tenant or a certificate holder to recover possession of the lands and therefore the amended proviso is purely procedural in character and will apply to the cases of transfers both prior and subsequent to the coming into force of the amended proviso. It is well settled that a procedural law has retrospective effect, vide Abdul karim v. Dy. Custodian-General, : [1964]6SCR837 Therefore we have no hesitation in coming to conclusion that under the amended proviso the Tahsildar can exercise the power to restore possession of the

land to a protected tenant or a certificate holder as the case may be where he is out of possession of the land.

38. Our attention has been invited to an unreported decision of Muktadar, J. In Jawarjmal v. Venkatam, Judgment in C.R.P. No. 6895 of 1978 and Batch dated 31-10-1979, where it was contended that by virtue of the proviso to subsec. (2) of sec. 38-E introduced by the amendment Act 2/79, the Tahsildar has been empowered to deliver possession, to a protected tenant, to whom the ownership stood transferred or the certificate was granted under S. 38-E prior to the coming into force of the amended proviso. The learned Judge repelled the said contention with the following observations.

'It is to be noted that this contention would have been acceptable had the legislature given retrospective effect, but unfortunately for the respondents the amendment is prospective and it has come into existence on the 11th January 1979. There it cannot be said that the respondents can take advantage of this amendment which has not been given retrospective effect'.

But, no reasons have been given for coming to the conclusion that the proviso introduced by the Amendment Act has no retrospective effect. As already held by us, the proviso has been introduced by the Amendment Act with a view to fill up the lacuna in the Act as pointed out by the Division Bench in Narasaiah's case (supra) and that the amendment is only procedural in character, and that under the proviso introduced by the Amending Act 2/79, the Tahsildar is empowered to deliver possession or a holder of a certificate under S. 38-E even though the proceedings for transfer of ownership had taken place prior to the coming into force of the amended proviso.

39. With respect for the reasons already given, we are unable to agree with the view taken by muktadar, J. In Jawarimal's case (supra) that the amended proviso does not apply to cases of transfer of ownership or issue of certificates under S. 38-E which had taken place prior to the coming into force of the said proviso.

40. It is contended by the learned counsel for the petitioners that even assuming that the proviso empowers the Tahsildar to restore possession of lands where the protected tenant or holder of certificate is out of possession, still the Tahsildar has to hold a fresh enquiry as required by the proviso read with the rules made thereunder in G.O. Ms. No. 2054 revenue (F) dated 7-5-1980 with regard to the pleas raised by the persons in possession of the land namely that the protected tenant had abandoned or surrendered his rights, and that the persons in possession had acquired rights by prescription or adverse possession. But, we do not think there is any merit in this submission. It has to be remembered that the provisions of S. 19 (10 read with S. 38-E (5) provide for enquiries regarding the genuineness for the surrender of possession of the land by a protected tenant and also provides for a regular enquiry under S. 38-E read with the rules framed thereunder with regard to transfer of ownership and the issue of ownership certificates to the protected tenants, and these enquiries are to be made after giving notice tot he landholder and all other persons interested in the land, and therefore whatever objections are available to the landholder or to other persons interested in, or in possession of the land must be taken at the stage of the enquiries made under the provisions mentioned above.

It is well established that once a certificate under sec. 38-E (2) has been issued after holding an enquiry in accordance with the rules, it became conclusive as between the certificates holder and the landholders or other persons who were in possession of or otherwise, interested in the land in respect of which ownership has been transferred to the protected tenant or a ownership certificate has been issued under S. 38-E further even the plea that a protected tenant who was out of possession would not be entitled to grant of a certificate of ownership under S. 38-E should be raised in the proceedings taken under S. 38-E for transfer of ownership and issue of the ownership certificate and once the certificate has been issued after holding an enquiry in accordance with the rules, the same cannot be challenged in a collateral proceeding or by way of a civil suit as Jurisdiction of civil Court is barred by reason of the provisions of S. 99 of the Act.

