

IN THE COURT OF THE JOINT COLLECTOR :: RANGA REDDY DISTRICT
PRESENT: SRI.K.VIJAYANAND, I.A.S.,

NO:F1/6908/97
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DATED: 29.01.2000
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Between:

- 1) Godhuma Kunta Balreddy
S/o.G.Yadi Reddy
- 2) G.Yadi Reddy S/o.G.Agaiah
- 3) G.Malla Reddy S/o.G.Agaiah
All r/o.Narigudem, Mallapur Vg,Uppal(M) Appellants

A n d

- 1) Koukuntla Mogulaiah S/o.K.Narsimlu
- 2) K.Jangaiah S/o.K.Narsimlu
- 3) K.Narsimlu S/o.K.Narsimlu
All r/o.Mallapur Vg., Uppal Mandal Respondents

This is an appeal filed U/s.24 of the Abolition of Inams Act, 1955 by the Appellants herein through G.R. Rao, Advocate, aggrieved by the orders of the Lower Court (Revenue Divisional Officer, Hyderabad East Division) passed on 6.9.1997 in Case No.J/7156/1996 granting Occupancy Rights Certificate to the respondents herein in respect of the lands Sy.Nos.93, 94 and 95 extent Ac.2-02 gts., Ac.2-09 gts., and Ac.11-12 Gts., respectively situated in Mallapur Vg., of Uppal Mandal.

The grounds of appeal are that :-

During the pendency of the case under appeal before the Lower Court, the appellants herein filed an application in Form-I for grant of Occupancy Rights Certificate over the suit lands claiming Sri.G.Agaiah (Late) was the Protected Tenant over the suit lands.

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The appellants No.2 and 3 are the sons of the deceased Protected Tenant and the Appellant No.1 is the son of the Appellant No.2 . In support of their claim they submitted the Certified Copy of the extract of Protected Tenancy Register along with the Certified Copies of Sesala Pahani Patrik 1955-58, pahanies of the years 1960-61, 1973-74 and 1994-95. An advocate on their behalf filed a memo by undertaking to file Vakalat, but did not file vakalat.

That the suit lands have fallen to the share of one of the Inamdars namely Mohd Rahman Ali as per the partition deed among the Inamdars who filed a case U/s.44 (4) of the Tenancy Act, 1950 for resumption of land and according to the compromise in between the respondents herein with the Inamdar Mohd Rahman Ali, the respondents surrendered Ac.12-32 gts., in Sy.No.95 totally admeasuring Ac.21-01 gts., in favour of the said Inamdar retaining the remaining area in their favour and accordingly decided by the then Revenue Divisional Officer in Case No.H/6733/79, dt.10.2.1982. But the Appellants herein were not the parties to the mutual compromise. The appellants herein are also the legal heirs of the Protected Tenant with equal rights along with the respondents herein.

In as much as that the Lower Court has failed to consider the land acquisition proceedings in Case

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No.D/1280/96 of 18.12.1996 wherein Ac.1-00 of land in Sy.No.95 was acquired and a notice U/s.12(2) of the Land Acquisition Act was issued to these respondents for drawing the compensation amount.

That as per the Tenancy record both Koukuntla Narsimha, the father of the respondents and Godhumkunta Agaiah, the father of the appellants herein were the joint Protected Tenants of the suit lands hence the appellants herein have also equal rights in the suit land.

The Lower Court has not considered the documents produced by the appellants herein which are the same as produced by the respondents and arbitrarily passed the impugned orders which are liable to be set aside. Hence prayed to grant Occupancy Rights Certificate in favour of the appellants being the legal heirs of the late Protected Tenant Sri.Godhumkunta Agaiah in respect of the suit lands. The appellants along with the appeal petition dt.16.9.97 have also filed a petition U/s.151 of C.P.C. to issue orders to stay the execution of the orders of the Lower Court.

The case taken on record. Notices have been issued to both the parties while calling Lower Court file and also issued orders to the Lower Court to maintain status-quo till the disposal of the case.

Sri.N.Dur a Reddy, Advocate, filed a Counter on

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behalf of the 1st Respondent herein stating that the appeal in question is not maintainable in law. If the appellants have any rival claim against the respondents herein they ought to have filed a petition in Form-I before the Lower Court. Hence they cannot be impleaded under appeal. The other grounds are elucidated facts in the written arguments. The written arguments have also been simultaneously filed which reads to the effect that:-

The appellants herein engaged a Counsel in the Lower Court who has undertaken to file a vakalat on behalf of the appellants but neither vakalat nor documentary evidence is filed by the appellants. Therefore the Lower Court relied upon the material documentary evidence available on record filed by the respondents herein and accordingly granted Occupancy Rights Certificate under appeal. The said orders have been implemented by the Mandal Revenue Officer in File No.B/8102/97, dt.15.9.97 and accordingly Patta pass Book has also been issued in their favour.

The appellants do not have any rights as they are not in possession of the suit lands and also their claim of share holders of Protected tenants is false and a concocted story.

The father of the appellants and the father of these respondents have never been joint Protected

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Tenants over the suit lands as there is no mention in any of the records since the commencement of the Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Act, 1950.

The Inamdars of the suit lands together with the other lands got partitioned their property, accordingly the suit lands have fallen to the share of one of the Inamdar namely Mohd.Rahman Ali who in turn got Occupancy Rights Certificate to the extent of Ac.12-32 gts., in SY.NO.95 in the year 1982 vide file No.H/6733/79 of the R.D.O., Hyd East . . The respondents herein were not owners of the Occupancy Rights Certificate issued to the said Inamdar Mohd Rahman Ali but obtained the Occupancy Rights Certificate over the suit lands under the provisions of Abolition of Inams Act, 1955.

