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Court : Andhra Pradesh

Decided On : Jun-22-2004

Reported in : 2004(4)ALD708

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh (T.A.) Tenancy and Agricultural Lands Act, 1950 - Sections 38(7) and 38E

Appeal No. : CRP No. 4117 of 1994

Appellant : NizamuddIn and ors.

Respondent : Narsappa and ors.

Advocate for Def. : C. Malla Reddy, Adv. for ;G. Anandam, Adv.

Advocate for Pet/Ap. : K. Govind, Adv. for ;N. Ashok Kumar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. This civil revision petition is filed against the order dated 21.8.1993 passed by the Joint Collector, Mahabubnagar affirming the order dated 8.4.1986 passed by

the Revenue Divisional Officer, Narayanapet. This is the second round of litigation in the matter. It arises under the provisions of the A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950 (for short 'the Act').

2. Two brothers viz. Ismail and Sahabuddin held various extents of land in Parsapur Village of erstwhile Kodangal Taluk of Mahabubnagar District. On the death of his brother, Ismail held the entire land. He in turn died in 1954, leaving behind him four sons viz. Nizamuddin, Syed Moinuddin, Zainulabeddin and Mustaq Hussain. Respondents herein were declared as protected tenants of Ismail in respect of about Ac.50.00 of land in different survey numbers. The Revenue Divisional Officer passed an order dated 17.9.1975 conferring ownership rights upon the respondents under Section 38-E of the Act in respect of the lands for which they were declared as protected tenants.

3. Nizamuddin, the eldest son, challenged the same before the appellate authority, the Joint Collector. The appeal was dismissed through order dated 15.12.1977. Thereupon, he filed CRP No. 1158 of 1978 in this Court. His contention was that the property held by Ismail devolved upon, his four sons and thereby the holding of the land stood divided into four shares and the same ought to have been taken into account for the purpose of Sub-section (7) of Section 38 of the Act. He also complained that neither he nor his brothers were issued any notices, before the Revenue Divisional Officer passed order under Section 38-E of the Act.

4. This Court found that the Revenue Divisional Officer passed an order without issuing notice to the petitioners as required under Rule 4 of the Rules framed under Section 38-E of the Act and thereby they were disabled from advancing their contentions. Through orders dated 18.3.1980, CRP No. 1158 of 1978 was allowed and the orders passed by the Joint Collector as well as the Revenue Divisional Officer were set aside. The matter was directed to be disposed of afresh, after issuing notice to the affected parties.

5. After remand, the Revenue Divisional Officer, issued notices and passed an order dated 8.4.1986 affirming the earlier order dated 17.9.1975. The appeal preferred by the petitioners before the Joint Collector was also dismissed.

6. Sri K. Govind, learned Counsel appearing for the petitioners, submits that the primary as well as appellate authority have failed to take into account the fact that on the death of the original landholder, the land devolved upon his four sons and the holdings ought to have been taken on that basis in the context of Sub-section (7) of Section 38 of the Act. He further contends that the finding recorded by both the authorities that the family held land in excess of two family holdings is not borne out by record. Learned Counsel also urges that the Revenue Divisional Officer proceeded as though he was sitting in appeal against the order dated 17.9.1975. He made an attempt to challenge the very status of the respondents as protected tenants on the ground that the provisional list of protected tenants was not communicated to the landholder and that the tenancy was surrendered orally.

7. Sri C. Malla Reddy, learned Senior Counsel appearing for the respondents, submits that the record discloses that after the death of original landholder, the land devolved upon Nizamuddin alone and there was no basis for the contention that other three brothers are also entitled for the land. He submits that both the authorities have taken into account the holdings of the family, as evidenced by the record, and on being convinced that the family held the land in excess of two family holdings, have granted ownership certificates to the respondents. Learned Senior Counsel submits that having regard to the object underlying the Act, no interference is called for.

