

Devavathi Namya and ors. Vs. Gurukul Trust and ors.

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Court : Andhra Pradesh

Decided On : Jul-14-2004

Reported in : 2004(5)ALD195; 2004(5)ALT418

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh (T.A.) Tenancy and Agricultural Lands Act, 1950 - Sections 32; Andhra Pradesh Tenancy Lands (Amendment) Act, 2002 - Sections 16; Andhra Pradesh Charitable Hindu Religious Institutions and Endowments Act

Appeal No. : CRP No. 1261 of 1998

Appellant : Devavathi Namya and ors.

Respondent : Gurukul Trust and ors.

Advocate for Def. : C. Nageshwar Rao, Adv. for Respondent No. 5 and ;K. Mahipathi Rao, Adv. for Respondent No. 6

Advocate for Pet/Ap. : T. Jagadish, Adv.

Disposition : Petition dismissed

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'), against the order, dated 9-3-1998, passed by the Joint Collector, Ranga Reddy District. Through the order under revision, the Joint Collector affirmed the order, dated 5-10-1989, passed by the Mandal Revenue Officer, Serilingampalli, rejecting the application filed by the petitioners hereinunder Section 32 of the Act.

2. Gurukul Ghatkesar Trust (hereinafter referred to as 'the Trust'), held vast extents of land in the outskirts of the city of Hyderabad. One such item is the land in Sy.No. 11, admeasuring about 360 acres, situated at Khanammet Revenue Village, Serilingampalli Mandal, Ranga Reddy District. One Mr. Saravathi Ramachander, an ex-serviceman, was engaged as the security guard by the Trust, for protection of its land in Sy.No. 111, about half-a-century ago. He was recorded as tenant in respect of about 65 acres of the land in that survey number. Under Section 37-A of the Act, he was treated as protected tenant, in respect of that land.

3. The protected tenant-Mr. Ramchander, submitted an application before the Revenue Divisional Officer, Chevella, for grant of ownership certificate, under Section 38-E of the Act. When the same was pending, he surrendered his protected tenancy rights before the Tahsildar, Chevella, and the same was recorded on 18-11-1981. He received compensation at the rate of Rs. 1,200/- per acre, from the landholders, for surrendering the tenancy.

4. One Mr. Bhavsingh and 14 others, the predecessors in title of the petitioners herein, filed application before the Tahsildar, Rajendranagar, under Section 32 of the Act, for restoration of the possession of the land, which is said to have been surrendered by Mr. Ramchander. According to them, Ramchander, is one of the members of the family, and though his name was recorded as protected tenant under Section 37-A of the Act, the right enures to the benefit of the entire family. They pleaded that surrender of tenancy by Ramchander alone did not have the effect of wiping away their rights of protected tenancy, and in that view of the matter, they were entitled to be restored to possession. Through order, dated 24-5-1985, the Tahsildar dismissed the application holding that Ramchander, alone

was the protected tenant and the surrender made by him was in accordance with Section 19 of the Act.

5. An appeal was preferred against the orders, dated 24-5-1985, passed by the Tahsildar, to the Joint Collector. The Joint Collector took the view that various documents filed by Mr. Bhav Singh and others to establish their possession over the land and independent claim of tenancy, was not considered by the Tahsildar, and that the entire matter, including the validity of surrender of tenancy was dealt with, in a casual manner. On recording such findings, the Joint Collector remanded the matter for fresh consideration to the Mandal Revenue Officer, Serilingampalli for de novo enquiry (in view of formation of Mandals, the powers of Tahsildar are conferred on Mandal Revenue Officer). When the matter was pending after remand, the 1st petitioner in the proceedings, by name, Bhavsingh, filed a memo to the effect that himself and other petitioners have resumed the possession of the land in question peacefully and that they have grown crops. Taking this development as well as the entire record into account, the Mandal Revenue Officer passed order, dated 30-5-1989, rejecting the application. It was held that Mr. Ramchander alone was the protected tenant, in respect of the land in question, and the tenancy was surrendered in accordance with the provisions of the Act. It was further observed that the land has since been sold by the Trust in favour some societies, and in view of the fact that the petitioners before him have stated that they have resumed possession, the entire proceedings under Section 32 of the Act, become infructuous.

