

THOTA SRIDHAR REDDY & ORS.

A

v.

MANDALA RAMULAMMA & ORS.

(Civil Appeal No. 2506 of 2021)

OCTOBER 01, 2021

B

**[SANJAY KISHAN KAUL AND HEMANT GUPTA, JJ.]**

*Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 – ss.19, 38-E – Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 – Protected tenant – Oral surrender of the tenancy rights, if permissible – High Court set aside the order dtd.19.2.82 passed by Revenue Divisional Officer granting occupancy rights to predecessor-in-interest of the appellants-purchaser as well as the order passed by Joint Collector dismissing the appeal filed by the protected tenant – Occupancy rights granted to the purchaser stood annulled – On appeal, held: Surrender of oral tenancy of a protected tenant is not permissible under the Tenancy Act except in the manner prescribed u/s.38-E (5) r/w s.19, Tenancy Act – In the present case, the oral surrender by the protected tenant is set up in the year 1954 followed by sale of tenancy rights in 1957 – Thereafter, the petition u/s.19, Tenancy Act was filed to seek approval of the Tenancy rights, but was withdrawn on the basis of an order withdrawing the appeal against the grant of occupancy rights – Thus, the purchasers took steps to procure surrender of tenancy rights, realizing that such surrender cannot be oral or by executing a sale deed – It was a cover up operation initiated by the purchaser – Since, neither the oral surrender nor surrender in writing was recorded as bonafide by the Tehsildar, the subsequent surrender approved by Mandal Revenue Officer is a nullity as such surrender is in contravention of the statutory provisions – Protected tenant was conferred ownership rights u/s.38-E, Tenancy Act on 23.3.75 whereas the conferment of occupancy rights were granted in the year 1982 under the Inams Act – On grant of certificate of ownership u/s.38-E, the protected tenants shall be deemed to be the full owners of such land – Once the protected tenants are deemed to be owners, there could not be any occupancy rights certificate as the purchasers were divested of*

C

D

E

F

G

H

- A *their ownership by virtue of the grant of ownership certificate u/s.38-E, Tenancy Act – Appeals allegedly filed by the protected tenant against the grant of occupancy rights certificate and subsequently being withdrawn is wholly inconsequential – Title of the protected tenants is complete and the ownership vests with them – Entitled to restoration of possession.*
- B *Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 – ss.19, 32, 38-E – Held: Neither s.19 nor s.32 forming part of Chapter III of the Tenancy Act are applicable in respect of protected tenant except when the reference is made to the provisions of s.19 on the basis of s.38-E(5) which starts with a non obstante clause giving overriding effect to anything contained in s.38-E.*
- C *Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 – Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 – Operation of the Acts – Held: Both the Inams Act and the Tenancy Act are enacted by the same Legislature – The Inams Act is a later Act enacted in 1955 but s.38-E (1) was substituted in 1971 which starts with a non- obstante clause– Therefore, ownership certificate granted under the Tenancy Act would prevail over the grant of occupancy rights certificate under the Inams Act – Both the Acts operate in different spheres.*

**Dismissing the appeals, the Court**

- HELD: 1.1** The scheme of the Act contained in Chapter IV of the Tenancy Act in respect of protected tenant is materially different from that of tenants governed by Chapter III of the Tenancy Act. The protected tenants are placed at much higher pedestal as even if a protected tenant is not in possession of the land, right has been given to him to seek possession later. Therefore, neither Section 19 nor Section 32 forming part of Chapter III of the Tenancy Act are applicable in respect of protected tenant except when the reference is made to the provisions of Section 19 on the basis of Section 38-E(5) which starts with a non obstante clause giving overriding effect to anything contained in Section 38-E. Such clause mandates the Collector to hold an enquiry suo motu to ascertain the genuineness of the surrender of right made by the protected

H

tenant. This exercise had to be done before the surrender of tenancy rights and not subsequently after many years of alleged surrender on the strength of unequal bargaining power with the tenant who survives on the basis of agriculture activities. The purchasers relied upon an oral surrender of tenancy rights in the year 1954 and later by a written document of 5.2.1957. The execution of the document in the year 1957 unequivocally proves the factum of protected tenancy of the respondents herein. Such surrender is contrary to Section 47 of the Tenancy Act prior to its omission by AP Act No. 12 of 1969 and in contravention of Section 38-E(5) read with Section 19(1)(a) of the Tenancy Act. [Paras 31, 32][1196-E-H; 1197-A]

A

B

C

1.2 A protected tenant is entitled to recover possession in terms of Section 36 as well as Section 44 of the Tenancy Act which prohibits the termination of protected tenancy. The proviso to sub-section (1) of Section 44 of the Tenancy Act puts complete embargo on a land holder to exercise the right of resumption unless he has within a period of eighteen months from the commencement of the said Act sought reservation of land to exercise his right or resumption in terms of the commencement of Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1955. The Deputy Collector in terms of the said provision had to make a necessary enquiry and issue a certificate that the land has been so reserved. Thus, the land holder had no right to terminate the tenancy after the commencement of Amending Act, 1955 except after an enquiry which was to be conducted by the Deputy Collector. No such reservation had been made nor any enquiry was conducted, therefore, the rights of protected tenant cannot be defeated. The purchasers have relied upon the oral surrender of protected tenancy in the year 1954. Such surrender of oral tenancy of a protected tenant is not permissible under the Tenancy Act except in the manner which is prescribed under Section 38-E (5) read with Section 19 of the Tenancy Act. Still further, the protected tenant has a right to seek possession in terms of Section 36 of the Tenancy Act. Even in terms of Section 38-D, if the land holder intends to sell the land which is in possession of a protected tenant, he has to give a notice in writing of his intention to such protected tenant. [Paras 33, 34][1197-B-F]

D

E

F

G

H

- A        1.3 Section 38-E contemplates that on grant of certificate of ownership under Section 38-E, the *protected tenants shall be deemed to be* the full owners of such land. Further, explanation provided under Section 38-E(1) provides that if a protected tenant has been dispossessed otherwise than in the manner and by the order of the Tahsildar as provided in Section 32, then notwithstanding any judgment, decree or order of any Court, or the order of the Board of Revenue or Tribunal shall be deemed to be holding the land on the date of notification. The Tahsildar is under an obligation to either *suo motu* or in furtherance of an application by the protected tenant, to hold a summary enquiry and direct taking of land in possession of the land holder or any other person claiming through or under him. The possession from a protected tenant can be taken only if the surrender of tenancy is approved by the Revenue Divisional Officer. The land owner is liable to restore possession in terms of Section 46 of the Act if he has failed to cultivate the land personally within one year. Therefore, there is an embargo on the surrender of tenancy rights by protected tenant and even if the tenancy is terminated, the land holder is personally liable to restore possession to the tenant, if he fails to cultivate the land within one year of termination of tenancy. Once a certificate of ownership is granted which is required to be published in the Government Gazette, the land stands transferred and vested in the protected tenant as a full owner of such land. Such certificate is final subject to the rights of the landowner under the Tenancy Act which is only to seek compensation. [Paras 35, 36][1197-F-H; 1198-A-C]
- F        1.4 In the present case, the entire argument is based upon the fact of oral surrender and subsequent filing and withdrawal of appeal in the year 1989 and of filing a belated appeal against the ownership certificate in the year 2015. The fact of filing of an appeal and its withdrawal was not raised in the first instance by the purchasers in proceedings before the Joint Collector or before the High Court. Since such documents were not produced at the earliest opportunity, and the veracity of such documents is not beyond doubt, there cannot be any attribution of knowledge of the grant of Occupancy Rights Certificate to the purchasers. It is strange that the appeal was withdrawn on 14.2.1989 but Section G
- H

19 petition was dismissed on the basis of alleged withdrawal of appeal on 31.1.1989. The High Court has held that the interest of the protected tenant cannot be validly conveyed in law in view of Section 30 of the Tenancy Act. In the present case, the surrender of tenancy rights is before the Mandal Revenue Officer on 31.1.1989, whereas as per the proviso to Section 19(1)(a) of the Tenancy Act, a tenant can surrender his rights at least a month before the commencement of the year and that surrender is to be made by the tenant in writing. Such surrender is to be admitted by him before the Tehsildar and the authority is to satisfy itself that surrender is made in good faith. In the present case, the oral surrender by the protected tenant is set up in the year 1954. Such surrender is followed by sale of tenancy rights in the year 1957. Thereafter, the petition under Section 19 of the Tenancy Act was filed to seek approval of the Tenancy rights, such application was withdrawn on the basis of an order withdrawing the appeal against the grant of occupancy rights. This shows that the purchasers have taken steps to procure surrender of tenancy rights, realizing that such surrender cannot be orally or by executing a sale deed. It was a cover up operation initiated by the purchaser but the same was still against the mandate of the statute as the finding of the surrender has to be recorded by the Tehsildar. Since, neither the oral surrender nor surrender in writing was recorded as *bonafide* by the Tehsildar, the subsequent surrender approved by the Mandal Revenue Officer is a nullity and bears no legal effect as such surrender is in contravention of the statutory provisions. The protected tenant was conferred ownership rights under Section 38-E of the Tenancy Act on 23.3.1975 whereas the conferment of occupancy rights were granted in the year 1982 under the Inams Act. [Paras 37, 38][1198-E-H; 1199-A-E]

1.5 Sub-section (5) of Section 38-E provides for an enquiry to ascertain the genuineness of surrender of the right by the protected tenant under clause (a) of sub-section (1) of Section 19. There is no provision in Chapter IV of the Tenancy Act to surrender protected tenancy rights. However, if an application is made under Section 19(1) of the Tenancy Act, the genuineness of such surrender is required to be ascertained by the Collector. The High Court has failed to notice that the explanation in sub-

A

B

C

D

E

F

G

H

- A section (1) of Section 38-E of the Tenancy Act specifically provides that if a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in Section 32, is not in possession of the land on the date of the notification issued under sub-section (1), then, the Tahsildar shall notwithstanding anything contained in the said Section 32, either *suo motu* or on the application of the protected tenant hold a summary enquiry, and direct that such land in possession of the land holder or any person claiming through or under him in that area, shall be taken from such possession thereof and shall be restored to the protected tenant.
- B [Paras 42, 44][1200-D-E, G-H; 1201-A]

*Ponnala Narasing Rao v. Nallolla Pantaiah (1998) 9 SCC 183 : 1998 ( 7 ) JT 600; Vorla Ramachandra*

*Reddy & Anr. v. Joint Collector I & Ors. (2021) SCC OnLine TS 703; Boddam Narsimha v. Hasan Ali Khan*

- C [Paras 42, 44][1200-D-E, G-H; 1201-A]
- D [2007] 11 SCC 410 : [2007] 1 SCR 1223 – distinguished.

