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Ganapathi and ors. Vs. Mirza Mustafa Ali Baig and anr.

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Court : Andhra Pradesh

Decided On : Jun-20-2005

Reported in : 2005(4)ALD804; 2005(5)ALT109

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 - Sections 19, 32, 32(2), 38E, 90, 90(1) and 91; Andhra Pradesh Rights in Land and Pattadar Pass Book Act, 1971

Appeal No. : CRP No. 2222 of 2005

Appellant : Ganapathi and ors.

Respondent : Mirza Mustafa Ali Baig and anr.

Advocate for Def. : Party-in-person Respondent No. 1

Advocate for Pet/Ap. : Patlolla Venkat Reddy, Adv.

Judgement :
ORDER

L. Narasimha Reddy, J.

1. This revision is filed under Section 91 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as 'the Act'). The

petitioners assail the order, dated 12.10.2004, passed by the Joint Collector, Medak, affirming the order dated 31.3.2003, passed by the Revenue Divisional Officer (RDO), Sanga Reddy. The proceedings arose out of an application filed by the respondents under Section 32(2) of the Act.

2. The petitioners claim that they are the protected tenants in respect of Ac.27-32 gts. in Sy.No. 20 and Ac. 14.35 gts. in Sy.No. 21 of Waddi Village of Nyalkal Mandal, Medak District, and that respondents 1 and 2 are the land holders. Number of proceedings ensued between the parties. The petitioners were recorded as protected tenants, under the provisions of the Act, in respect of the said land. The respondents initiated proceedings before the Mandal Revenue Officer (MRO) in the year 1986, alleging that the tenancy deserves to be terminated since the petitioners did not pay the rent. The application was rejected. In an appeal preferred before the Joint Collector, an order was passed on 25.9.1991, holding that since the respondents possessed less than two family holdings, the petitioners are not entitled to be granted ownership' certificate, under Section 38-E of the Act, but the petitioners cannot be dispossessed, unless it was established that there was any default on their part.

3. The petitioners got themselves recorded as pattadars in respect of the land. Aggrieved by the same, the respondents preferred an appeal, under the provisions of A.P. Rights in Land and Pattadar Pass Book Act, 1971, before the RDO. The appeal was allowed and the names of the respondents were restored as pattadars.

4. Alleging that the petitioners do not have any right in respect of the lands in view of the orders of the RDO, passed under the A.P. Rights in Land and Pattadar Pass Book Act, the respondents moved an application under Section 32(2) of the Act, before the MRO. That application was rejected. Aggrieved thereby, the respondents preferred an appeal before the RDO. He disposed of the appeal and remanded the matter to the MRO, for fresh disposal, by framing certain guidelines. The petitioners filed an appeal before the Joint Collector. He rejected the appeal, through order dated 12.10.2004.

5. Sri P. Venkat Reddy, learned Counsel for the petitioners, submits that the very application filed by the respondents, under Section 32(2) of the Act was not maintainable, either on facts or in law. He submits that once the application was dismissed, the only course open to the respondents was to file an appeal before the Joint Collector, whereas, they have approached the RDO, who is not vested with any appellate power. The learned Counsel contends that instead of correcting this material irregularity, the Joint Collector had affirmed the order of the RDO.

6. The first respondent appeared as party-in-person. He submits that the occasion for him and his brother, to file the application under Section 32(2) of the Act arose, because the petitioners failed to pay any rent and thereby lost the right to continue as tenants. He submits that, simply because the petitioners were recorded as protected tenants at one point of time, they are not entitled to continue as tenants, without payment of rent. He submits that being the superior authority in the hierarchy, the RDO is competent to correct the errors committed by the MRO, and since the RDO did not undertake adjudication of rights as such, no exception can be taken to it.

7. A perusal of the record discloses that the petitioners were recorded as protected tenants, in respect of the lands referred to above. The effort of the respondents to get them evicted at one point of time, failed. Taking advantage of the same, the petitioners got themselves recorded as pattadars, otherwise than through the proceedings under Section 38-E of the Act. It hardly needs any emphasis that rights of a protected tenant can enlarge into that of an owner, only after the requirements under Section 38-E of the Act are followed and proceedings under that provision are initiated. Having regard to the holding of the respondents, the authorities have already taken the view that the petitioners herein cannot be granted the ownership certificate under Section 38-E of the Act.

8. It is true that the Act recognizes the rights of a protected tenant and ensures that they are not indiscriminately dispossessed. The Act, however, equally mandates that even a protected tenant is under obligation to pay the rent, and any default committed by such tenant, would entail an order of eviction under sub-section (1) of Section 90 of the Act. Either on account of lack of proper guidance,

or having been vexed with repeated proceedings, the respondents straight away submitted an application for resumption of the land under Section 32(2) of the Act, though the plea was about non-payment of rent. The MRO rejected the same on untenable grounds. Not being conversant with the relevant provision, the respondents moved the RDO. The latter did not undertake any adjudication of rights, but indicated the steps to be taken by the MRO. An observation was made to the effect that the order of the MRO is set aside. The defect if any, in this regard stood corrected, once the entire issue was brought before the appellate authority, the Joint Collector, under Section 90 of the Act, though it was brought in a different context, viz, against the order of RDO. The order passed by the MRO on the application filed under Section 32(2) was very much before the Joint Collector, and he in turn endorsed the steps taken by the RDO in remanding the matter. For all practical purposes, the directions as to remand with necessary guidelines, can now be treated as those issued by the Joint Collector.

9. Unless the matters of this nature resolved in accordance with law, at the earliest point of time, they are likely to give rise to social tensions and resultant hardship to the parties. If the petitioners have committed default in payment of rent, the same needs to be taken note of, and necessary orders to be passed by the MRO. For this purpose, the respondents can make a formal application. In case, it emerges that there was default on the part of the petitioners, the respondents deserves to be extended the necessary relief, under Section 19 read with Section 32 of the Act.

10. For the forgoing reasons, the CRP is disposed of, directing that the Mandal Revenue Officer, Nyalkal Mandal, shall consider the application filed by the respondents, under Section 32(2) of the Act, together with an application that may be filed by the respondents under Section 19 of the Act, and pass appropriate orders, by recording a specific finding as to:

'Whether there was any default on the part of the petitioners in payment of rent?'

11. This finding shall be recorded only after hearing both the parties. If the answer to the said question emerges in positive, necessary steps shall be taken under Section 32 of the Act, to put the respondent in possession of the land, without any

loss of time. There shall be no order as to costs.

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