6. Sri T. Jagadish, learned Counsel for the petitioners submits that though the name of Mr. Ramchander alone was recorded as protected tenant in respect of the land, the petitioners and their predecessors in title being co-tenants and family members, were entitled to be treated as protected tenants. According to him, the surrender of tenancy by Ramchander was not in accordance with law, and at any rate, it cannot defeat the rights of others, who are entitled to be recognized as protected tenants. He contends that in the appeal preferred by the petitioners in the first round of litigation, the Joint Collector recorded a finding to the effect that there existed sufficient material to indicate that the petitioners are in possession of various extents of land, as tenants, and that the same ought to have been taken

into account by the Mandal Revenue Officer, while passing the order after remand. Learned Counsel also submits that the statement made by one of the petitioners, by name, Bhavsingh, that he resumed possession of the land cannot be made applicable to others and the proceedings under Section 32 of the Act ought not to have been terminated without granting any relief.

7. Sri Ravi, learned Counsel for the Respondents 1 to 4, on the other hand, submits that Mr. Ramchander alone was recognized as protected tenant, that too, under Section 37-A of the Act, and that there is nothing on record to indicate that he was acting on behalf of other members of the family. He contends that once the predecessors in title of the petitioners have stated before the Mandal Revenue Officer that they have regained the possession of the land, the very application under Section 32 of the Act, became infructuous and the petitioners were not entitled for any relief. On the basis of the A.P. Tenancy Lands (Amendment) Act, 2002, which came into force with effect from 26-11-2002, learned Counsel submits that the provisions of the Act did not apply to the lands held by the institutions, and even assuming that there existed any protected tenancy in favour of the petitioners, it ceased to be in force, in view of the amendment.

8. Sri K. Mahipathi Rao, learned Counsel for the Respondent No. 6, submits almost on the same lines, as did the Counsel for Respondents 1 to 4. He submits that the petitioners failed to establish their protected tenancy, and in fact have frustrated their own application filed under Section 32 of the Act, by pleading at a later stage that they have regained the possession of the land.

9. This case presents another instance of the efforts of certain individuals, to deprive the Trust, of the valuable properties endowed to it, by great philanthropists. Recently, in Revenue (Endowments) Department, A.P. v. Sri Swamy Ayyappa Co-operative Housing Societies Limited, : 2003(6)ALD225 (DB), a Division Bench of this Court had an occasion to deal with the whole episode extensively, clearly demonstrating as to how the very object of the Trust was frustrated by certain selfish individuals. The following observation of the Division Bench would aptly disclose the gravity of the matter:

'It is under those two resolutions purported to have been passed by the Committee of the Trust; the whole extent of Ac.627-00 of land belonging to the Trust, which was acquired by the noblemen, was alienated. In neither of the resolutions, the purpose for which the lands have been permitted to be sold is revealed. It is not difficult to discern that the whole operation obviously was conceived and executed with an extraordinary finesse by the President of the Trust for his own personal benefit without any concern whatsoever to the noble aims and objects for which purposes the Trust was founded.'

10. The scale and size of the activities by the individuals was so large, that the Legislature had to step in amend the Act, exempting any agricultural lands belonging to, or given, or endowed, for the purpose of any charitable, Hindu religious endowments, as defined by the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, by amending Section 16 of the Act. This has the effect of keeping the lands held by the Trust outside the purview of the Act. Some of the beneficiaries of the alienations of the lands of the Trust, including the 6th respondent herein, filed writ petitions challenging the amendment. Those writ petitions along with other related matters were dealt with by a Division Bench in the case referred to above. After undertaking extensive discussion, this Court dismissed the writ petitions and upheld the amendment. Various measures to protect the property of the Trust were also indicated therein.

11. The effect of the amendment of Section 16 of the Act is that, there cannot be any protection of tenancy rights under the Act, in respect of the lands held by the Trust. The amendment dates back to the inception of the Act. Hence, the entire cause in the revision virtually becomes infructuous.