- E 1.6 The appeals allegedly filed by the protected tenant against the grant of occupancy rights certificate and subsequently being withdrawn is wholly inconsequential as after the grant of ownership certificate in terms of Section 38-E of the Tenancy Act, the protected tenants are deemed to be owners. Once the protected tenants are deemed to be owners, there could not be any occupancy rights certificate as the purchasers were divested of their ownership by virtue of the grant of ownership certificate under Section 38-E of the Tenancy Act. Such certificate was also not disputed by the purchasers. Therefore, title of the protected tenants is complete and the ownership unambiguously vests with them. There was no right with the purchaser to claim occupancy rights on the basis of possession since 1.11.1973 upon surrender of protected tenancy rights. If the surrender of protected tenancy rights is not in accordance with the mandate of the statute, the possession from 1.11.1973 would be inconsequential as such possession would not affect the rights of the protected tenant who is entitled to statutory protection. In fact, the grant of Certificate unequivocally transfers ownership rights to the protected tenant.[Paras 47, 48][1202-D-G]
- H

**1.7 The Inams Act is a subsequent statute than the Tenancy Act** Section 33 of the Inams Act is to the effect that nothing in the Act shall in any way be deemed to affect the application of the provisions of the Tenancy Act to any inam or mutual rights and obligations of Inamdar and his tenants, save insofar as the said provisions are in any way inconsistent with the express provisions of this Act. Section 38-E (1) of the Tenancy Act, as substituted in the year 1971, starts with a non-obstante clause giving overriding effect to any other law for the time being in force. Such sub-clause will include the Inams Act and that Inams Act will not be operative in the case of Section 38-E (1) of the Tenancy Act. This notification was issued on 1.1.1973 to cover the entire Telangana Area of the State. Both the Inams Act and the Tenancy Act are enacted by the same Legislature. The Inams Act is a later Act enacted in the year 1955 but Section 38-E (1) was substituted in the year 1971 which starts with a non- obstante clause. Therefore, ownership certificate granted under the Tenancy Act would prevail over the grant of occupancy rights certificate under the Inams Act. Both the Acts operate in different spheres. Inams Act deals with the land owner, whereas the Tenancy Act protects the rights of the tiller i.e., tenant including a protected tenant. Section 38-E of the Tenancy Act was inserted initially in the year 1954 and subsequently substituted in 1971 giving overriding effect to such provision. Therefore, an Inamdar under the Inams Act would not have any right of allotment of occupancy rights in view of overriding effect given to Section 38-E. [Para 49][1202-G-H; 1203-A-E]

**1.8 However, ownership rights were granted to the protected tenant in respect of land measuring 19 acres and 16 guntas whereas occupancy rights have been granted in respect of the land measuring 31.05 guntas including of land falling in Survey Nos. 61 and 62 in Village Jeedimetha on 19.2.1982.** Therefore, the said occupancy rights certificate in favor of the purchaser shall be valid in respect of the land falling under Survey Nos. 61 and 62, which is not the land claimed by the protected tenant as part of their tenancy. The Occupancy Rights Certificate in respect of land falling in Survey Nos. 53, 54, 55 and 56 is null and void and inoperative. The protected tenant shall be entitled to restoration of possession in terms of explanation to Section

A

B

C

D

E

F

G

H

- A 38-E (1) read with Section 32 of the Tenancy Act. The Tehsildar to ensure that the possession is delivered to the protected tenant within 3 months. Thus, the present appeals are dismissed except to the extent of land falling in Survey Nos. 61 and 62 in respect of which the occupancy certificate granted to the purchasers on 19.2.1982 would be valid. [Paras 50-52][1203-F-H; 1204-A-B]

B *S. Rangaiah and Ors. v. Collector Medak & Ors. (1996) SCC Online AP 275; S. Veera Reddy v. Chetlapalli Chandaiah (1994) SCC Online AP 510; Bhimavarapu Venkaiah & Anr. v. RDO (1999) SCC Online AP 896; S. Narsasimha and Ors. v. Joint Collector-II, Ranga Reddy District (2006) SCC Online AP 57 – distinguished.*

C *Kotaiah & Anr. v. Property Association of the Baptist Churches(P) Ltd. (1989) 3 SCC 424 : [1989] 3 SCR 472; Edukanti Kistamma (Dead) through LRs & Ors. v. S. Venkatareddy (Dead) through LRs & Ors. (2010) 1 SCC 756 : [2009] 16 SCR 47; B. Bal Reddy v. Teegala Narayana Reddy (2016) 15 SCC 102 : [2016] 4 SCR 62 – relied on.*

D *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors. (2019) SCC Online SC 975; Jai Narain Parasrampuria v. Pushpa Devi Saraf (2006) 7 SCC 756 : [2006] 5 Suppl. SCR 325; Jupudi Bhushanam v. Joint Collector, Khammam and Ors. (1996) SCC OnLine AP 941; Kasa Muthanna and Another v. Sunke Rajanna and 11 Ors. (2015) SCC OnLine Hyd 592; Sada v. The Tahsildar (1987) 2 APLJ 397; J. Narayana & Ors. v. Jainapally Pedda Kistaiah and Ors. (2013) SCC OnLine AP 289 – referred to.*

E

F

## **Case Law Reference**

G	[2007] 1 SCR 1223	distinguished	Para 10
	[2006] 5 Suppl. SCR 325	referred to	Para 14
	[2016] 4 SCR 62	relied on	Para 17

H

[1989] 3 SCR 472

relied on

Para 20

A

[2009] 16 SCR 47

relied on

Para 20

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2506  
of 2021.

From the Judgment and Order dated 03.06.2019 of the High Court B  
for the State of Telangana at Hyderabad in C.R.P. No.3848 of 2018.

With

Civil Appeal No. 2507 of 2021.

Dushyant A. Dave, Sr. Adv., D. Ramakrishna Reddy, C  
V. Ramakrishna Reddy, Ms. Neha Sangwan, Ms. D. Tejaswi Reddy,  
Mrs. D. Bharathi Reddy, R. V. Yogesh, Nishesh Sharma, Advs. for the  
Appellants.

B. Adi Narayan Rao, Guru Krishna Kumar, Sr. Advs., Balram  
Goud, Abid Ali Beeran, Mithun Shashank, Sarath S. Janardanan,  
Ms. Filza Moonis, P. Venkat Reddy, Prashant Tyagi, P. Srinivas Reddy,  
M/s Venkat Palwai Law Associates, Advs. for the Respondents.

The Judgment of the Court was delivered by

**HEMANT GUPTA, J.**

1. These two appeals are directed against the order passed by the E  
High Court of Judicature at Hyderabad for the States of Telangana and  
Andhra Pradesh whereby revision under Section 28 of the Andhra  
Pradesh (Telangana Area) Abolition of Inams Act, 1955<sup>1</sup> was allowed  
on 3.6.2019 while setting aside the order dated 19.2.1982 passed by the  
Revenue Divisional Officer granting occupancy rights to Shri Thota  
Balakrishna Reddy, predecessor-in-interest of the present appellants<sup>2</sup> in  
respect of the land measuring 31.05 guntas falling in survey Nos. 53, 54,  
55, 56, 61 and 62 in Village Jeedimetla as well as the order dated 4.12.2017  
passed by the Joint Collector whereby the appeal filed on behalf of the  
protected tenant, represented by Mandala Ramulamma, wife of Mandala  
Yettaiah<sup>3</sup> was dismissed. The resultant effect of such order of the High  
Court was that the occupancy rights granted to the purchaser stood  
annulled.

---

<sup>1</sup> For short, the ‘Inams Act’

<sup>2</sup> Hereinafter referred to as the ‘purchaser’

<sup>3</sup> For short, the ‘protected tenant’

E

F

G

H

- A        2. Now, the purchaser seeks restoration of the occupancy rights granted in their favor on 19.2.1982 in the present appeals. On the other hand, the protected tenant claims such rights on the strength of certificate granted to Mandala Yettaiah on 20.3.1975 under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950<sup>4</sup>.
- B        3. It is not in dispute that one Mandala Lakshmaiah was the protected tenant over the land measuring 19 acres and 16 guntas bearing Survey Nos. 53, 54, 55 and 56 in Village Jeedimetla, District Hyderabad. The tenancy rights were said to be surrendered orally in favor of Shri Thota Balakrishna Reddy in the year 1954. The original Inamdar Jayaram Rao and Venkateshwar Rao executed sale deed of the land measuring 19 acres and 16 guntas on 5.7.1957 in favor of the purchaser- Shri Thota Balakrishna Reddy. On the same day, the protected tenant has also purportedly sold the tenancy rights in favor of the purchaser.
- C        4. The purchaser applied for occupancy rights certificate under the Inams Act in the year 1975. Such certificate was granted to him on 19.2.1982 in view of the occupation and possession of the land by the purchaser. On the other hand, the protected tenant was conferred ownership rights when the certificate of ownership under Section 38-E of the Tenancy Act was issued on 20.3.1975. The certificate of ownership granted to protected tenant reads thus:

**“CERTIFICATE OF OWNERSHIP UNDER SECTION 38-E  
OF THE ANDHRA PRADESH (TELANGANA AREA)  
TENANCY AND AGRICULTURAL LANDS ACT 1950”**

- F        Whereas Sri Yettaiah is the protected tenant of the land specified below belonging to the land holder Sri M. Venkateswar Rao, S/o Nanatha Rao.
- G        And whereas by virtue of Govt. Notification No. G.O. Ms. No.3, Revenue (G) dated 1<sup>st</sup> January, 1973 issued under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, the ownership of the said land stands transferred to the said Sri Yettaiah.