41. Thus at the stage of delivery of possession under the amended proviso to sec. 38-E (2) read with the rules framed thereunder, it is not open to the person in possession to once again raise pleas or objections which

were already raised in the proceedings taken earlier culminating in the transfer of ownership and issue of a ownership certificate under S. 38-E of the Act to a protected tenat. If this argument of the learned counsel for the petitioners is accepted, it will tantamount to conferring a power on the Tahsildar to go into the validity or otherwise of the certificate issued under S. 38-E of the Act by the competent authority. We do not think the proviso can be interpreted so as to confer such a power on hte Tahsildar, therefore we are unable to uphold the contention of the learned counsel for the petitioners that under the amended proviso the Tahsildar should entertain and determine objections based upon surrender, abandonment or adverse possession or objections as to the validity of the certificate issued under S. 38-E of the Act.

42. Another contention urged by the learned counsel for the petitioners is that in view of the ruling in narasaiah's case, (1978 (2) APLJ (High Court) 36) (supra), the persons in possession are entitled to raise the plea that the rights of the protected tenant who was out of possession of the land get extinguished by reasons of the persons in possession of the land acquiring rights by adverse possession.

43. Jeevan Reddy, J. Held in Narasayya v. Tahsidar (W.P. No. 327/77 dated 12-12-1977) that the provisions of the Limitation Act were inapplicable to the proceedings under the Act, but the division Bench in narasaiah's case 9supra0 differed with the said view and held that the provisions of S. 27 of the limitation Act apply and the rights of the protected tenant who was out of possession of the land for over 12 years would stand extinguished and therefore he would not be entitled to recover possession of the lands from the persons in possession, but, as already held by us, the question whether the protected tenant's rights stood extinguished by adverse possession or not is a matter to be agitated in the proceedings taken for the issue of a certificate under section 38-E of the Act read with the relevant rules, and the same cannot be agitated after ownership has been transferred and a certificate has been issued to the protected tenant under S. 38-E.

A person having an interest in the land or claiming rights by adverse possession in the said land, should set up his objections or claims in the proceedings taken under S. 38-E read with the relevant rules before the Tribunal constituted for the said purpose and the Tribunal could then hear and dispose of the objections and claims. Having failed to set of the objections and claims at the stage of enquiry under S. 38-E and the rule made thereunder it is not open to such persons to set up once again such claims or objections after a certificate has been issued, and at the stage the proceedings taken under the amended proviso for restoration of possession of the lands to the protected tenant or the certificate holder.

44. One other contention urged is, that under sec. 38-E ownership of the lands held by a protected tenant stands transferred to and vest in him only if the said protected tenant was in actual physical possession of the lands and a certificate of ownership could only be issued to such a protected tenant in possession of the land and therefore a certificate issued under S. 38-E without restoration of possession of the land to the protected tenant under the Explanation to sec. 38-E (1) is not valid. Section 38-E (1) says that from the notified date the ownership of all lands' held by protected tenants which they are entitled to purchase from their land holders in such area under any provision of this chapter shall subject to the conditions laid down in sub-sec. (V) of S. 38, stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands.

Under the proviso to the said sub-section, where any proceeding under S. 19 or S. 32 or S. 44 is pending on the notified date, the transfer of ownership of such lands takes effect on the date on which such proceeding is finally decided and when the tenant retains possession of the land in accordance with the decision in such proceedings. With regard to a protected tenant who is not in possession on the notified date, the Explanation to S. 38-E (10 provides that for the purpose of the said sub-section such protected tenant shall 'be deemed to have been holding the land on the date of the notification' and further empowers the Tahsildar, to restore posession of the lands to the protected tenant after holding a summary enquiry. The learned counsel relied upon the ruling in Narasaiah's case 9supra0 where it was observed that the expression holding necessarily means that they must also be in possession of the lands as protected tenants and the effect of the Explanation is 'that the protected tenant is deemed to be person holding the land, but for purposes of

conferring upon him the rights of ownership possession has to be restored to him'. We are unable to agree with this submission. The words 'held' and holding have not been defined in the Act, but the expressions 'basic holding' consolidation of holding and family holding have been defined in the Act and in these expressions the word holding cannot be construed as being in actual possession.

