

CASE NO.:
Appeal (civil) 3429 of 2002

PETITIONER:
Boddam Narsimha

RESPONDENT:
Hasan Ali Khan (Dead) by L.R. & Ors

DATE OF JUDGMENT: 25/01/2007

BENCH:
Dr. Arijit Pasayat & S. H. Kapadia

JUDGMENT:
J U D G M E N T

KAPADIA, J.

Nawaz Jung Bahadur was a pattedar of the lands inter alia in Survey Nos. 63, 68, 69 and 70 admeasuring 69 acres 10 guntas in village Madhapur of Serlingampally Mandal, Ranga Reddy in Andhra Pradesh. On the demise of Nawaz Jung Bahadur, one of his sons Mohd. Ali Khan filed a suit for partition of the properties of late Nawaz Jung Bahadur. This was in 1935. The scheduled property was Item 6 of Schedule B in Suit No. 42/62 filed in the City Civil Court, Hyderabad. In the plaint it was stated that Item 6 was in possession of the tenants. One such tenant, Boddam Bala Mallaiah (hereinafter referred to as "Bala") was the cultivating tenant in respect of Survey Nos. 63, 68, 69 and 70 of village Madhapur admeasuring 69 acres 10 guntas as indicated by Khasra Pahani for the year 1954-55. Bala was a lessee for three years. He was inducted in the aforesaid lands under a kaulanama dated 1.3.1953. This kaulanama was executed by one Hamid Ali Khan son of Md. Nawaz Jung. Initially it was for one year. It was renewed each year. It stated that on expiry of the stipulated period the tenant will have no right over the land in possession. It further stated that Bala will be sole cultivator and that without the permission of the landlord, Bala will not include any other cultivator. Hamid Ali Khan sold his share to Bala on 23.11.1959 through a registered sale deed. The partition suit referred to above filed in 1935 (renumbered in 1962) stood decided on 24.11.1970. This sale deed dated 23.11.1959 in favour of Bala stood executed after the vendor Hamid Ali Khan obtained permission under Sections 47 and 48 of the Hyderabad Tenancy and Agricultural Land Act, 1950. The permission was obtained from Deputy Collector on 13.11.1959. Accordingly, Bala became a pattedar in place of Hamid Ali Khan in respect of the suit land. In the revenue records for the year 1972-73, the name of Bala was shown as pattedar. The alienation in favour of Bala was during the pendency of the suit for partition of the ancestral properties belonging to Nawaz Jung Bahadur. Bala died in 1975. He was the paternal uncle of the appellant herein.

Pursuant to the preliminary decree, an Advocate Commissioner was appointed in the final decree proceedings vide I. A. No. 854/84 in suit No. 42/62. On 28.11.1993 the said Commissioner came to the suit site to measure the lands. At that stage the LRs. of Bala and his 2 brothers instituted a suit for permanent injunction against the respondents herein being suit No. 294/93 which was dismissed on 8.6.1998. The important point to be noted is that the plaintiffs in the said suit did not allege Bala to be a protected tenant. Bala had two brothers, namely, Agaiah (father of the appellant) and Komariah.

Subsequently, the vendees (K. Sambasiva Rao and ors.) who claimed title through the LRs. of Bala and his two brothers instituted another suit for permanent injunction against the respondents herein. This suit was dismissed on 8.6.1998.

The LR's. of Bala and his two brothers filed one more application before the Special Court under the Land Grabbing (Prohibition) Act, 1982 which was dismissed by the Special Court vide Order dated 13.5.1997.

Having failed in the above proceedings, an application was moved on 16.12.1998 before the Tribunal (R.D.O.), Ranga Reddy Distt. seeking a declaration of protected tenancy under Section 37-A of the Tenancy Act. This application was moved by the present appellant. In the said application, it was alleged for the first time that late Bala was a protected tenant. By the said application, the appellant also asked for an Ownership Certificate under Section 38-E of the A. P. (Telangana Area) Tenancy & Agricultural Lands Act, 1950 ("the Act") as amended from time to time. In other words, the appellant herein invoked the said Act for the first time on 16.12.1998 though Section 37-A stood incorporated in the tenancy law by way of an (Amendment) Act, 1955, which came into force on 12.3.1956.

Bala was the paternal uncle of the appellant herein. He died in 1975. He, during his lifetime, did not claim to be a protected tenant. In fact, as stated above, he became a pattedar prior to 1.1.1973. Even his LR's. did not claim that Bala was a protected tenant in respect of the said land, therefore, for the first time, the nephew of Bala, the appellant herein, sought a declaration that Bala was a protected tenant under Section 37-A and accordingly claimed an Ownership Certificate under Section 38-E of the Act after a lapse of more than 40 years. No explanation was given in the application by the appellant for not invoking section 37-A for almost 40 years. The Tenancy Act came into force on 10.6.1950. At this point it may be stated that the appellant herein is not the L.R. of Bala. The appellant is the nephew of Bala, however, appellant claims that Bala was cultivating the above lands with his two brothers, namely, Agaiah (father of the appellant herein) and Komaraiah.