It is hereby declared that the said tenancy Sri Yettaiah shall be deemed to be owner of the said land with effect from 1<sup>st</sup> January,

H        <sup>4</sup>For short, the ‘Tenancy Act’

1973 as against the land holder and all other persons having any interest therein. A

DESCRIPTION OF LAND

Dist.	Tq.	Village	Sy. No.	Pot. Hissa No.	Dry or Wet	Area Ac. Gts	Assessment Rs. Ps	Boundaries
Hyd.	Medchal	Jeedimetla	53		Dry lands	4.24		
			54			0.13		
			55			0.13		
			56			14.08		
						19.16		

B  
C  
D  
E  
F  
G  
H

“

5. The purchaser had the protected tenancy rights firstly by the alleged oral surrender in the year 1954 and secondly, by transfer of tenancy rights vide a registered document on 5.7.1957 and later the factum of withdrawing of an appeal by the protected tenant on 14.2.1989 against the grant of occupancy rights certificate to the purchaser. The purchaser also relies upon an order passed by the Mandal Revenue Officer, Gutubullapur Mandal on 31.1.1989 in a petition under Section 19 of the Tenancy Act recognizing the surrender of protected tenancy rights by the protected tenant on the basis of an affidavit allegedly filed by him on 24.1.1989 to withdraw the appeal against the grant of occupancy rights to the purchaser. Though the order of withdrawal of appeal was passed on 14.2.1989, but Section 19 petition was dismissed on 31.1.1989.

6. Civil Appeal Nos. 2508-2509 of 2021 by way of Special Leave Petitions were filed by the persons who have purchased plots, amongst other persons, in the colony known as Meenakshi Estates, developed on the land admeasuring 9 acres 16 guntas. In the said appeals, the legal heirs of successors-in-interest of the protected tenant gave up their claim over the land in question and confined their claim to the remaining land excluding the land measuring 9 acres 16 guntas. Thus, the issue in the present appeals is in respect of the residual 10 acres of land.

- A        7. In view of this factual background, the question required to be examined herein is as to whether the stand of the purchaser that the protected tenant had surrendered the tenancy rights orally and which was later on accepted by the Mandal Revenue Officer on 31.1.1989 is legal and valid and not in contravention of the provisions of the Tenancy Act. The ancillary question would be whether the purchaser could claim occupancy rights on 19.2.1982 when the ownership rights were transferred in favor of the protected tenant on 20.3.1975. It is also to be ascertained whether there was any transferrable interest in the property which could be granted to the purchaser in 1982. Such contentions are required to be assessed in the light of the statutory provisions of the C Tenancy Act and Inams Act which read as thus:

**“TENANCY ACT**

2(1) In this Act, unless there is anything repugnant in the subject or context:-

- D                    XXX                    XXX                    XXX  
 (r) “Protected tenant” means a person who is deemed to be a protected tenant under the provisions of this Act;  
 (Substituted by AP Act No. 15 of 1971 for “Protected” means a person who is deemed to be protected tenant under the provisions of this Act)

- E                    XXX                    XXX                    XXX  
 (v) “Tenant” means an asami shikmi who holds land on lease and includes a person who is deemed to be a tenant under the provisions of this Act;

F                    XXX                    XXX                    XXX

**CHAPTER III**

Tenant

- G        19. (1) Notwithstanding any agreement or usage or any decree or order of a Court of law, but subject to the provisions of sub-section (3), no tenancy of land shall be terminated before the expiration of the period for which the land is leased or deemed to be leased otherwise than,-

H

(a) by the tenant by surrender of his rights to the landholder at A  
least a month before the commencement of the year.

Provided that such surrender is made by the tenant in writing  
and is admitted by him before and is made in good faith to the  
satisfaction of the Tahsildar; or

Provided further that where the land is cultivated jointly by B  
joint tenants or members of an undivided Hindu Family, unless the  
surrender is made by all of them, it shall be ineffective in respect  
of such joint tenants as have not joined in the application for  
surrender, irrespective of the fact that the names of all the joint  
tenants are not mentioned in the certificate;

(b) by the landholder on a ground specified in sub-section (2).

xxx                           xxx                           xxx

#### CHAPTER IV

##### Protected Tenant

34. (1) A person shall, subject to the provisions of sub-sections (2)  
and (3), be deemed to be a protected tenant in respect of land if D  
he-

(a) has held such land as a tenant continuously, -

(i) for a period of not less than six years, being a period wholly E  
included in the Fasil years 1342 and 1352 (both years inclusive),  
or

(ii) for a period of not less than six years immediately preceding  
the 1<sup>st</sup> day of January, 1948, or

(iii) for a period of not less than six years commencing not earlier F  
than the 1<sup>st</sup> day of the Fasil year 1353 (6<sup>th</sup> October, 1943), and  
completed before the commencement of this Act, and

xxx                           xxx                           xxx

(3) A person who at the commencement of this Act is no longer in G  
possession of land in respect of which he is deemed under sub-  
section (1) to be a protected tenant shall, notwithstanding anything  
contained in that sub-section, not be deemed to be a protected  
tenant in respect of such land if-

H

- A      (a) he was evicted from such land in pursuance of a decree or order of a competent Court, or
- (b) such land is being cultivated personally by the land-holder, or
- (c) a permanent structure has been built by the land-holder on such land, or
- B      (d) such land has been permanently diverted by the land-holder to non-agricultural uses.

Explanation.- In sub-sections (2) and (3) of this section and in sections 35, 36 and 37 references to a person include references

- C      to such two or more persons as are referred to in Explanation III to sub-section (1)."

\*38-E. (1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, judgment, decree, contract or grant to the contrary, the Government may, by

- D      notification in the Telangana Gazette, declare in respect of any area and from such date as may be specified therein, that ownership of all lands held by protected tenants which they are entitled to purchase from their land-holders in such area under any provision of this Chapter shall, subject to the condition laid down in sub-section (7) of section 38, stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands:

Provided that where in respect of any such land, any proceeding under section 19 or section 32 or section 44 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date, on which such proceeding is finally decided, and when the tenant retains possession of the land in accordance with the decision in such proceeding.

- F
- G      Explanation:- If a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in section 32, is not in possession of the land on the date of the notification issued hereunder, then for the purposes of this sub-section, such protected tenant shall, notwithstanding any judgment, decree or order of any Court, or the order of the Board of Revenue or Tribunal or other authority,
- H

be deemed to have been holding the land on the date of the notification; and accordingly, the Tahsildar shall notwithstanding anything contained in the said section 32, either suo motu or on the application of the protected tenant hold a summary enquiry, and direct that such land in possession of the landholder or any person claiming through or under him in that area, shall be taken from the possession of the landholder or such person, as the case may be, and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the protected tenant had held the land on the date of such notification.

A

B

C

(2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal after holding such enquiry as may be prescribed, to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein:

D

E

Provided that where the land, the ownership of which has been transferred to the protected tenant under sub-section (1), is in the occupation of a person other than the protected tenant or holder of the certificate issued under this sub-section, it shall be lawful for the Tahsildar to restore the possession of the said land to the protected tenant or holder of the certificate, after giving notice of eviction to the occupant thereof, in the prescribed manner.

F

(3) Within ninety days from the date of notice of issue of the certificate under sub-section (2), every land-holder of lands situated in the area specified in the notification under sub-section (1), shall file an application before the Tribunal for the determination of the reasonable price of his interest in the land which has been transferred to the ownership of a protected tenant under sub-section (1), and if an application is not so filed within such period by the landholder, the Tribunal may suo-motu proceed to determine such price and thereupon all the provisions of sub-section (4) to (8) of section 38 shall mutatis mutandis apply to such application:

G

H

- A      Provided that if the protected tenant commits default in respect of any instalment, it shall be recovered by the Government as arrears of land revenue and paid to the landholder:
- B      Provided further that if the whole or any part of the price due to the landholder cannot be recovered as arrears of land revenue the transfer shall not be effective and the amount, if any, already paid by the protected tenant towards the price shall be refunded to him together with interest at three percent per annum and the land revenue paid by him, if any, after deducting therefrom the rent for the period.
- C      (4) The Government may, for the purpose of giving effect to the provisions of this section, by rules, make such supplemental, incidental and consequential provisions as they may deem necessary, such as the procedure for making inquiry to ascertain the extent of the holding of the tenant as on the notified date and the extent of the land which is to be deemed to have been transferred to and vested in the protected tenants.
- D      (5) Notwithstanding anything contained in this section or section 19, the Collector may, suo-motu at any time, hold an enquiry with a view to ascertain the genuineness of the surrender of the right made by the protected tenant under clause (a) of sub-section (1) of section 19, for the purpose of effecting the transfer of ownership under this section, and pass such order in relation thereto as he may think fit.
- E      Provided that no order adversely affecting any person shall be passed under this sub-section unless such person has had an opportunity of making his representation thereto.
- F      • Inserted by Hyderabad Act No. III of 1954. Inserted clause reads as under:-
- G      “38-E (1) Notwithstanding anything in this chapter or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary the Government may, by notification in the Jarida, declare in respect of any area and from such date as may be specified therein that ownership of all lands held by protected tenants which they are entitled to purchase from their land-holders in such area under any
- H

provision of this chapter shall subject to the provisions of sub-section (7) of section 38 of the Act stand transferred to and vest in the protected tenants holding them and from such date the protected tenant shall be deemed to be the full owner of such lands.”

