

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

WRIT APPEAL No.391 of 2023

Kanderi Satyanarayana, S/o.Venkata Reddy,
Aged about 49 years, R/o. Bhimanapalli Village,
Kittenna Cheruvu, Uppalaguptam Mandal,
East Godavari District.

.. Appellant

Versus

Nulu Subrahmaneswara Rao, S/o.Sambasiva Rao,
Aged about 71 years, Occ: Cultivation,
R/o.8-4-80, Main Road, Amalapuram,
East Godavari District and three others.

...Respondents

Smt. N. Anula, Counsel for the appellant.

Smt. M. Bhaskara Lakshmi, Counsel for respondent No.1.

GP for Revenue, Counsel for respondent Nos.2 to 4.

DATE : 04.04.2024

PER DHIRAJ SINGH THAKUR, CJ:

The present writ appeal under clause 15 of the Letters Patent has been preferred against the judgment and order dated 24.03.2023 passed in W.P.No.25831 of 2010. By virtue of judgment and order impugned, the writ petition filed by the respondent No.1

herein was allowed and the order passed by the tahsildar dated 29.06.2010 under the provisions of the Andhra Pradesh Occupants of Homesteads (Conferment Of Ownership) Act, 1976 (hereinafter referred to as “the Act”) passed in favour of the appellant herein was set aside.

With a view to understand the background, in the light of which the present controversy has arisen, it is necessary to give the material facts, in brief:

2. Mr. Nulu Subrahmaneswara Rao/Respondent No.1 herein, is the owner of land measuring Five Acres and Thirty Three Cents falling in Survey No.625/1 and Thirteen Cents falling in Survey No.625/2 situate in Bheemanapalli Village of East Godavari District. These parcels of land were given on oral lease in the year 1998, to the father of the appellant and after whose death the appellant herein stepped into his shoes. It appears that on account of certain alleged defaults in the rentals for the years 2002-2003, 2003-2004, 2004-2005, the writ petitioner, Mr. N. Subramanyeswara Rao/respondent No.1 herein, filed an application bearing Andhra Tenancy Case No.06 of 2006 which was allowed by the Special Officer-cum-Principal Junior Civil Judge,

Amalapuram with a direction to the appellant herein to vacate the schedule property with a further direction regarding delivery of possession of the same within three months from the date of the said order.

3. An appeal preferred by the appellant herein against the said judgment and decree also came to be dismissed vide judgment and order dated 24.09.2008. In the interregnum, the appellant herein approached the Tahsildar, Uppalaguptam under the provisions of the Act.

4. The Tahsildar in his order recorded that the extent of Homestead land claimed by the applicant was measuring Three Cents out of Five Acres Forty Six Cents which was covered by the judgment and decree of the Civil Court. The Tahsildar in his Order proceeded to hold as under:

“The applicant is an Agricultural labour and is a Land less Agriculturist. The Homestead land measuring Ac.0.03 cts is under his occupation by construction of a thatched house at own cost and dwelling in it for the past 40 years.

I therefore consider the applicant Sri Kanderi Satyanarayana S/o Venkatareddy of Kithanacheruvu H/o Bheemanapalli (V) of Uppalaguptam (M) as Occupant of the Homestead land measuring Ac.0.03 cts in R.S.No.625/2

Kithanacheruvu H/o Bheemanapalli (V) of Uppalaguptam (M) under the AP Occupants of Homesteads (Conferment of) Ownership rules 1975 and Order issue of Ownership Certificate on payment of price mentioned in Form II of the Act.”

5. The order passed by the Tahsildar came to be challenged by way of writ petition No.25831 of 2010, which was allowed by virtue of judgment and order dated 24.03.2023, impugned in the present writ appeal, on the ground that the Tahsildar, Uppalaguptam in passing the order dated 29.06.2010, acted without jurisdiction inasmuch as the principles of natural justice had been violated as also the pleas raised by the writ petitioner/respondent No.1 herein had not been considered on merits by the Tahsildar.

6. The learned single Judge appears to have been not satisfied that the enquiry as envisaged under Rule 4 of the rules framed under the Act had been conducted properly.