On receipt of the said application dated 16.12.1998, the matter was referred by the Tribunal to the Mandal Revenue Officer ("M.R.O."), who reported that there was no protected tenants in respect of the suit lands and that Bala's name was never recorded as protected tenant in respect of the said lands. It was further reported that Bala was the pattedar, that he was cultivating the lands as pattedar and that he was cultivating as Owner under the above sale-deed dated 23.11.1959.

Before the Tribunal, two contentions were advanced, namely, that Bala was a deemed tenant under section 5 of the Act. It was also contended that, in any event, Bala was the protected tenant under section 37-A of the Act and, therefore, he was entitled to Ownership Certificate under section 38-E of the Act. Both these contentions were rejected by the Tribunal vide order dated 24.8.1999. It was held that section 5 contemplates making of an application by the landlord upon which the Tehsildar had to decide whether there is a deemed tenant on the property. The Tribunal held on the facts of the present case that neither the appellant protested against omission of Bala's name from the revenue records as a deemed tenant nor has the landlord filed an application before the Tehsildar to declare Bala not be a tenant. No application was ever made to rectify the alleged mistake/omission. In the circumstances, the Tribunal held that section 5 of the Act has no application. On the second point regarding applicability of section 38-E, the Tribunal held that in 1975 an enquiry was conducted pursuant to the Notification issued by the Government enforcing the provisions of section 38-E. In that enquiry, it was found that there were no protected tenants in Madhapur village. For the aforesaid reasons, the Tribunal dismissed the application made by the appellant.

Aggrieved by order of the Tribunal dated 24.8.1999, the appellant herein preferred an appeal under Section 90 of the Act. The appeal was dismissed by the Joint Collector vide order dated 13.3.2000. Thereupon, a Civil Revision Petition was filed by the appellant herein under section 91 of the Act which was dismissed by the High Court vide judgment dated

16.4.2001 which is now under challenge before this Court.

Mr. F.S. Nariman, learned senior counsel, appearing on behalf of the appellant submitted that a statutory right of protected tenancy is not lost on account of delay or laches. It was submitted that such a right is not obliterated for want of application, particularly when the law does not contemplate any such application by the person claiming to be a protected tenant and also in the absence of any injury or prejudice to the land holders. In this connection, it was urged that under section 37-A of the Act, a tenant in possession on 12.3.1956 becomes a protected tenant; that section 37-A directs the authorities to record him as a protected tenant and that section 37-A does not prescribe any application to be made and, therefore, in such circumstances, it cannot be said that a statutory right is lost because the concerned person did not make any application for recognition of his status as a protected tenant. In order words, it was urged that if a tenant is in possession on 12.3.1956, then the statute confers upon him the status of a protected tenant and such a right continues even if the person entitled thereto fails to move the authorities for grant of a declaration. In the circumstances, it is urged that the appellant was entitled to a certificate of ownership under section 38-E of the Act, which stood introduced w.e.f. 1.1.1973.

It was next urged that delay or omission, if any, to compile list of protected tenants under sections 37-A and 38-E of the Act was on account of the failure on the part of the concerned authorities under the Act for which the tenant cannot be denied as status of protected tenancy by invoking the theory of laches and delay. Learned counsel urged that the statutory rights of the protected tenant conferred under section 37-A upon cultivating tenants in possession on 12.3.1956 are automatic and not dependant on applications to be made. He acquires rights of ownership under section 38-E of the Act automatically. That the respondents were pattedar of lands admeasuring 2000 acres which was more than the ceiling prescribed and, therefore, Bala had acquired rights of protected tenancy under section 37-A of the Act because he was the cultivating tenant in possession on 12.3.1956. According to section 38-E, the ownership of the land stood automatically transferred to protected tenants if the conditions under section 38(7) stood satisfied. According to the appellant, under section 38-E, the authorities were duty bound to prepare a provisional list of protected tenants to whom ownership stood transferred. A general notice was required to be published. Individual notices were required to be given to the protected tenants of the land holders. A public enquiry was required to be made. Only then a final list had to be published. Learned counsel submitted that no such notice was ever given to the appellant though the appellant's family continued to remain in possession. The appellant have challenged the finding of the Tribunal that there was an enquiry and a nil provisional list was prepared in 1975 under section 38-E against which there was no protest from the appellant or from the LRs. of Bala. As no such notice was ever issued, the application made by the appellant in 1998 under section 38-E should have been treated as an objection to the provisional list and, therefore, the Tribunal had wrongly rejected the appellant's application for Ownership Certificate. Learned counsel urged that the name of Bala was recorded in the Khasra Pahani for the year 1954-55 as a tenant and his name was shown as a pattedar subsequently and, therefore, it was the statutory duty of the Tribunal to conduct an enquiry suo moto which they fail to do. It is the case of the appellant that they are in possession of the lands right throughout and they moved under the Act only when their possession sought to be disturbed. Learned counsel submitted that it was the duty of the concerned authorities to prepare a list of protected tenants. They fail to prepare the list, therefore, according to the learned counsel, the application of the appellant under section 38-E ought not to have been rejected on the ground of delay and laches, particularly when under the Act there is no limitation prescribed. The appellant had approached the Tribunal when the Advocate Commissioner appointed by the civil court, in the partition suit filed by the owners (respondents herein) sought partition of the properties belonging to late Nawaz Jung Bahadur, tried to dispossess the appellant. Therefore, the appellant's right to seek a declaration/ Ownership Certificate arose only