A

*The said provision was Substituted by AP Act No. 15 of 1971, as extracted above.*

B

xxx

xxx

xxx

44. \*\*[(1)Subject the provisions of sub-section (8) a landholder who, on the date on which the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1954 comes into force, is not already cultivating personally an area to three times the family holding for the local area concerned and who in good faith requires land leased out to a protected tenant for cultivating personally may, notwithstanding anything contained in Section 19 of the Act, terminate the tenancy and resume such land or portion of such land that would, together with the land which he is already cultivating personally, either as owner or protected tenant, be equal to three times the family holding, by making an application in the manner prescribed to the Collector or any other officer whom the Government may from time to time authorise in this behalf.

C

D

E

\*\*\*[Provided that after the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1955, no such landholder shall be entitled to exercise the right of resumption under this sub-section unless he has within a period of eighteen months from the commencement of the said Act filed with the Deputy Collector, in the prescribed manner, a statement of reservation demarcating the lands which he reserves for the exercise of the rights or resumption under this section. On such statement being filed, the Deputy Collector shall, as soon as may be, after making necessary enquiry, issue a certificate to the landholder in the prescribed manner to the effect that the lands have been so reserved. The right to terminate tenancy shall be exercisable only in respect of the lands specified in the certificate as so reserved and shall not extend to any other land.]

F

G

*\*\* Substituted by Hyderabad Act No. III of 1954.*

H

- A        \*\*\* *Inserted by Hyderabad Act No. III of 1956*
- (2) The landholder's right to terminate tenancy of any protected tenant under sub-section (1) shall be limited to an area which shall after such termination, leave with the protected tenant an area, which together with the land owned by him or cultivated by him as a protected tenant, is equal to a basic holding for the local area concerned:
- Provided that, where by such resumption the land that will be left with protected tenant together with other land owned or cultivated by him will be less than a basic holding, the landholder's right of terminating the tenancy, shall be limited to half the area of land leased out by him to the said protected tenant:
- Provided further, that where the land owned by a landholder does not exceed a basic holding he will be entitled to resume the entire land leased by him.]
- B
- C
- D        46. 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 provisions 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.
- E
- F        (1) Notwithstanding anything contained in any other law for the time being in force or in any decree or order of a Court, no permanent alienation and no other transfer of agricultural land shall be valid unless it has been made with the previous sanction of, #[or in the case of a disposition by will] has been confirmed by, the Taluqdar.
- G        ##[Provided that the Collector may declare a permanent alienation or any other transfer of agricultural land to be valid if the permanent alienation or transfer took place before the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1954 and possession of the land transferred
- H

was given to the vendee before such commencement if application for sanction is made within one year after such commencement]. A

*## Inserted by Hyderabad Act No. III of 1954*

(2) Applications for such previous sanction #[or confirmation] shall be made and disposed of in accordance with such procedure as may be prescribed. B

*# Deleted by Hyderabad Act No. XXIII of 1951*

INAMS ACT

1. (1) This Act may be called the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. C

(2) It extends to the whole of the Telangana area of the State of Andhra Pradesh and shall apply to all inams as defined in clause (c) of sub-section (1) of Section 2.

(3)(a) This section, Section 2, Section 3 except clauses (d), (g), (h) and (i) of sub-section (2), sections 30 to 34 (both inclusive), Section 35 to the extent to which it enables rules to be made for the purposes of the aforesaid sections, Section 36 and Section 37, shall come into force on the date of publication of this Act in the Official Gazette; D

(b) the rest of this Act shall come into force on such date as the Government may, by notification in the Official Gazette, appoint in this behalf. E

2. (1) In this Act, unless there is anything repugnant in the subject or context- F

xxx

xxx

xxx

(c) ‘inam’ means land held under a gift or a grant made by the Nizam or by any Jagirdar, holder of a Samsthan or other competent grantor and continued or confirmed by virtue of a muntakhab or other title deed, with or without the condition of service and coupled with the remission of the whole or part of the land revenue thereon and entered as such in the village records and includes- G

(i) arazi makhta, arazi agraahar and seri inam; and H

A (ii) lands held as inam by virtue of long possession and entered as inam in the village records:

Provided that in respect of former Jagir areas, the expression inam shall not include such lands as have not been recognised as inams by Government after the abolition of the Jagirs.

B                           xxx                           xxx                           xxx

(j) ‘protected tenant’ means the protected tenant as defined in the Telangana Tenancy and Agricultural Lands Act, 1950.

C                           xxx                           xxx                           xxx

3. (1) Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or other instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil, Revenue or Atiyat Court, and with effect from the date of vesting, all inams shall be deemed to have been abolished and shall vest in the State.

D                           (2) Save as expressly provided by or under the provisions of this Act and with effect from the date of vesting, the following consequences shall ensue, namely:-

E                           (a) the provisions of the Telangana Land Revenue Act, 1317 Fasli relating to inams, and the provisions of the Telangana Atiyat Enquiries Act, 1952 and other enactments, rules, regulations and circulars in force in respect of Atiyat grants shall, to the extent, they are repugnant, to the provisions of this Act, not apply and the provisions of the Telangana Land Revenue Act, 1317 Fasli, relating to unalienated lands for purposes of land revenue, shall apply to the said inams;

F                           (b) all rights, title and interest vesting in the Inamdar, kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant in respect of the inam land, other than the interest expressly saved by or under provisions of this Act and including those in all communal lands, cultivated and uncultivated lands (whether assessed or not), waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works,

G

H

fisheries and ferries, shall cease and be vested absolutely in the State free from all encumbrances. A

xxx                   xxx                   xxx

(h) the relationship with regard to inam land as between the inamdaar and kabiz-e-kadim, permanent tenant, protected tenant or non-protected tenant shall be extinguished; B

xxx                   xxx                   xxx

4. (1) Every inamdar shall, with effect from the date of vesting, be entitled to be registered as an occupant of all inam lands other than- C

(a) lands set apart for the village community, grazing lands; waste lands, forest lands, mines and quarries; tanks, tank beds and irrigation works, streams and rivers;

(b) lands in respect of which any person is entitled to be registered under Sections 5, 6, 7 and 8 of the Act; D

(c) lands upon which have been erected buildings owned by any person other than the inamdar;

which immediately before the date of vesting, were under his personal cultivation and which, together with any lands he separately owns and cultivates personally are equal to four and a half times the ‘family holding’. E

xxx                   xxx                   xxx

7. (1) Every protected tenant shall, with effect from the date of vesting, be entitled to be registered as an occupant of such inam lands in his possession as may be left over after the allotment under section 4, which were under his personal cultivation and which, together with any lands he separately owns and cultivates personally, are equal to four and a half times the ‘family holding’. F

(2) The protected tenant shall be entitled to compensation from the Government as provided for under this Act in respect of inam lands in his possession in excess of the limit specified in sub-section (1) whether cultivated or not: G

H

- A                         Provided that-
  - (a) he continued to be a tenant of such inam lands until the date of vesting; or
  - (b) if he is not in possession, he has been unlawfully dispossessed of such lands by the inamdar between the 10<sup>th</sup> of June, 1950 and the date of vesting.
- B                         (3) No protected tenant shall be entitled to be registered as an occupant under sub-section (1) unless he pays to the Government as premium an amount equal to forty times the land revenue for dry land and thirteen times for wet land. The amount of premium shall be payable in not more than ten annual instalments along with the annual land revenue and in default of such payment shall be recoverable as arrears of land revenue due on the land in respect of which it is payable.
- C                         D                         Provided that the protected tenant who is a poor person shall be entitled to be registered as an occupant under sub-section (1), without payment of any premium to the Government.
- E                         10. Collector shall examine the nature and history of all lands in respect of which an Inamdar, kabiz-e-kadim, permanent tenant, protected tenant or non-protected tenant, claims to be registered as an occupant under sections 4, 5, 6, 7 and 8, as the case may be, and decide-
  - F                         (a) in whose favour, and in respect of which inam lands, the claims should be allowed;
  - (b) the land revenue and the premium payable in respect of such lands.
- G                         XXX                     XXX                     XXX
- H                         33. Nothing in this Act shall in any way be deemed to affect the application of the provisions of the Telangana Tenancy and Agricultural Lands Act, 1950 to any inam or the mutual rights and obligations of an Inamdar and his tenants, save in so far as the

said provisions are in any way inconsistent with the express A provisions of this Act."

