A MAN MOHAN & ORS.

v.

MOHD. MOHINUDDIN ALI KHAN (DEAD) BY L.RS.

(Civil Appeal No. 5539 Of 2001)

MAY 9, 2008

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[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950; Ss. 2(g), 40, 44, 45 & 46 and clarificatory C *circular No. 650 dated March 30, 1951 issued by the Board of Revenue:*

Agricultural tenancy/protected tenancy – Eviction Petition – Allowed by the Authority – Application for restoration of D *tenancy – Rejected by the Authorities – Appeal against allowed by Appellate Authority – Revision Petition – Allowed by High Court doubting the claim of the appellant as adopted son of original tenant holding that the original land owner and his successor continue to cultivate the land in question after* E *getting back possession thereof – Correctness of – Held: Incorrect – There is no impediment to the maintenance of Application for Restoration of Protected Tenancy as right of protected tenants are heritable with a few exceptions, which are of no concern in the instant case – A tenant is entitled to recovery of possession in case owner does not cultivate the land* F *personally/discontinue the same after getting back the possession – Cultivation of the land by the land owner/successor, with the help of two persons by giving them share of crop, would not amount to personal cultivation in terms of s. 2(g) of the Act – In the facts and circumstances of the case, clarificatory Cir-* G *cular issued by the Board of Revenue not applicable – Moreover the Circular would not override the statutory provisions u/ s. 2(g) of the Act – Agricultural tenancy – Protected tenants.*

An application was filed by the original land owner

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under Section 44 of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act for determination of the protected tenancy of the predecessor of interest of the appellants, tenants. The application was allowed by the Authorities. Appellants, successors of the said tenant, filed an application u/ss.45 and 46 of the Act for restoration of possession of the land on ground that the original land owner or his successor had failed to cultivate the land in question. The application was rejected by the Authorities. The appeal preferred thereagainst by the successor of the original tenant was allowed by the Appellate Authority. The land owners field a Revision petition before the High Court, which was allowed by the High Court relying on Circular No. 650 dated March 30, 1951 issued by the State Revenue Board holding that the original landowner and after his death, his successor, with the help of two persons cultivated the land in question. Hence the present appeal.

Appellant-tenants contended that though adoption of appellant No.1 by the original tenant had been proved on record but even assuming for the moment that his adoption had not been proved yet, the fact that the other three claimants were his legal heirs was admitted and they were accordingly entitled to maintain the application under Sections 45 and 46 of the Act; that as per Section 45 of the Act, if the land owner did not cultivate the land within the time fixed in the said provision, the tenants were entitled to a restoration of the land on an application made for this purpose; and that as the final Court of fact had clearly opined that neither the original owner nor his successors had cultivated the land, the appellants were entitled to succeed.

Respondent-landowner submitted that the order of the Tahsildar granting an adoption certificate to appellant No. 1 was wholly without jurisdiction; and that there was no proof as to when the land owners had been engaged

A for cultivating the land by the original land owner or his successors.

Allowing the appeal, the Court

HELD: 1.1 It is true that the original tenant of the property in question lived upto the year 1973 but did not choose to make an application in terms of Sections 45 and 46 of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act during his life time and left it to his successors to do so after his death. There is no impediment to the maintenance of such an application, and a perusal of s. 40 of the Act on the contrary clarifies that the rights of protected tenants are heritable with a few exceptions which are of no concern in this matter. (Para – 7) [114, B,C,D]

1.2 A bare perusal of the provisions u/ss.45 and 46 of the Act reveals that a tenant is entitled to the recovery of possession in case the owner does not cultivate the land personally or having commenced such cultivation discontinues the same within ten years. (Para – 9) [115-G]

1.3 It appears to be the conceded position that the personal cultivation that was allegedly carried on by the original land owner and his successors does not fall under sub clause (i) or (ii) of s. 2(g) of the Act and the dispute pertains to the cultivation envisaged under sub clause (iii) of s.2(g) of the Act. (Para – 9) [116-B,C]

1.4 It is apparent that as the land was being cultivated by the two persons by giving a share of the crop to the landowners, it would not amount to personal cultivation in terms of s. 2(g) of the Act. (Para – 9) [116-E]

1.5 The clarificatory circular issued by the Board of Revenue in 1951 is not applicable as it is nobody's case that the persons engaged for cultivation were also sharing the expenses of the cultivation. Moreover this circular would not over ride the statutory provision u/s. 2(g)(iii)

of the Act, which was incorporated in the Act in 1961. Hence, the appellant must succeed on this basis. (Para – 9) [116-E,F]