Apart from this, the learned single Judge was of the view that once the Court of competent jurisdiction had decided disputed questions and rendered a decision on merits in the matter, the Tahsildar could not have exercised jurisdiction which was conferred upon him by the Homestead Act. It was therefore held:

“19) ... Once a Court of competent jurisdiction, which has the authority to decide the disputed questions, has given a decision on the merits of the matter, this Court is of the firm opinion that the Tahsildar exceeded his jurisdiction and also exercised jurisdiction which is not conferred upon him by Homestead application. He did not act as warranted under law. There is also a clear failure of the Rules of natural justice and the plea raised by the writ petitioner is not even considered on the merits by the Tahsildar. Since there is a clear failure in the jurisdiction this Court holds that the petitioner is entitled to a Writ of certiorari as prayed for, quashing the order dated 29.06.2010. The same is accordingly quashed.

20) The plea of the learned Government Pleader that there is an alternative remedy under Section 8 of the Homestead Act is also overruled because of the wrongful exercise of the jurisdiction and also because of the failure of the rules of natural justice. This Writ Petition is held to be maintainable and it is accordingly allowed. There shall be no order as to costs.”

7. At this stage, it is deemed pertinent to refer to the scheme of the Andhra Pradesh Occupants of Homesteads (Conferment of Ownership) Act, 1976. The Act from a reading of the preamble appears to have been enacted to provide for conferment of right of ownership on landless agriculturists, agricultural labourers and artisans, in respect of sites occupied by and adjacent to, their

dwelling houses or huts in rural areas of the State of Andhra Pradesh.

8. An Agricultural Labourer in terms of the Section 3(1) is defined as a person whose principal means of livelihood is the income derived from the wages for his manual labour on agricultural land.

9. Section 3(3) defines an agriculturist to mean a person who cultivates agricultural land by the contribution of his own manual labour or of the manual labour of any member of his family.

Section 3(4) defines an artisan in the following terms:

“(4) 'artisan' includes a village carpenter, blacksmith, barber, washerman, potter and other persons engaged in such other callings or employment as may be specified by the Government in this behalf;”

Section 3(9) defines a Homestead as under:

“(9) 'homestead' means the site of any dwelling house occupied, either as licensee or otherwise, by any landless agriculturist or agricultural labourer or artisan in any village and includes such other area adjacent to the dwelling house as may be necessary for the convenient enjoyment of such dwelling house;”

Section 3(10) defines a landless agriculturist in the following terms:

“(10) 'landless agriculturist' means an agriculturist, who does not hold any agricultural land as owner, or who owns an extent of agricultural land which does not exceed one hectare if it is a wet land, and two hectares if it is a dry land;”

Section 3(11) defines a landowner as under:

“(11) 'land-owner' means an owner of the homestead and includes a lessor licensor in relation to any homestead, trustee, usufructuary mortgagee and any other intermediary who has an interest in the homestead;”

Section 3(13) defines occupant of Homestead as under:

“(13) 'occupant of homestead' means any landless agriculturist or agricultural labourer or artisan for the time being in occupation of the dwelling house built at his expense or at the expense of his predecessor in title on a homestead belonging to a land-owner;

Explanation: - It shall be presumed until the contrary is proved that the dwelling house has been built by the occupant thereof, at his expense;”

10. Section 4 of the Act envisages a bar to eviction of an occupant of homestead from dwelling house or homestead as under:

“4. Bar to eviction of an occupant of homestead from dwelling house or homestead –

(1) If in any village, an occupant of home-stead is in occupation of a dwelling house on the date of commencement of this Act, the said occupant of homestead shall not be evicted from such dwelling house or homestead, unless the land-owner proves that the homestead belongs to him and that the dwelling house thereon was built at his expense and the person occupying the dwelling house is only a tenant and not an occupant of homestead.

(2) The provisions of sub-section (1) shall not apply to a dwelling house which is situated on any agricultural land from which a tenant of such agricultural land has been evicted consequent upon the lawful resumption of the land by the land-owner in accordance with any law for the time being in force in that behalf.

(3) If an occupant of homestead who was in occupation of a dwelling house on or after the 6th October, 1971, has been evicted before the commencement of this Act, the authorised officer shall, on an application made by the said occupant of the home-stead, within six months from the date of such commencement or may, suo motu at any time, after making such inquiry as may be prescribed, restore the possession of the homestead and dwelling house to the said occupant of homestead and on such restoration, the provisions of this Act shall apply as if he were in

occupation of the said homestead and dwelling house on the date of commencement of this Act.

Explanation.- For the purposes of this section 'tenant' means any person who has paid or has agreed to pay rent or other consideration for his being allowed by another to enjoy the land of the latter under a tenancy agreement express or implied, and includes his heirs and legal representatives."