8. Sections 1, 2, 3 except clauses (d), (g), (h) and (i) of sub-section (2), Sections 30 to 34, Section 35, Sections 36 and 37 had come into force on the date of publication of the Inams Act in the Official Gazette on 20.7.1955 in terms of Section 1(3)(a) of the Inams Act. The other provisions of the Inams Act including Section 3(2) (d), (g), (h) and (i) came into force w.e.f. 1.11.1973. B

9. In terms of Section 34 of the Tenancy Act, a person is deemed to be a protected tenant in respect of any land of which he is not in the possession at the time of commencement of the Act. He can seek to recover possession, if he intimates to the landholder within six months of the said commencement that he is willing to hold the land on the terms and conditions on which he held it before he lost possession thereof as per Section 36. Still further, Section 38 starts with non obstante clause contemplating that a protected tenant shall at any time after the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1954, be entitled to purchase the land-holder's interest in the land held by the former as a protected tenant. It may be mentioned that if in respect of a land held by a protected tenant, the landlord concerned intends to relinquish his interest in the land without receiving any consideration, the Tribunal shall issue to such protected tenant a certificate as provided in sub-section (6) of Section 38 (See Section 38-B). Further, in terms of Section 38-D, if the landlord at any time intends to sell the land held by the protected tenant, he shall give a notice in writing of his intention to such protected tenant and offer to sell the land to him. The protected tenant is to convey his intention to purchase the land within six months from the date of receipt of such notice. C D E F

10. Mr. Dushyant Dave, learned senior counsel for the appellant *inter alia* submitted that an appeal against the grant of occupancy rights on 09.02.1982 was filed on 18.03.1987 by the protected tenant. Such appeal was beyond the period of 30 days provided to file an appeal. The said appeal was later withdrawn on 14.02.1989. Reliance has been placed upon a judgment of this Court reported as **Boddam Narsimha v. Hasan Ali Khan & Ors.**<sup>5</sup>, wherein this Court held that the benefit of section 38- G

---

<sup>5</sup>(2007) 11 SCC 410 H

- A E is to be given to persons holding the lands as protected tenants and who continue to hold the lands as such on 1.1.1973.
  - 11. It was further argued that the purchasers had purchased Inam land, governed by the Inams Act. It was also contended that the rights of the protected tenant under the Tenancy Act are subject to provisions of the Inams Act by virtue of Section 33 of the said Act relying on the judgment of Andhra Pradesh High Court in *S. Rangaiah and Ors. v. Collector Medak & Ors.*<sup>6</sup>. It was also argued that Inams Act recognizes the right of Inamdar and protected tenant to sell/ alienate their right and interest in the land. The reliance was on the judgments reported as *S. Veera Reddy v. Chetlapalli Chandaiah*<sup>7</sup> and *Bhimavarapu Venkaiah & Anr. v. RDO*<sup>8</sup>, *S. Narsasimha and Ors. v. Joint Collector-II, Ranga Reddy District*<sup>9</sup>. It was thus contended that the bar under Section 30 restricting sub-division or sub-letting and alienation in terms of now Section 47 (since repealed) of the Tenancy Act are not applicable in view of the Inams Act.
  - D 12. A reference was also made to affidavits filed by Yettaiah, son of the principal protected tenant as well as by the wife of the protected tenant, admitting sale of land to the purchaser in 1957. Thus, the argument was that the certificate of occupancy right was issued on 19.02.1982 upon due enquiry and after hearing the heirs of the original protected tenant.
  - F 13. Mr. Dave relied upon an appeal filed against the grant of occupancy rights before the Mandal Revenue Officer wherein statements of the parties and the compromise arrived at by them were recorded. This appeal was later withdrawn on 14.02.1989 by the protected tenant.
  - G 14. Further, an application filed before the Mandal Revenue Officer, Qutubullapur, Medchal District under Section 32 of the Tenancy Act seeking restoration of possession was referred to but it was contended that the pendency of such application was not disclosed by the respondents in proceedings before the High Court. Thus, the Respondent Nos. 3 to 10 are seriously guilty of suppression of relevant facts.

<sup>6</sup>1996 SCC Online AP 275

<sup>7</sup>1994 SCC Online AP 510

<sup>8</sup>(1999) SCC Online AP 896

H <sup>9</sup>2006 SCC Online AP 57

Reference has been placed upon a judgment of this Court reported as A  
*Jai Narain Parasrampuria v. Pushpa Devi Saraf*<sup>10</sup>.

15. Mr. V. Giri, learned counsel in another appeal submitted that three generations of the protected tenant participated in transactions granting occupancy rights to the family members of the purchaser in respect of the subject property. It was argued that the initial appeal against the grant of occupancy rights certificate was withdrawn by the protected tenant. Thereafter, the later appeal against such grant would be barred *ab initio* as the same was filed after an inordinate delay of 36 years. Hence, it was argued that the compromise in judicial proceedings ought to be given utmost sanctity, asserting the compromise arrived at by the parties in 1989 which led to the withdrawal of appeal. B C

16. It was further argued that the contention of the protected tenant that they became aware of occupancy rights certificate in the year 2015 was a clear moonshine defense and that the delay of 33 years by them *per se* defeats the proprietorial claim against subject property. Reliance was placed upon judgment of this Court in *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors*<sup>11</sup> *inter-alia* to contend that the appellants are in possession since the date of purchase, therefore, they have perfected their possession into title. Another order passed by this Court in Civil Appeal Nos. 4367-4372 of 2016 titled as *Jagadish v. State of Karnataka* decided on 29.08.2019 was referred wherein it has been held that even though there is no period of limitation prescribed under Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, but such right is required to be exercised within reasonable time. Similar view has been taken by the Division Bench of the High Court in *Vorla Ramachandra Reddy & Anr. v. Joint Collector I & Ors.*<sup>12</sup>, wherein the reliance is placed upon the judgment of this Court reported as *Ponnala Narasing Rao v. Nallolla Pantaiah*<sup>13</sup>. It was thus argued that the challenge to the grant of occupancy certificate had not been made within reasonable time, thus the High Court had erred in law to interfere to dispute the legality of the occupation rights certificate after gross delay and inaction on part of the respondents. D E F G

---

<sup>10</sup>(2006) 7 SCC 756

<sup>11</sup>(2019) SCC Online SC 975

<sup>12</sup>2021 SCC OnLine TS 703

<sup>13</sup>(1998) 9 SCC 183

- A        17. Learned counsel for the appellants also relied upon Single Bench judgments of Andhra Pradesh High Court reported as *Jupudi Bhushanam v. Joint Collector, Khammam and Ors.*<sup>14</sup>, *Kasa Muthanna and Another v. Sunke Rajanna and 11 Ors.*<sup>15</sup> It was argued that the reliance placed by the High Court on the judgment in *Sada v. The Tahsildar*<sup>16</sup> is misconceived as in that case, the violation of period of limitation prescribed under Section 24 was not the question, nor the interplay between the Inams Act and the Tenancy Act was examined therein. Even the judgment of this Court in *B. Bal Reddy v. Teegala Narayana Reddy*<sup>17</sup> would not be applicable in the facts of the present case.
- C        18. It was hence contended that the Joint Collector in its order dated 4.12.2017 has rightly held that Section 38-E Certificate was granted in favor of the protected tenant under a misconception because of original uncorrected protected tenancy register. Still further, the Certificate under Section 38-E should be followed by a payment of compensation to the land owner. Since no compensation has been paid, the final vesting does not take place. Furthermore, the conduct of protected tenant prior to and subsequent to Section 38-E Certificate demonstrates that such certificate never attained legal finality in light of the due legal procedure.
- E        19. It was averred that the predecessor-in-interest of the purchaser was in possession on 01.11.1973 which entitled him to occupancy rights under the Inams Act. The name of predecessor-in-interest was also recorded in the order of 1982 by the Revenue Divisional Officer and the Joint Collector who passed the order in 2017.
- F        20. On the other hand, learned counsel for the respondents-protected tenants submitted that the primary objection of the purchaser was firstly, settlement and consequent withdrawal of the appeal by the protected tenants in the year 1989 and secondly, delay in filing of the appeal in the year 2015. It was argued that the Tenancy Act and Inams Act are based upon the principle that tiller of the land shall be the owner. The provisions of the Tenancy Act are intended to secure the interests of the tenants and insulate them from relinquishing their rights directly or indirectly. The freedom of the protected tenant to relinquish his tenancy

<sup>14</sup> 1996 SCC OnLine AP 941

<sup>15</sup> 2015 SCC OnLine Hyd 592

<sup>16</sup> (1987) 2 APLJ 397

H        <sup>17</sup> (2016) 15 SCC 102

rights are restricted by the statute as such surrender can be only with the permission of the Competent Authority. In the present case, the purchaser has placed reliance upon an oral surrender of tenancy rights in the year 1954 and subsequent sale thereof in the year 1957. These two actions are prohibited in law as the surrender has to be in writing and is to be admitted by the tenant in good faith subject to the satisfaction of the Tehsildar in terms of Section 38-E(5) read with Section 19(1)(a) of the Tenancy Act. Both the instances of surrender of tenancy rights orally in 1954 and in writing in 1957, contravenes the statutory protection granted to the protected tenant. The Tenancy Act has been enacted to protect the tenants from exploitation of the land owners, therefore, the interpretation which advances the purpose of the statute should be accepted. The statute has prescribed a mode of surrender of tenancy and such mode alone could be resorted to before the surrender is made. The subsequent proceedings were to justify the surrender of alleged tenancy rights. The reliance is placed upon *Kotaiah & Anr. v. Property Association of the Baptist Churches(P) Ltd.*<sup>18</sup>, *Edukanti Kistamma (Dead) through LRs & Ors. v. S. Venkatareddy (Dead) through LRs & Ors.*<sup>19</sup> and *B. Bal Reddy*.

21. On merits, it was argued that the purchasers had not disclosed the factum of the appeal being filed before the Joint Collector or before the High Court. In fact, the protected tenants had no knowledge of the appeal being filed and withdrawn. The filing and withdrawal of the appeal is surrounded by suspicious circumstances so as to justify the grant of Occupancy Rights Certificate to the purchasers. The order of granting occupancy rights was passed on 19.2.1982 after issuance of certificate under Section 38-E. Once ownership rights had been granted under Section 38-E, the same cannot be disputed except in the manner contemplated by law. There was no question of granting occupancy rights to the purchasers as the land is deemed to be transferred to the protected tenant as the owner and that there was no interest or title in the disputed land which could be claimed by the purchasers once the ownership is granted to the protected tenant. Section 33 of the Inams Act specifically provides that the Inams Act will not affect the Tenancy Act and the provisions of the Tenancy Act, particularly Section 38-E (1) and Sub-Section 5 read with Section 19 have been given overriding effect

<sup>18</sup>(1989) 3 SCC 424

<sup>19</sup>(2010) 1 SCC 756

A

B

C

D

E

F

G

H

- A after the enactment of Inams Act. Thus, such provisions would prevail over the Inams Act. Section 38-E (1) of the Tenancy Act substituted in the year 1971 had given overriding effect to Chapter IV over any other law which would also include the Inams Act.