CIVIL APPELLATE JURISDCTION : Civil Appeal No. 5539 of 2001

From the Judgment & Order dated 17.2.1999 of the High Court of Judicature at Andhra Pradesh in CRP No. 2336/1997

K. Amareswari, K. Maruthi Rao, K. Radha, Rana Kamal and Anjani Aiyagari for the Appellants.

M.N. Rao, Bhaskar Gupta, Sudha Gupta, B. Sri Ram, Vivek Jain, A. Ramesh and Anshuman Ashok for the Respondents.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. This appeal is directed against the judgment of the Andhra Pradesh High Court dated 17th February, 1999 whereby the plea of the appellant to reclaim the status of a protected tenant under Section 45 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Act") has been rejected. The facts are as under:

2. Dilawar Ali Khan was the original land owner. He filed an application under Section 44 of the Act for determination of the protected tenancy of the predecessor in interest of the appellants, one Ramalingam who was a protected tenant. The said application was allowed in the year 1967, the tenancy terminated and the land holder was put in possession thereof. The appellants as successors of Ramalingam who died in 1973, filed an application under Sections 45 and 46 of the Act for restoration of possession alleging that Dilawar Ali Khan and on his death, his successors, had failed to cultivate the land in question as contemplated by Section 45 of the Act and they were thus, entitled to a restoration of the possession. The said peti-

A tion was resisted by the land holders and it has claimed that after the termination of the tenancy under Section 44 of the Act, Dilawar Ali Khan had cultivated the land by investing a huge amount thereon and that after his death his heirs had cultivated the land with the assistance of one Gopaiah and Hanumaiah by
B paying their wages in kind. It was also pleaded that Ramalingam had died issueless and that Man Mohan one of the applicants who claimed to be his adopted son was in fact not so and as such the application was not maintainable. The Revenue Officer called for evidence from both parties and after a analysis
C thereof allowed the application, both on the question of maintainability and also on facts.

3. Aggrieved thereby, the applicants preferred an appeal before the Joint Collector. This officer found that the applicants were indeed the legal heirs of Ramalingam and that Dilawar Ali
D Khan nor his successors had cultivated the land after it had been restored to them on an application under Section 44 of the Act. The appeal was accordingly allowed. Aggrieved thereby the land owners filed a revision petition under Section 91 of the Act before the High Court. The court in its judgment dated 17th Febru-
E ary, 1999 observed that the tenancy in the hands of Ramalingam had been terminated under Section 44 in the year 1967 and though Ramalingam had lived upto 1973 he had not raised any question with regard to the cultivation by the land owners. The court also observed that there was clear doubt as to the claim
F of adoption made by Man Mohan as the dependant certificate which had been issued by the Revenue Officer accepting his claim as the adopted son of the Ramalingam had no value, as it was the civil court alone that could give such a declaration. In conclusion, the Court observed thus:

G > " I am of the opinion that there is no evidence to establish that the respondents are the legal heirs and successors of late Ramalingam and consequently they are not entitled to file an application U/ss 45 and 46 of the Act".

4. The Court then examined the basis on which the claim
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had been made and observed that from the evidence it appeared that Dilawar Ali Khan had indeed invested huge amounts of money for the installation of a pump and electric motor and though admittedly he and his successors had taken the help of Gopaiah and Hanumaiah in the cultivation of the land a perusal of their evidence showed that they were being paid on "Batai" basis i.e. a share of the crops and as such the land was deemed to be under the self cultivation of the land owners. The Court also relied for its conclusion on a clarificatory Circular No. 650 dated 30th March, 1951, issued by the Board of Revenue, Hyderabad to the effect that if a land owner and one or more persons cultivated the land jointly sharing the expenses as well as the yield, the question of the creation of a tenancy at will did not arise. The High Court accordingly set aside the order of the Joint Commissioner and restored the order of the Revenue Officer. It is in this circumstance, that the tenants are before us.

5. Mrs. K. Amareswari, the learned Senior counsel for the tenants – appellants has argued that though Man Mohan's adoption by Ramalingam had been proved on record but even assuming for the moment that his adoption had not been proved yet, the fact that the other three claimants Erramma, Yadaiah and Eshwaraiah were his legal heirs was admitted and they were accordingly entitled to maintain the application under Sections 45 and 46 of the Act. It has also been submitted that as per Section 45, if the land owner did not cultivate the land within the time fixed in the said provision, the tenants were entitled to a restoration of the land on an application made for this purpose and as the final court of fact i.e. Joint Commissioner had clearly opined that neither Dilawar Ali Khan nor his successors had cultivated the land, the appellants were entitled to succeed.