12. Even otherwise, it needs to be observed that the petitioners or their predecessors in title were never registered or recorded as the protected tenants, in respect of the land in question. The Act prescribed the procedure for preparation of list of protected tenants and consideration of any objections in relation thereto. When Mr. Ramchander alone was recorded as protected tenant, nobody has objected 'for such an entry. He alone initiated the steps for securing the ownership rights under Section 38-E of the Act. When the steps were in progress, he has

chosen to surrender the tenancy, after receiving, substantial amount from the landholder. It was at that stage, that the predecessors in title of the petitioners came forward with an application under Section 32 of the Act, for restoration of the possession of the land.

13. Learned Counsel for the petitioners submits that in the first round of litigation, the Joint Collector has recorded a finding to the effect that there existed sufficient material to show that the predecessors in title of the petitioners were themselves protected tenants and that the same was not reversed by any superior authority or Court. He contends that though the matter was remanded, the finding that other family members of Mr. Ramchander were also entitled to be treated as protected tenants became final and Mandal Revenue Officer ought not to have ignored it. This contention would certainly have been worth consideration, if it were to be a case where the Joint Collector recorded a definite finding and remanded the matter on a specific issues other than this. A reading of the order of the Joint Collector, dated 14-8-1987, discloses that except making certain general observations, he did not record any definite finding. Further, he remanded the entire matter for de novo enquiry and did not restrict it to any particular aspect. It is settled principle of law that whenever a matter is remanded by the superior authority or Court, without specifying the limits of such remand, the entire case would be at large. See *Sanatan Mohapatra v. Hakim Mohammad*, : AIR1977 Ori194 .

14. The restoration of possession under Section 32 of the Act is an extraordinary remedy available to protected tenants alone. Having regard to the typical nature of the rights conferred upon a protected tenant, through series of judgments, this Court held that the relief under Section 32 of the Act, can be sought for by the tenants, and extended by the competent authority, uninhibited by ordinary law of limitation also. When such is the status accorded to the right under Section 32 of the Act, it is fundamental that the person claiming it, should establish beyond any doubt that he is the protected tenant. In the absence of any clinching proof in that regard, the question of extending the relief under Section 32 of the Act, does not arise.

15. Whatever may have been the justification in submitting the application under Section 32 of the Act, the persons, who filed the same, have frustrated it, by stating that they have regained the possession of the land. An application under Section 32 of the Act presupposes a protected tenant or his legal heir having been dispossessed. When it is pleaded that the land is in possession of the persons, who filed the application, the authority virtually gets denuded of its powers, to proceed with the application. As observed earlier, the application filed under Section 32 of the Act was dismissed on recording a finding that the applicants failed to establish that they are the protected tenants. On appeal, the Joint Collector remanded the matter for conducting de novo enquiry. During the course of de novo enquiry, the 1st petitioner filed a memo to the effect that he and other petitioners regained the possession of the land. The relevant portion of the order, dated 30-5-1989, passed by the Mandal Revenue Officer, Serilingampalli, refers to the event as under:

'At this stage, the Petitioner No. 1, Bhavsingh has mischievously, with mala fide intention to harass the respondents and in order to confuse this Court, has filed the petition that the petitioners have peacefully taken possession of the land and have grown crops on the land as per the schedule appended to the petition.'

This is almost a matter of record. Though learned Counsel for the petitioners submits that the petition said to have been filed by Mr. Bhavsingh, should bind him alone and not others, and present appeal to this Court, since there is nothing on the record to disclose the other petitioners, pleaded the matter in a different way. Having filed a petition to the effect indicated above, they wanted an order from the Mandal Revenue Officer in the form of an injunction against the respondents herein. The Mandal Revenue Officer had rightly rejected the relief stating that he is not competent to pass such orders.

16. In fact, the development referred to above was sufficient to reject the application, without undertaking any discussion, on merits. The Tahsildar has undertaken extensive discussion. The Appellate authority had traced the entire genesis of the case and had demonstrated as to how the claim of the petitioners was untenable. Therefore, no interference is called for with the findings recorded

by the Mandal Revenue Officer and the Joint Collector. At any rate, with the amendment to Section 16 of the Act, the entire proceedings become untenable. The petitioners have not chosen to challenge the validity of the amendment. Writ petitions challenging the amendment were already dismissed.

17. Hence, the civil revision petition is dismissed. In the circumstances, there shall be no order as to costs.

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