22. The argument that the protected tenant has not deposited the sale consideration payable to the land owner is inconsequential as it is land owner who had to apply for compensation by way of an application to the Tribunal in terms of Section 38-E (3) of the Tenancy Act. In addition, the payment of sale consideration was the responsibility to be exercised by the Collector in terms of Section 38-E read with Section 38 sub-sections (4) to (8) of the Tenancy Act. Therefore, failure of the land owner or the Revenue Authorities to assess the compensation payable by the protected tenant would not defeat his rights by virtue of being declared as an owner on the strength of a statute. It was also argued that the land owner could not affect sale of his interest in the land which is in possession of the protected tenant without giving an opportunity to the protected tenant to purchase such land. The ownership rights were transferred in favor of the purchasers in the year 1957 but no opportunity was granted to the protected tenant to purchase land. Therefore, in terms of Section 38-D, the sale itself in favor of the purchasers is in violation of the prohibition contained in Section 38-D of the Tenancy Act.

E 23. It was further submitted that the Ownership Certificate issued under Section 38-E has not been challenged by any person before any authority. Therefore, the transfer of ownership is complete in respect of the protected tenant. At best, the land owner could claim the unpaid, undetermined sale price from the protected tenant but the transfer of ownership rights shall be absolute. Reliance has been placed upon judgment of this Court in *Edukanti Kistamma* and judgment of the High Court reported as *Sada*.

G 24. It was contended that Occupancy Rights Certificate was issued to the purchasers without any notice to the protected tenant. Such certificate would be null and void after the ownership rights were conferred to the protected tenant. The affidavits of Mandala Yettaiah and Govaramma in 1979 relinquishing the rights are undated, unsigned and in any case ineffective as there was no permission obtained by the Tehsildar for surrender of the tenancy rights under Section 38-E (5) read with Section 19 of the Tenancy Act. Therefore, the knowledge of

H

grant of Occupancy Rights Certificate to the purchasers cannot be attributed to the respondents and thus could be disputed in the year 2015 when the information about such Certificate came to the notice of some of the protected tenants. It was an assertion of the title by the protected tenant on the basis of certificate granted under Section 38-E of the Tenancy Act. Thus, the Occupancy Rights Certificate obtained by the purchasers was in nullity, *void ab initio* and without jurisdiction.

A

B

25. We have heard learned counsels for the parties and find no merit in the present appeals. Before we examine the facts of the case, some principles of law need to be stated.

26. In *Sada*, a Full Bench of the Andhra Pradesh High Court examined various aspects of the Tenancy Act by framing 9 points for consideration by giving complete legislative history of the Tenancy Act. The High Court held on the point Nos. 2 and 4 relevant for the purpose of the preset appeal as under:

C

“(1) What is the meaning of the words ‘lands held by protected tenants’ and whether a protected tenant must have been in physical possession on the date of notification issued by the Government under Section 38E(1) of the Act (in this batch 1-1-1973) for becoming owner of the property and for obtaining the ownership certificate?

D

E

4) Whether the new proviso to Section 38E(2) added by Act 2 of 1979 is retrospective and permits restoration of possession where the ownership certificate has been issued before 11-1-1979 the date when Act 2 of 1979 has come into force?

“27. In our view, the contention for the landholders that unless the protected tenant is in physical possession on the date of notification issued, under Section 38-E(1), he cannot get the ownership rights, is not tenable. A plain regarding of S. 38-E (1) shows that the Government may, by notification in the gazette declare respect of any area, that from which such date as may be specified therein, ownership of all lands held by protected tenants which they are entitled to purchase from their landholders in such area shall, subject to Sec. 38(7), stand transferred to and vest in the protected tenant holding them. It is important to note that the statute does not say ‘held on the date specified in such notification’. Wherever the

F

G

H

- A Legislature wanted that land should have been held on any specified date, it had clearly specified in that Act...

xx

xx

xx

29. It is clear from S. 38-E that it is for these protected tenants

- B who are finally declared to be protected tenants' and included in the Register prepared for that purpose end for whom protected tenancy certificates have been issued, that ownership rights are envisaged. In S. 33-E(1), subject of course, to the limitation with regard to extent of holdings as specified in S. 38(7) and to the proviso to S. 38-E(1). Once persons who held land on the dates or for the periods mentioned in S. 34. 37 and 37-A and the requirement of physical possession on the dates required in those sections is satisfied, such persons have become protected tenants'. Once a person becomes a protected tenant, he earns a qualification to become an owner by force of statute, subject of course to the qualification regarding extent in S. 38(7) and to the proviso to S. 38-E(1). There is no requirement in the Act that he should also be in possession on the date specified in the notification issued in S. 38-E(1). The words 'all lands held by protected tenants' is more a description of the lands with regard to which the right as 'protected tenant' has been declared and there are no words requiring physical possession on the date specified in the notification.

xx

xx

xx

31. A person 'holds' the land as protected tenant if he is still a 'protected tenant' on the notified date, though out of possession. *As long as his right as protected tenant has not been determined by date of notification in a manner known 10 the Act, he 'holds' the land as protected tenant, whether physically in possession or not* We shall explain this again under point 7 in the context of surrender".

G

xx

xx

xx

36. For all the aforesaid reasons we hold on Point No. 1 that for tie vesting of the ownership of land 'held' by a protected tenant under S. 38-E(1), it is not necessary that the protected tenant should have been in physical possession on the date of notification, it is sufficient if he continued to hold the status of a 'protected

H

tenant' as on the notified date even if not in physical possession and he satisfied the requirements of S. 32(7) of the Act. This is also subject to the proviso to Section 38-E(1). A

XX

XX

XX

55. Point No. 4 The point is whether the new proviso to S. 38-E(2) added by Act 2 of 1979 is retrospective and permits restoration of possession Where ownership the certificate is issued before 11-1-1979 when Act 2/79 has come into force. B

56. Now the new proviso to S. 38-E(2) was introduced by Act 2/1979 to get round the difficulty created by the judgment in *Narsaiah's case* (1), There, it was held, that once the protected tenant has become owner, there is no machinery in the Act enabling him to obtain possession. It was pointed out that the provision in the latter part of the Explanation to S. 38 E (1) enabling a 'protected tenant' to obtain possession through the Tahsildar was not applicable to the case of an application by an owner, even if it be a case of a protected tenant becoming an owner. C D

57. In our view, the Legislature wanted to fill up the difficulty created by *Narsaiah's case* when it added the new proviso to S. 38-E(2) enabling the Tahsildar to restore possession to a former protected tenant who had become the owner. E

XX

XX

XX

59. It is then argued that the words "the ownership has been transferred" in the new proviso to S. 38-E(2) show that the amendment does not apply to cases where the ownership certificate has been issued before 11-1-1979. This interpretation is not correct. We fully endorse the reasons given in *Chennaiah's case* to say that these words cannot be given such a restricted meaning. Point No. 4 is decided accordingly. F

XX

XX

XX

G

66. For purposes of S. 38-E(1) the protected tenant should not have validly surrendered his tenancy right by the date of notification under S. 38-E(1). But if he had voluntarily surrendered his rights prior to 4-2-1954 (the date of the 1954 amendment) and put the landholder in possession, be it without the intervention of the H

- A      Tahsildar, he could not claim any rights of ownership under S. 38-E(1) upon the issue of the notification. Likewise, if the surrender was after 4-2-1954 and before the date of notification under S. 38-E(1) and such surrender satisfied the requirements of Sec. 19 and was a valid surrender, the protected tenant could not claim ownership rights. If however there was no valid surrender, whether before (being not voluntarily but forcible), or after (being not in conformity with S. 19), the protected tenant had a right to be put back in possession under S. 32 as stated in *Venkanna v. Buchamma* (12) and such protected tenants, (if they had not otherwise lost their status under Ss. 32 or 44 by the notified date) would be entitled to ownership rights under S. 38E(1) and would be entitled to the ownership certificate under S. 38-E(2). In cases where proceedings under S. 19 are pending on the date of notification and end in favour of the protected tenant thereafter, the date of vesting gets postponed till the said decision. Point No. 7 is decided accordingly.”
- D      27. In *Kotaiah*, this Court held that the protected tenant cannot be dispossessed illegally by the landlord or anybody else. Section 38-D prohibits the land holder from alienating the tenanted land to third parties. Even if the land holder intends to sell the tenanted land, he must give a notice in writing of such intention to the protected tenant. It was concluded as under:
- “22. In sum...,
- F      (i) The protected tenant has a right to become full owner of the lands in his possession. He becomes the owner when the Government issues a notification under Section 38-E. We are told that the Government had issued such a notification on 1-10-1973, relating to the district where the lands in question are situated. It was about three years earlier to termination of the appellants' tenancy by the Association. If the appellants had a right to become owners of the tenanted lands, the question of terminating their tenancy would not arise.
- G      (ii) The protected tenant cannot be dispossessed illegally by the landlord or anybody else. If so dispossessed, the Tehsildar either suo motu or on application must hold a summary enquiry, and direct that the land be restored to the protected tenant. That is the mandate of Section 38-E and the Explanation thereof.