when the Advocate Commissioner tried to dispossess the appellant. Mere laches would not disentitle the tenant to the relief sought for by him under the Act. In this connection, reliance was placed on the judgment of the Full Bench of the Andhra Pradesh High Court in the case of Sada v. The Tahsildar, Utnoor reported in AIR 1988 AP 77. It was submitted that the accrued right in favour of the tenant by operation of law does not get defeated merely by omission to have their names recorded in the revenue records. In this connection, reliance was placed on the judgment of this Court in the case of Bahadur Singh and ors. v. Shangara Singh and ors. reported in (1995) 1 SCC 232. It was next contended that in view of the Memo dated 11.9.2000 issued by the R.D.O. stating that the particulars of tenants who became protected tenants under section 37-A was not available though the register contains particulars of 36 other villagers. The High Court should have directed the Tribunal to hold an enquiry and compile a register on the basis of the village record since no person can be affected on account of omissions on the part of the Tribunal in complying with the statutory mandatory provisions of the Act.

For the following reasons, we do not find any merit in the above contentions.

Bala was a koul who had taken an annual lease from Hamid Ali Khan. He was a tenant-at-will. This was during the pendency of the partition suit. He became a pattedar vide conveyance dated 23.11.1959. The kaul itself indicates, that Bala was to cultivate in his individual capacity; that at the end of the year, Bala had to return the lands to the owner; that Bala was not given the right to include any other cultivator. Therefore, there is no merit in the contention of the appellant that Bala was jointly cultivating the suit lands with his two brothers Agaiah (father of the appellant) and Komaraiah. Further, between tenancy and the conveyance, there was a time gap. Hamid Ali Khan was a pattedar. His rights were purchased by Bala vide conveyance dated 23.11.1959, therefore, on 1.1.1973, when the Notification came to be issued, Bala was not the tenant. He was a pattedar. Moreover, appellant herein is not the L.R. of Bala. Bala was his paternal uncle. At no point of time, even the LRs. of Bala had claimed that Bala was a protected tenant. It is evident from section 38-E that the said section has been enacted for those protected tenants who are declared to be protected tenants and included in the Register prepared for that purpose. A person becomes a protected tenant when he is a holder on the dates or for the periods mentioned in sections 35, 37 and 37-A. Once a person becomes a protected tenant, he is entitled to an Ownership Certificate under section 38-E. In the case of Sada (supra) the Full Bench of the Andhra Pradesh High Court held that a person "holds" the land as protected tenant if he is still a protected tenant on the notified date i.e. 1.1.1973, though out of possession. As long as his right as protected tenant has not been determined by the date of Notification in a manner known to the Act, he holds the land as a protected tenant, whether physically in possession or not. For the vesting of ownership of land held by a protected tenant under section 38-E, it is not necessary that the protected tenant should be in physical possession on 1.1.1973. It is sufficient if he continues to hold the status of a protected tenant on the notified date, even if he is not in physical possession. The Act does not merely regulate the relationship of landlord and tenant but deals with the alienation of agricultural land and includes transfer of the land holders interest to the protected tenants. Therefore, the grant of pattedari (ownership rights) also finds place in the Act.

On the facts and circumstances of the present case, Bala had become a pattedar (owner) under the conveyance dated 23.11.1959. His name was shown as a pattedar even prior to 1.1.1973. The benefit of section 38-E is given to persons who hold the lands as protected tenants and who continue to hold the lands as protected tenants on 1.1.1973. The protected tenancy has to be enforced on 1.1.1973. Under section 38-E, ownership rights are conferred only upon persons who continue to be protected tenants as on 1.1.1973. They form a special class. In the present case, as stated above, Bala became a pattedar in 1959. In the case of Sada (supra) it has been held