45. In a recent decision of the Supreme Court in state of A.P. V. Mohd. Ashrafuddin, : [1982]3SCR482 , the interpretation of the expressions 'held and holding in sec. 3 (1) of the Andhra pradesh Land reforms (ceiling on Agricultural holdings) Act 1 of 1973 fell for consideration it was contended for the appellant therein that the term 'holding' took in its fold land held by various person in various capacities viz, as an owner as a limited owner. As a usufructuary mortgagee or as a tenant or as a person in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise, or in one or more of such capacities. On the hand, it was contended for the respondent that the expression 'held in the definition of 'holding' contemplates ownership with posession. But this submission was repelled, and the condition of the appellant was upheld by their lorddhips in the following words (para 8):

'The word 'held' is not defined in the Act. We have, therefore to go by the dictionary meaning of the term. According to oxford dictionary 'held' means: to possess: to be the owner or holder or tenant of ; keep possession of occupy thus, held connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term 'held' only in the sense of possession. For example if a land is held by an owner and also by a tenant or by a person in possession pursuant to a contract for sale the holding will be taken to be the holding of all such persons. It obviously means that an owner who is not in actual possession will also be taken to be a holder of the land. If there was any doubt in this behalf, the same has been dispelled by the explanation attached to the definition of term 'holding'. The explanation clearly contemplates that the same land can be the holding the land in two different capacities. The respondent in view of the definition certainly is holding as an owner, although he is not in possession'.

46. From the aforesaid ruling it follows that under S. 38-E (1), the ownership of all lands held by a protected tenant stands transferred to him on hte notified date and a certificate of ownership can be issued to such a protected tenant even if he was out of possession or possession has not been restored to him in accordance with the provisions of the explanation and a certificate issued by the competent authority under S. 38-E will be valid. The Validity of the certificate issued under Sec. 38-E after following the prescribed procedure cannot be challenged again at the stage of delivery of possession under the amended proviso to s. 38-E (2).

47. One of the contentions urged by the petitioners in Narasaiah's case (1978 (2) APLJ (High Court) 36) (supra) was that the proceedings taken by the Tahsildar or the Tribunal for restoration of possession to the protected tenants without issuing notice to the persons in possession were violative of the principles of natural justice. With a view to provide for such a notice, the legislature has intervened and introduced the proviso by Amendment Act 2/79 and conferred jurisdiction on the Tahsildar to restore possession of the lands to the protected tenant or certificate holder, and also provides for issue of notice and an opportunity to persons in possession to make their representations in accordance with the rules made thereunder. The Rules made in G.O. Ms. No. 2064 Revenue (F) dated 7-5-1980 made under section 97 read with section 38-E requires a notice to be issued to the persons in possession and an opportunity to make their representations before the Tahsildar passed any order under the amended proviso for restoration of possession of the land to the protected tenant or the holder of the certificate as the case may be. Thus now, statutorily the amended proviso provides for issue of a notice and opportunity to the persons in possession to make their representations. Hence the tahsildar has to comply with the procedure laid down by the proviso in which case there will be no question of violation of principles of natural justice.

48. In the result, all the writ petitions, except W.P. No. 1731 of 1980 are dismissed, but in the circumstances without costs. Advocate's fee rs. 200/- in each writ petition.

49. In W.P. no. 1731 of 1980 it is urged by the learned counsel for the petitioner that a notice was issued by

the Tahsildar dispossessing the petitioner without giving him a prior notice as required by the amended proviso. Therefore, the impugned notice to that extent is illegal and is liable to be quashed. It is open to the Tahsildar to take proceedings afresh in accordance with law and after complying with the amended proviso and the Rules made thereunder. The writ petition is partly allowed accordingly to the extent mentioned above. No order as to costs Advocate's fee Rs. 200/- in this writ petition.

50. Order accordingly.