6. The learned counsel for the respondents have however pointed out that the order of the Tahsildar granting an adoption certificate with respect to Man Mohan was wholly without jurisdiction and as there was no proof as to when Gopaiah and Hanumaiah had been engaged for cultivating the land by Dilawar Ali Khan or his successors, the appeal was liable to be dis-

A missed.

7. We have gone through the arguments advanced by the learned counsel for the parties. We are of the opinion that we are not really called upon to examine Man Mohan's status as the adopted son of Ramalingam in the light of the fact that the B application for restoration of possession filed under Sections 45 and 46 of the Act is maintainable at the instance of the other three claimants who are admittedly the heirs of Ramalingam. It is true, as has been contended by the learned counsel, that Ramalingam lived upto the year 1973 but did not choose to C make an application in terms of Sections 45 and 46 during his life time and left it to his successors to do so after his death. We find from a perusal of the Act that there appears no impediment to the maintenance of such an application, and a perusal of Section 40 of the Act on the contrary clarifies that the rights of D protected tenants are heritable with a few exceptions which are of no concern in this matter.

8. In this background the substantive issue would be as to whether Dilawar Ali Khan or his successors had cultivated the land in terms of Section 45 of the Act and on a failure to do so E the consequences thereof. Section 45 and 46 are re-produced below:

"45. Landholder to restore possession if he fails to cultivate within one year:- (i) If upon the termination of tenancy under F section 44 the landholder –

(a) does not within one year from the date on which he resumed possession of the land, or

(b) having commenced such discontinues the same G within ten years of the said date, he shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him unless he has obtained from the tenant his refusal in writing to accept the tenancy on the terms and conditions prevailing before the termination of H

the tenancy or has offered in writing to give possession of the land to the tenant on the said terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof:

(2) After the tenant has recovered possession of the land under sub section (1) he shall, subject to the provisions of this Act, hold the same on the terms and conditions on which he held it immediately before the termination of his tenancy.

(3) If the land holder fails to restore possession of the land to the tenant as provided in sub section (1) he shall be liable to pay such compensation to the tenant as may be determined by the Tahsildar for the loss suffered by the tenant on account of the eviction.

Explanation: For the purposes of this section, references to a protected tenant shall include references to the heirs mentioned in the Explanation to section 40.

46. Application for recovery of possession by tenant: - If at any time the tenant makes an application to the Tahsildar and satisfies him that the landholder has failed to comply within a reasonable time with the provision of Section 45, the protected tenant shall be entitled on a direction by the Tahsildar to obtain immediate possession of the land to such compensation as may be awarded by the Tahsildar for any loss caused to the tenant by his eviction and by the failure of the landholder to restore or give possession of the land to him as required by the said section.

9. A bare perusal of these provisions reveals that a tenant is entitled to the recovery of possession in case the owner does not cultivate the land personally or having commenced such cultivation discontinues the same within ten years. Section 2 (g) reads as under:

" "To cultivate personally" means to cultivate on one's own

A account –

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

B (iii) by servants on wages payable in cash or kind, but not in crop share or by hired labour under one's personal supervision, or the personal supervision of any member of one's family.

It appears to be the conceded position that the personal C cultivation that was allegedly carried on by Dilawar Ali Khan and his successors does not fall under sub clause (i) or (ii) and the dispute pertains to the cultivation envisaged under sub clause (iii). It is the case of the land owners that they had been cultivating the land through Gopaiah and Hanumaiah and were paying D them wages in kind. Mrs. K. Amareswari, the learned Senior counsel, has contended that from the evidence on record including the statements of Gopaiah and Hanumaiah both recorded on 24th January, 1974 it was clear that they had cultivated the land on behalf of Dilawar Ali Khan on "Batai" basis i.e. on half share of the produce almost from the date that Dilawar E Ali Khan had taken possession of the land in 1967. It is therefore apparent that as the land was being cultivated by these two persons by giving a share of the crop to the landowners, it would not amount to personal cultivation. The clarificatory circular issued in 1951 is not applicable as it is nobody's case F that Gopaiah and Hanumaiah were also sharing the expenses of the cultivation. Moreover this circular would not over ride the statutory provision 2(g)(iii) which was incorporated in the Act in 1961. We, are therefore, of the opinion that the appellant must succeed on this basis. We accordingly set aside the judgment G and order of the High Court, and restore the order of the Joint Collector dated 16th June, 1977. No order as to costs.

S.K.S. Appeal allowed.

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