8. The respondents or their predecessors in title as the case may be were declared as protected tenants in respect of land in an extent of about Ac.50.00, held by the land owner Ismail. Though learned Counsel for the petitioners submits that the proper procedure was not followed while including the names of the respondents in the final list of protected tenants, this Court is not inclined to permit the petitioners to raise the issue at this stage. The provisions of the Act are very clear and unambiguous. They stipulate the detailed procedure in the matter of preparation of list of protected tenants. Any aggrieved person has to raise the dispute only within one year from the date of publication of the list and not thereafter. The plea as regards surrender of protected tenancy deserves to be taken note of, only to be rejected. Section 19 of the Act categorically states that any surrender of tenancy shall be in writing, that too before the Tahasildar. This

Court held repeatedly that a surrender of tenancy otherwise than in accordance with Section 19 of the Act, cannot be recognized.

9. In addition to conferring tenancy rights, the Act also provides for conferment of ownership rights upon protected tenants, subject to certain conditions. Section 38-E of the Act prescribes the procedure for conferment of ownership rights in favour of protected tenants. A reference is made to Sub-section (7) of Section 38 of the Act as regards the extent, in respect of which such certificates can be given.

10. The operation of Sub-section (7) of Section 38 is two-fold, in that, it prescribes extent of the land up to which ownership rights can be conferred upon a protected tenant, and the extent of the land which should be left with the landholder before such rights are conferred. It is to the effect that a protected tenant shall be entitled to acquire ownership rights, if only the landholder is left with at least two family holdings in relation to that area and that a protected tenant shall be entitled to be conferred ownership rights only in respect of one family holding. It is in this context that an enquiry into the extent of land held by the landholder, on one hand, and the one held by the protected tenant be it as independent owner or protected tenant on the one hand, becomes relevant. In other words, conferment of ownership rights under Section 38-E of the Act in respect of the entire land held by the protected tenant, is not a matter of course. Obviously, with a view to make the enquiry into this aspect effective, Rule 4 of the Rules mandates that the affected party shall be put on notice.

11. The Revenue Divisional Officer passed an order way back on 17.9.1975. In this order, he simply referred to the factum of conferment of ownership rights, indicated the extents, and did nothing more. No exercise was undertaken to ascertain the extent of the land held by the landholder or by the protected tenants. The petitioners challenged this order on the grounds of non-issuance of notice, violation of Sections 37 and 38-E of the Act etcetera. The appellate authority refused to interfere with the same. In CRP No. 1158 of 1978, this Court set aside the said order and the matter was remanded to the Revenue Divisional Officer for fresh consideration and disposal.

12. With the order of this Court in CRP, the Revenue Divisional Officer ought to have started the matter afresh, after issuing notices. He was under obligation to ascertain the holding of the landholder as well as that of the protected tenants. A perusal of the order passed by him, after remand, discloses that he treated the proceedings as the one in which the earlier order dated 17.9.1975 is under challenge. The array of the parties in that order also buttresses this view.

13. The Revenue Divisional Officer proceeded on the footing that Nizamuddin alone is the owner of the entire land, which was earlier held by his father Ismail. The fact that Ismail had four sons was not in dispute. He was guided by the entries in the relevant records. It was nobody's case that the property did not devolve on the other three sons. It is settled principle of law that the mentioning of the name of one of the joint family members in the revenue records shall not be detrimental to the rights and interests of others. Totally different things would have ensued, had it been a case where the other three brothers relinquished their shares or that the entire property devolved upon Nizamuddin otherwise than through succession. When Nizamuddin categorically pleaded that he is only one of the shareholders, there is no justification for the Revenue Divisional Officer or the Joint Collector to treat him as the exclusive owner of the entire land. They have proceeded on the basis of the situation as it prevailed in the year 1954 when the protected tenancy rights were conferred. The contention of the petitioners that the property was divided into four shares was negated by the authorities on the ground that other three brothers are not coming forward. Even if there did not exist any claim from the other three brothers, such a course of action would adversely affect the rights of the petitioners. The reason is that the actual holding of Nizamuddin is only one-fourth and he is treated as holding the entire extent. This in turn had the direct and important bearing on the computation of family holdings to the landholder under Sub-section (7) of Section 38 of the Act.