(iii) The landholder by himself cannot dispossess the protected tenant even if the tenancy is terminated in accordance with the law. The landlord will have to take recourse to Section 32. He must approach the Tehsildar to hold an enquiry and pass such order as he deems fit. A

(iv) Section 38-D prohibits the landholder from alienating the tenanted land to third parties. If the landholder intends to sell the land, he must give notice in writing of his intention to the protected tenant. The first offer must be given to the protected tenant. It is only when the protected tenant does not exercise the right to purchase, the landholder could sell the land to third parties. The alienation made in contravention of these provisions has no legal effect." B

28. In *Edukanti Kistamma*, the appellants were the protected tenants and were issued ownership certificate under Section 38-E of the Tenancy Act. The stand of the respondents of surrender of the tenancy rights was found to be invalid. This Court in these circumstances held that it is not necessary that a protected tenant should also be in possession on the date specified in the notification issued under Section 38-E of the Tenancy Act. This Court relied upon the judgment in *Kotaiah* and held as under:

"19. In view of the above, it is evident that the scheme of the Act provides that a person who is a protected tenant has a right to get the ownership in accordance with the statutory provisions, provided the total area of the land owned by the landholder including the land under the cultivation of his tenants is more than three times the area of a family holding for the local area concerned. The person should be in lawful possession of the land on the date of commencement of the 1950 Act to claim benefits under the Act. The Government has to make a declaration by publishing the notification in the gazette in respect of any area and from such date as may be specified therein, that the ownership of all lands held by protected tenants which they are entitled to purchase from their landholders in such area under the Act, subject to the conditions laid down under Section 38(7) of the Act would stand transferred to and vest in the protected tenants holding them as such and from such date the protected tenants shall be deemed to be the full owners of such lands. E F G H

- A 20. The certificate issued under Section 38-E(2) shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate, as against the landholder and all other persons having any interest therein. In case the protected tenant is not in possession of the land, he has a right to restoration of the possession of the said land through the Tahsildar. The protected tenant cannot be dispossessed illegally by the landlord or anybody else. If so dispossessed, he has a right to restoration of the possession. He can be dispossessed only by taking recourse to the procedure prescribed under Section 32 of the 1950 Act.
- B
- C 21. There is a complete embargo on the right of the landholder to alienate the tenanted land to a third party without giving an option to the tenant to purchase the land. Section 47 of the 1950 Act (omitted by the amendment of 1969) provided that any transfer of such land except to the protected tenant shall be void ab initio.
- D The protected tenant may surrender his rights by strict adherence to the statutory requirements under the 1950 Act. In case there is any deviation from any such requirement, it would render the surrender ineffective and inconsequential.

XXX

XXX

XXX

- E 26. The 1950 Act being the beneficial legislation requires interpretation to advance social and economic justice and enforce the constitutional directives and not to deprive a person of his right to property. The statutory provisions should not be construed in favour of such deprivation. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe
- F
- G
- H

the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose.

xxx

xxx

xxx

41. There can be no doubt that once a protected tenant gets a certificate of ownership under Section 38-E(2) of the 1950 Act, he has a right to apply for restoration of possession to him if he has been dispossessed. The protected tenant has a right to ask for summary eviction of a trespasser.”

29. This Court in *Boddam* approved a Full Bench Judgment of the High Court in *Sada*. In *Boddam*, an application was filed claiming protected tenancy under Section 37-A of the Tenancy Act in the year 1998. On 16.12.1998, for the first time, it was alleged that the appellant was reflected as cultivating tenant in the Khasra Pahani for the year 1954-1955 for three years. The sale deed was executed in his favor by the owner on 23.11.1959 after permission was granted to his vendor under Sections 47 and 48 of the Tenancy Act. Bala, the paternal Uncle of the appellant had not claimed protected tenancy rights during his lifetime as he died in the year 1975. Even his legal representatives did not claim protected tenancy. It was only in 1998 that protected tenancy was sought and the ownership certificate under Section 38-E of the Tenancy Act was claimed after more than 40 years. This Court held as under:

“13. ...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 *Sada* [AIR 1988 AP 77 : (1987) 2 An LT 749 (FB)] 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

A

B

C

D

E

F

G

H

- A 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 landholder's interest to the protected tenants. Therefore, the grant of pattedari (ownership rights) also finds place in the Act."
- B 30. This Court in **Bal Reddy** quoted with approval the Full Bench judgment in **Sada** as well as the earlier judgment of this Court in **Kotaiah** to hold that protected tenancy could be terminated only in a manner known to law. In the absence of such valid termination of 'protected tenancy', the interest of such protected tenant continues to be operative and subsisting in law and could devolve on his legal heirs and representatives who could then claim restoration of possession. As laid down in **Sada**, even if the protected tenant had lost possession, without there being valid termination of his status as a protected tenant, he would still be entitled to all incidents of protection under the Act.
- C
- D 31. We shall now examine the respective contentions of the parties in view of the law laid down and also the judgment of the High Court in **Sada** which has stood the test of time for last more than 30 years. The scheme of the Act contained in Chapter IV of the Tenancy Act in respect of protected tenant is materially different from that of tenants governed by Chapter III of the Tenancy Act. The protected tenants are placed at much higher pedestal as even if a protected tenant is not in possession of the land, right has been given to him to seek possession later. Therefore, neither Section 19 nor Section 32 forming part of Chapter III of the Tenancy Act are applicable in respect of protected tenant except when the reference is made to the provisions of Section 19 on the basis of Section 38-E(5) which starts with a non obstante clause giving overriding effect to anything contained in Section 38-E. Such clause mandates the Collector to hold an enquiry *suo motu* to ascertain the genuineness of the surrender of right made by the protected tenant. This exercise had to be done before the surrender of tenancy rights and not subsequently
- E
- F
- G after many years of alleged surrender on the strength of unequal bargaining power with the tenant who survives on the basis of agriculture activities.
- H 32. The purchasers relied upon an oral surrender of tenancy rights in the year 1954 and later by a written document of 5.2.1957. The execution of the document in the year 1957 unequivocally proves the

factum of protected tenancy of the respondents herein. Such surrender is contrary to Section 47 of the Tenancy Act prior to its omission by AP Act No. 12 of 1969 and in contravention of Section 38-E(5) read with Section 19(1)(a) of the Tenancy Act.

A

33. A protected tenant is entitled to recover possession in terms of Section 36 as well as Section 44 of the Tenancy Act which prohibits the termination of protected tenancy. The proviso to sub-section (1) of Section 44 of the Tenancy Act puts complete embargo on a land holder to exercise the right of resumption unless he has within a period of eighteen months from the commencement of the said Act sought reservation of land to exercise his right or resumption in terms of the commencement of Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1955. The Deputy Collector in terms of the said provision had to make a necessary enquiry and issue a certificate that the land has been so reserved. Thus, the land holder had no right to terminate the tenancy after the commencement of Amending Act, 1955 except after an enquiry which was to be conducted by the Deputy Collector. No such reservation had been made nor any enquiry was conducted, therefore, the rights of protected tenant cannot be defeated.

B

C

D

34. The purchasers have relied upon the oral surrender of protected tenancy in the year 1954. Such surrender of oral tenancy of a protected tenant is not permissible under the Tenancy Act except in the manner which is prescribed under Section 38-E (5) read with Section 19 of the Tenancy Act. Still further, the protected tenant has a right to seek possession in terms of Section 36 of the Tenancy Act. Even in terms of Section 38-D, if the land holder intends to sell the land which is in possession of a protected tenant, he has to give a notice in writing of his intention to such protected tenant.

E

F

35. Section 38-E contemplates that on grant of certificate of ownership under Section 38-E, the *protected tenants shall be deemed to be* the full owners of such land. Further, explanation provided under Section 38-E(1) provides that if a protected tenant has been dispossessed otherwise than in the manner and by the order of the Tahsildar as provided in Section 32, then notwithstanding any judgment, decree or order of any Court, or the order of the Board of Revenue or Tribunal shall be deemed to be holding the land on the date of notification. The Tahsildar is under an obligation to either *suo motu* or in furtherance of an application by the protected tenant, to hold a summary enquiry and direct taking of land

G

H

- A in possession of the land holder or any other person claiming through or under him. The possession from a protected tenant can be taken only if the surrender of tenancy is approved by the Revenue Divisional Officer. The land owner is liable to restore possession in terms of Section 46 of the Act if he has failed to cultivate the land personally within one year.
- B Therefore, there is an embargo on the surrender of tenancy rights by protected tenant and even if the tenancy is terminated, the land holder is personally liable to restore possession to the tenant, if he fails to cultivate the land within one year of termination of tenancy.

36. Once a certificate of ownership is granted which is required to be published in the Government Gazette, the land stands transferred and vested in the protected tenant as a full owner of such land. Such certificate is final subject to the rights of the landowner under the Tenancy Act which is only to seek compensation.

37. The judgments referred to by the learned counsels for the appellants are not applicable to the facts of the present case. *S. Rangaiah* was a case of kabiz-e-kadim, which means an old occupier, who is neither a tenant nor a protected tenant. Such kabiz-e-kadim was granted protected tenancy status after the land got vested with the Government on 20.7.1955. The Bench noticed that even after vesting of Inam, a protected tenant would continue to have tenancy rights and would have the disability to enter into the agreement of sale on 22.1.1965 in favor of the respondents. The present matter is not a case of transfer of rights by or on behalf of the protected tenant. The entire argument is based upon the fact of oral surrender and subsequent filing and withdrawal of appeal in the year 1989 and of filing a belated appeal against the ownership certificate in the year 2015. The fact of filing of an appeal and its withdrawal was not raised in the first instance by the purchasers in proceedings before the Joint Collector or before the High Court. Since such documents were not produced at the earliest opportunity, and the veracity of such documents is not beyond doubt, there cannot be any attribution of knowledge of the grant of Occupancy Rights Certificate to the purchasers. It is strange that the appeal was withdrawn on 14.2.1989 but Section 19 petition was dismissed on the basis of alleged withdrawal of appeal on 31.1.1989. The High Court has held that the interest of the protected tenant cannot be validly conveyed in law in view of Section 30 of the Tenancy Act.