that protected tenants are covered by Chapter IV of the Act. They fall under a limited category. They are referred to in sections 34, 37 and 37-A. In the said judgment, it has been held that section 37-A, introduced by Act No. 3/56 deals with a separate class of persons deemed to be protected tenants. This class of persons is different from the category of protected tenants who fall under sections 34 and 37 respectively. Section 37-A refers to persons who are holders of the land at the commencement of Amending Act of 1955 (12.3.1956). These persons were required to be tenants on 12.3.1956 and that they should continue to be tenants till 1.1.1973. Only such category of persons are entitled to Ownership Certificate under section 38-E. In the present case, even for the sake of argument, if we were to proceed on the basis that Bala was a protected tenant on 12.3.1956, still Bala became a pattadar vide conveyance dated 23.11.1959, therefore, in any event, the assumed protected tenancy did not continue up to 1.1.1973. In our opinion, therefore, in any view of the matter, the appellant herein was not entitled to the Ownership Certificate under section 38-E of the Act. Section 38-E has no application to the facts of the present case.

We conclude on this point by quoting para 44 of the judgment of Andhra Pradesh High Court in the case of Sada (supra).

"44. In our view, this contention is not correct. If a protected tenant is already in physical possession on the date of notification there is no problem at all. If proceedings under S. 19, 32 or 44 are pending, the date of vesting gets itself postponed. If the 'protected tenancy' stood validly terminated by the date of notification under S. 19, 32 or 44, in that case, no certificate at all can be issued. But, as long as a person continued to be a 'protected tenant' either under S. 34, 37 or 37-A, as per the Act and has not lost that status, whether he is in actual possession or not on the date of notification, and is also to be 'deemed' to be in possession under the first part of the Explanation subject to S. 32(7) and the proviso to S. 38-E(1), the ownership stands transferred straightway to such protected tenant by the very force of S. 38-E(1). Further, S. 38-E(2) read with the A. P. (T.A.) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 contemplates a full-fledged inquiry after notice to the landholders or after hearing objections of any other interested person (vide Rr. 4, 5). Once a certificate is issued, the same is, under S. 38E(2), 'conclusive evidence' of the ownership of the protected tenant, and cannot be defeated by the result of any inquiry under second part of the Explanation to S. 38-E. Another reason for this view is that the inquiry under S. 38-E(2) read with the Rules of 1973 referred to above, is to be done by the Tribunal (the Revenue Divisional Officer) and obviously his decision to grant the ownership certificate will not and cannot be jeopardised by the result of any inquiry by a subordinate official like the Tahsildar, who deals with the granting of possession to a 'protected tenant.' (emphasis supplied)

Secondly, as stated above, Bala was a lessee from Hamid Ali Khan. The kaul itself indicates that Bala was obliged to cultivate the lands in his individual capacity. However, it was urged on behalf of the appellant that Bala jointly cultivated the lands with Agaiah (father of the appellant herein), and Komaraiah. We gave opportunity to the appellant to produce any entry from the revenue records, village records or mutation entry indicating joint cultivation of the land by Bala and his two brothers. Appellant had not been able to show any such entry. This aspect is important since the appellant is not the L.R. of Bala. At no point of time, Bala or his LRs. or even the appellant has approached the authorities to record joint cultivation in the mutation entries. Under section 48-A of the Act, restrictions are placed on alienation by a protected tenant. A protected tenant on 1.1.1973 cannot

alienate the right of ownership under section 38-E for eight years from the date of acquisition of such rights. Further, under section 40 of the Act, all rights of a protected tenant are heritable by his lineal descendants by blood or adoption. Bala died in 1975. Bala died during the period when there was restriction on alienation of ownership rights acquired by a protected tenant under section 38-E. The present appellant has not applied on the demise of Bala for his name to be brought on record as L.R. of Bala or on the basis of joint cultivation by his father, Agaiah and other uncle Komaraiah. Further under section 4 of the Andhra Pradesh Rights in Land and Pattadar Pass Book Act, 1971, acquisition of rights have got to be intimated. Any person who acquires any right by succession, survivorship, inheritance, partition, patta or otherwise has to intimate in writing about his acquisition of such right. There is nothing to show that Bala and his two brothers were jointly cultivating the lands. In fact, the kaul did not allow Bala to cultivate the land with any other person without the prior permission of the landlord. In the circumstances, there is no evidence to show that the land was jointly cultivated by Bala along with Agaiah and Komaraiah. Therefore, in any view of the matter, since the present appellant is not the L.R. of Bala, he is not entitled to an Ownership Certificate or a declaration of protected tenancy under the Act. In our view, having failed in the civil court and before the special court under the Land Grabbing Act the present appellant falsely claimed to be a protected tenant as on 1.1.1973. The entire exercise was an abuse of process of law. In the circumstances, the High Court was right in dismissing the petition on the ground of delay and laches.

For the aforesaid reasons, there is no merit in the civil appeal and the same is dismissed with no order as to costs.