14. The question as to whether the relevant date for computing the holdings of the landholder or the protected tenant in the context of conferment of ownership rights under Section 38-E of the Act shall be the one on which the Act came into force; or 1.1.1973 on which date, the notification referred to under Section 38-E of the Act was issued, fell for consideration before this Court in *S. Venkaiah v. B. Nagaiah*,

1988 (1) APLJ 149. Justice Jagannadha Rao, as he then, dealt with the matter extensively with reference to the provisions of the Act, rules made thereunder, notifications issued from time to time, and the decided cases. It was ultimately held that it is the date of notification namely 1.1.1973, with reference to which the holdings are to be decided and not the date on which the Act came into force. The anomaly of any other course of action was also pointed out. It is apt to refer to the relevant finding.

'Further if under the Act, the date of transfer of ownership is the notified date as per Section 38-E(1) the date of computation of holdings should not be any other date. It is with regard to the date on which the transfer of ownership takes place that computation of holdings of the landholder as well as the tenant have to be made with a view to find out whether the conditions mentioned in Section 38(7) are satisfied. Otherwise, there is no point in Section 38-E(1) stating that ownership will be transferred or deemed to be transferred with reference to the date notified. By applying any other date, anterior to such date as the relevant date for computation of holdings, Section 38E(1) and Rule 4(1) will not be complied with. As the notified date is 1.1.1973, the relevant date for computing the extent of holdings is also 1.1.1973.

For the aforesaid reasons, I hold on point No. 1 that the relevant date for computing the holdings and for considering whether the conditions under Section 38(7) are satisfied, the crucial date is 1.1.1973 and not 4.2.1954.'

This view received support from a Division Bench in Islamia Arabic College, Kurnool v. Balaram Singh, : 1997(4)ALT90 (DB). It is not in dispute that the Revenue Divisional Officer has proceeded on the basis that Nizamuddin is the sole owner and he held more than two family holdings of the land. Inasmuch as the position obtaining as on 1.1.1973 by which time, Ismail died and the land devolved on his four sons was not taken into account, the findings recorded in the orders under revision cannot be sustained.

15. The discussion undertaken by the Revenue Divisional Officer in relation to computation of holdings was rather cryptic. The Joint Collector made an attempt to supplement some reasons for it. A reading of the order of the Joint Collector

discloses that Ac.53.12 guntas of land held by the family was treated as wet and on conversion it was treated as Ac. 151.15 guntas of dry land. There does not exist any basis for such a conclusion. The petitioners were entitled to be put on notice before such a finding was recorded. The petitioners were put in dark of all this exercise. The steps taken and proceedings initiated while passing the order dated 17.9.1975 were treated as the basis, though the said order was set aside by this Court. The concluding paragraph of the order of the Revenue Divisional Officer discloses that he felt limited and circumscribed by the order dated 17.9.1975. It reads as under:

'Therefore I do not see any reason to interfere with the orders passed by the Additional Revenue Divisional Officer on 17.9.1995 in file No. M/1683/75. Accordingly the case is dismissed.'

16. If the order dated 8.4.1986 is to be interpreted in a technical manner, it emerges that it did not confer any ownership rights on the respondents at all. The earlier order dated 17.9.1975, under which the rights were conferred, was set aside by this Court. Hence, there appears to be an absolute non-application of mind to the facts of the case. When the valuable rights of the petitioners are involved and the Act is almost expropriatory in nature, from the point of view of landholders, the, authorities are required to be careful and meticulous in taking the steps under it.

17. For the foregoing reasons, the civil revision petition is allowed and the order passed by the Revenue Divisional Officer and the one passed by the Joint Collector are set aside. The matter is remanded to the Revenue Divisional Officer for fresh consideration and disposal. Since the matter was dealt with in a casual and superficial manner even after remand by this Court, it is directed that the Revenue Divisional Officer shall take all the factual and legal aspects into account and deal with them carefully and meticulously.