As regards to acquisition of one acre in Sy.No.95 the respondents alone have received the compensation amount but the appellants never filed any objection petition in the said award proceedings. The appellants are put to strict proof of their claim basing on the material documents.

The appellants if had any rights over the suit lands they ought to have filed a petition in Form-I before the Lower Court or agitate before passing the orders by the Lower Court under appeal and presently

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they cannot be impleaded in the case filing an appeal before this Court. Hence the appeal is liable for dismissal and be dismissed.

The appellants have also filed written arguments. The grounds of the written arguments are as under:-

That as per the documents Certified Copy of P.T. Register produced by them in the Lower Court their father G.Agaiah was the joint Protected Tenant over the suit lands along with K.Narsimlu, the late father of the respondents. Further as per the Certified Copy of pahanies 1955-58 Sri.G.Agaiah is recorded as Protected Tenant along with the K.Narsimulu the father of the respondents. The father of these appellants Sri.G. Agaiah was hence dispossessed from the lands but there is no material to say as to when and by whom he was dispossessed.

As per the citation AIR 1988 AP 77 before the full bench of the Hon'ble High Court, A.P., Hyderabad in Sada and etc., Vs. the Tahsildar Utnoor it is held that as per the provisions of Tenancy Act, 1950, a Protected Tenant who is not in possession of the land on the date of notification shall be entitled for Occupancy Rights Certificate and it is not necessary that the Protected Tenant should have been in possession of the land on the date of notification.

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Hence irrespective of the fact that the appellants were in possession or not they entitled for Occupancy Rights Certificate.

The respondents and the Inamdar with a dishonest intention behind the back of the appellants compromised and got issued to the extent of Ac.12-32 gts., in Sy.No.95 in favour of the Inamdar but the respondents in their written argements have denied that they were aware of the Occupancy Rights Certificate issued to the said Inamdar.

The Lower Court should have verified the records while issuing Occupancy Rights Certificate to the respondents.

All the above mentioned aspects clearly show that Bri.B.Agaiah, the father of the appellants was a Protected Tenant along with K.Narsimlu, the father of the respondents herein and are therefore entitled to Occupancy Rights Certificate in respect of the suit lands to an extent of Ac.11-12 gts., in Sy.no.93, 94 and 95 at Mallapur Vg., of Uppal Mandal along with the respondents herein. Hence prayed to issue Occupancy Rights Certificate accordingly in favour of the appellants.

Having stood over for consideration with due examination of the Lower Court file this Court doth deliver the orders as follows:-

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ORDER :

Having deleted the area of Ac.12-32 Gts., in Sy.No.95 granted under Occupancy Rights to the Inamdar Bri.Mohd Rahaman Ali vide R.D.O., Hyd East Division in Procs.No.H/6733/72 dt.10.3.82 and Ac.1-00 said to have been acquired there remains Sy.Nos.93, 94 and 95 with an extent of Ac.2-02gts., Ac.2-09 gts., and Ac.7-01 gts., respectively which are the suit lands in this case.

As seen from the Lower Court Case diary Shri.G.R.Rao, Advocate filed an under taking on 21.6.1997 to file a vakalat on behalf of the appellants herein. The case has undergone adjournments 3 times as on 5.7.1997, 19.7.97 and 23.8.1997 but no vakalat or objection petition filed by the appellants herein and on 30.8.1997 also the appellants were absent hence the case in the Lower Court reserved for orders and accordingly orders passed on 26.9.98. Besides as verified the Lower Court file, no document is filed by the appellants in support of their claim.

It is established that the appellants were on record before the Lower Court filing Form-I along with the Certified Copies of P.T., Sesala pahani 1955-58 and 1973-74 requesting Occupancy rights Certificate. But there is no mention about the action taken on the said Form-I whereas it could be rejected by issuing speaking orders to the appellants. This proves that the

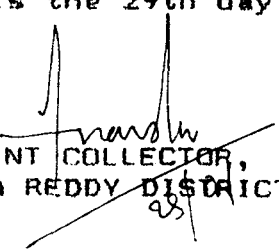
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appellants before this Court are not on the ground of impleading petition as objected by the respondents herein in their written arguments.

Instead of going into details of the contents of the written arguments filed by both the parties I find that the point raised above and remarks passed there to are sufficient to come to the conclusion that the Lower Court has not followed scrupulously the provision of Abolition of Inams Act, 1955 for granting occupancy rights. I further feel that it would be fair to remanded the case to the Lower Court for denova enquiry exclusively under the provision of the Inam Abolition Act, in the interest of justice, as the appellants were not given sufficient opportunity to prove their claim.

Hence, the appeal is allowed and the orders under appeal are set aside with a direction to the Lower Court to examine the essential record required for determining the Occupancy Rights Certificate while giving opportunity to both the parties to contest their claim.

Typed to dictation, corrected by me and pronounced in the Open Court on this the 29th day of January, 2000.


JOINT COLLECTOR,
RANGA REDDY DISTRICT.

To

- 1) Godhuma Kunta Balreddy
C/o.G.Yadi Reddy
- 2) G.Yadi Reddy S/o.G.Agaiah
- 3) B.Malla Reddy S/o.G.Agaiah
(Through - B.R.Rao, S.N.Padmini, Advocates,
R/o.11-6-695, Red Hills, Hyderabad.