11. Section 7 envisages that in case of any dispute between the landowner and an occupant of the homestead regarding any matter governed by the provisions of the Act, the same shall be decided by the authorised officer, after following the prescribed procedure.

12. Section 8 further envisages an appeal to the Revenue Divisional Officer against any order or decision passed by the authorised officer.

13. While Section 9 envisages the exercise of revisional powers by the District Collector either *suo motu* or on an application filed in that behalf.

14. Section 11 envisages a bar of jurisdiction of Civil Courts in the following terms:

“11. Bar of jurisdiction of civil courts - No civil court shall have jurisdiction in respect of any matter which the Government are, or the authorised officer is empowered by or under this Act, to determine and no order of eviction shall be passed and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

15. Section 14 is also relevant and envisages as under:

“14. Act to override other laws - The Provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage, or contract or decree or order of a Court or other authority.”

16. Counsel for respondent No.1 has reiterated the stand as was taken before the learned single Judge and supported the view expressed by the writ Court.

17. We have heard learned counsel for the parties and gone through the record.

18. In the backdrop of the aforementioned facts and provisions of law, it can be seen that the appellant claims himself to be a landless agriculturist who claims to be in possession of a dwelling house constructed over a plot of land measuring three cents. From the

record it appears that, although the decree against the appellant was to an extent of Five Acres Forty Six Cents, the appellant herein had during the pendency of the execution proceedings, surrendered an area of Five Acres And Forty Three Cents, while continuing to retain the possession over the three cents, for which he claimed the benefit of ownership in terms of the Act.

19. Sub-section 2 of Section 4 of the Act envisages that the provisions of Sub-section 1 of Section 4 of the Act would not apply to a dwelling house which is situate on any agricultural land from which a tenant of such agricultural land has been evicted consequent upon the lawful resumption of the land by the landowner in accordance with any law for the time being in force in that behalf. To the extent, the appellant herein had surrendered land measuring Five Acres Forty Three Cents in favour of the respondent No.1/petitioner pursuant to the decree passed by the Civil Court, the appellant herein would not be entitled and rightly so, the appellant had not claimed any benefit under the Act, in regard to the land so surrendered.

20. The claim of the appellant was limited to the dwelling house and homestead measuring three cents. The question that arises for

consideration is, whether the appellant was entitled to claim the benefit of the Act, in regard to the Homestead and the dwelling house despite the passing of the decree in A.T.C. No.6 of 2006. The answer lies in Section 14 which is reproduced in the preceded paragraphs and which clearly envisages that the provisions of the Act and the rules made therein shall have effect notwithstanding anything inconsistent contained *inter alia* in any decree or order of a Court or other authority.

21. The fact that there was a decree or order from a civil Court, therefore, would not prevent the appellant to approach the authorised officer with a view to seek the benefit of ownership under the Act. In our opinion, the protection against eviction granted to an occupation of a homestead or a dwelling house under Section 4 (1) has three important elements, each of which had to be proved by the landowner with a view to take away the protection so provided under Section 4 (1). The three important elements which the landowner has to prove are:

- i) That the homestead belongs to him.
- ii) That the dwelling house thereon was built at his expense.
- iii) And that the person occupying the dwelling house was only a tenant and not an occupant of the homestead.

22. It is only if all the three elements are proved by the landowner that the appellant would lose protection against the eviction under Section 4(1).

23. We, however, are in agreement with the finding recorded by the learned single Judge, that the order of the Tahsildar was in violation of the principles of natural justice inasmuch as the said tahsildar had not given adequate opportunity of being heard to the petitioner/respondent No.1 herein, to that extent, in our opinion, it would have been apt for the learned single Judge to set aside the order passed by the Tahsildar and further should have remanded the matter for consideration afresh.

24. We, allow the writ appeal and set aside the judgment and order impugned and remand the matter to the authorised officer concerned to pass appropriate orders afresh, after adequate opportunity of being heard given to the parties concerned. The authorised officer shall pass a detailed speaking order within a period of three months from today. Until such time as the order is passed, the appellant's possession over the homestead and the dwelling unit be not disturbed. In case any of the parties are aggrieved by the order so passed, it shall be open to them to avail

the remedy of appeal prescribed under Section 8 of the Act. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ.

R. RAGHUNANDAN RAO, J.

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