H

38. In the present case, the surrender of tenancy rights is before the Mandal Revenue Officer on 31.1.1989, whereas as per the proviso to Section 19(1)(a) of the Tenancy Act, a tenant can surrender his rights at least a month before the commencement of the year and that surrender is to be made by the tenant in writing. Such surrender is to be admitted by him before the Tehsildar and the authority is to satisfy itself that surrender is made in good faith. In the present case, the oral surrender by the protected tenant is set up in the year 1954. Such surrender is followed by sale of tenancy rights in the year 1957. Thereafter, the petition under Section 19 of the Tenancy Act was filed to seek approval of the Tenancy rights, such application was withdrawn on the basis of an order withdrawing the appeal against the grant of occupancy rights. This shows that the purchasers have taken steps to procure surrender of tenancy rights, realizing that such surrender cannot be orally or by executing a sale deed. It was a cover up operation initiated by the purchaser but the same was still against the mandate of the statute as the finding of the surrender has to be recorded by the Tehsildar. Since, neither the oral surrender nor surrender in writing was recorded as bonafide by the Tehsildar, the subsequent surrender approved by the Mandal Revenue Officer is a nullity and bears no legal effect as such surrender is in contravention of the statutory provisions. The protected tenant was conferred ownership rights under Section 38-E of the Tenancy Act on 23.3.1975 whereas the conferment of occupancy rights were granted in the year 1982 under the Inams Act.

39. In *S. Veera Reddy*, the appellants were transferees of the protected tenant who sought declaration. The appellants relied upon a document dated 8.2.1963 by which the protected tenant was said to have transferred possession in their favor. On the other hand, one Sattaiah claimed possession after alleged surrender of tenancy rights by the protected tenant. The appellants filed a suit claiming declaration of title and perpetual injunction. It was also a case where plaintiffs and defendants applied for occupancy rights under the Inams Act. In fact, Section 38-E came to be inserted in the year 1971 after the filing of the suit by the appellants.

40. *Bhimavarapu Venkaiah* is a case of transfer of Inam land wherein occupancy rights were claimed and the matter was remitted to the Revenue Divisional Officer to consider the application of the first petitioner for the grant of occupancy rights. *S. Narasimha* was also a

A

B

C

D

E

F

G

H

- A case of claim of grant of Occupancy Rights Certificate. There is however no claim of grant of ownership rights as a protected tenant and interplay between the Tenancy Act or the Inams Act.

41. In the judgment of this Court in **Ponnala Narsing Rao**, theory of oral surrender of protected tenancy rights prior to 1954 was disbelieved.

- B It was held that the application under Section 32 of the Tenancy Act was filed after an unreasonable delay. Such judgment has been followed by the Andhra Pradesh High Court in **Vorla Ramachandra Reddy**.

42. We do not find that such judgments provide assistance to the arguments raised by the learned counsel for the appellants. Firstly, the

- C application was treated to be one under Section 32 of the Tenancy Act. Section 32 falls in Chapter III of the Act dealing with the rights of the tenants whereas the rights of protected tenants are governed under Chapter IV. Section 32 is not applicable *stricto sensu* except to the limited extent as mentioned in the explanation to Section 38-E (1) of the Tenancy Act. Therefore, judgments in **Ponnala Narsing Rao** or **Vorla Ramachandra Reddy** are not applicable to the facts of the present case. Sub-section (5) of Section 38-E provides for an enquiry to ascertain the genuineness of surrender of the right by the protected tenant under clause (a) of sub-section (1) of Section 19. There is no provision in Chapter IV of the Tenancy Act to surrender protected tenancy rights.
- E However, if an application is made under Section 19(1) of the Tenancy Act, the genuineness of such surrender is required to be ascertained by the Collector.

43. The judgment in **Boddam Narsimha** is not helpful to the arguments raised by Mr. Dave as it is not a case of protected tenant on the dates mentioned in Sections 35, 37 and 37-A.

44. The order of the learned Single Bench in **Jupudi Bhushanam** is to the effect that once certificate under Section 38-E is granted, and subsequently he has been dispossessed, he has the right to seek remedy from the Civil Court. The High Court has failed to notice that the

- G explanation in sub-section (1) of Section 38-E of the Tenancy Act specifically provides that if a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in Section 32, is not in possession of the land on the date of the notification issued under sub-section (1), then, the Tahsildar shall notwithstanding anything contained in the said Section 32, either *suo*

H

*motu* or on the application of the protected tenant hold a summary enquiry, and direct that such land in possession of the land holder or any person claiming through or under him in that area, shall be taken from such possession thereof and shall be restored to the protected tenant.

A

45. In the judgment of **Kasa Muthanna**, the plaintiff was relying upon a certificate under Section 38 of the Tenancy Act whereas the defendant was relying upon a sale which was void in terms of Section 38 of the Tenancy Act. The High Court was examining in second appeal filed by the defendant, when the certificate under Section 38-E was granted to the plaintiff or their predecessors. In the aforesaid case, a certificate issued under section 38-E had become final and binding for not being challenged as per the procedure established by law. The Court held that the revenue entries made ignoring the 38-E certificate are illegal and that when once the title is established and the defendants had failed to prove adverse possession or any other right to remain in possession, the plaintiffs are entitled to the relief of recovery possession.

B

C

46. In the judgment reported as **J. Narayana & Ors. v. Jainapally Pedda Kistaiah and Ors<sup>20</sup>**, the question examined was whether the appellants are the protected tenants or owners under Section 38-E of the Tenancy Act. The High Court held as under:

D

“16. From a perusal of the above, it is clear that it is only after the certificate is issued under sub-section (2), that the rights of ownership stand conferred upon a protected tenant. Another important aspect is that even where a certificate is issued, it must be followed by determination of the amount to be paid to the land owner and actual payment thereof. The default in payment of price in its entirety or portion thereof would lead to annulment of the ownership.

E

F

17. In the instant case the appellants were not issued any certificate of ownership at all. They did not even produce any deed of lease, which contains their names. It was not even pleaded that the price for the land was determined and the same was paid as provided under sub-section (3) of Sec.38-E of the Tenancy Act.

G

xxx

xxx

xxx

- A      22. It is important to note that if a P.T. or his successors are dispossessed from the land, they can seek the relief of recovery of possession under Section 32 of the Tenancy Act by filing application before the Tahsildar. As a matter fact, they filed an application under Sec. 32 of the Tenancy Act way back in the year 1988 for recovery of possession against the Respondents. That, however, was after the lands were acquired and Notification under Sec.4 (1) of the Act was published. Till today no orders have been passed thereon. The result is that the Respondents are undisputedly in possession of the land and in contrast the appellants were never in possession of the same, till it was acquired. The Point No.2 is answered accordingly.”
- B      47. The appeals allegedly filed by the protected tenant against the grant of occupancy rights certificate and subsequently being withdrawn is wholly inconsequential as after the grant of ownership certificate in terms of Section 38-E of the Tenancy Act, the protected tenants are deemed to be owners. Once the protected tenants are deemed to be owners, there could not be any occupancy rights certificate as the purchasers were divested of their ownership by virtue of the grant of ownership certificate under Section 38-E of the Tenancy Act. Such certificate was also not disputed by the purchasers. Therefore, title of the protected tenants is complete and the ownership unambiguously vests with them.
- C      48. Now we shall examine the occupancy rights certificate granted to the purchasers in the year 1982. There was no right with the purchaser to claim occupancy rights on the basis of possession since 1.11.1973 upon surrender of protected tenancy rights. If the surrender of protected tenancy rights is not in accordance with the mandate of the statute, the possession from 1.11.1973 would be inconsequential as such possession would not affect the rights of the protected tenant who is entitled to statutory protection. In fact, the grant of Certificate unequivocally transfers ownership rights to the protected tenant.
- D      49. The Inams Act is a subsequent statute than the Tenancy Act. Section 33 of the Inams Act is to the effect that nothing in the Act shall in any way be deemed to affect the application of the provisions of the Tenancy Act to any inam or mutual rights and obligations of Inamdar

and his tenants, save insofar as the said provisions are in any way inconsistent with the express provisions of this Act. Section 38-E (1) of the Tenancy Act, as substituted in the year 1971, starts with a non-obstante clause giving overriding effect to any other law for the time being in force. Such sub-clause will include the Inams Act and that Inams Act will not be operative in the case of Section 38-E (1) of the Tenancy Act. This notification was issued on 1.1.1973 to cover the entire Telangana Area of the State. Both the Inams Act and the Tenancy Act are enacted by the same Legislature. The Inams Act is a later Act enacted in the year 1955 but Section 38-E (1) was substituted in the year 1971 which starts with a non-obstante clause. Therefore, ownership certificate granted under the Tenancy Act would prevail over the grant of occupancy rights certificate under the Inams Act. Both the Acts operate in different spheres. Inams Act deals with the land owner, whereas the Tenancy Act protects the rights of the tiller i.e., tenant including a protected tenant. In terms of Section 3(2)(b) of the Inams Act, all rights, title and interests vesting in the Inamdar including the protected tenant shall cease and be vested absolutely in the State, free from all encumbrances. Section 7 of the Inams Act deals with the right of a protected tenant to be registered as an occupant of such inam lands in his possession as may be left over after the allotment under Section 4. Section 38-E of the Tenancy Act was inserted initially in the year 1954 and subsequently substituted in 1971 giving overriding effect to such provision. Therefore, an Inamdar under the Inams Act would not have any right of allotment of occupancy rights in view of overriding effect given to Section 38-E.

50. However, ownership rights were granted to the protected tenant in respect of land measuring 19 acres and 16 guntas whereas occupancy rights have been granted in respect of the land measuring 31.05 guntas including of land falling in Survey Nos. 61 and 62 in Village Jeedimetla on 19.2.1982. Therefore, the said occupancy rights certificate in favor of the purchaser shall be valid in respect of the land falling under Survey Nos. 61 and 62, which is not the land claimed by the protected tenant as part of their tenancy. The Occupancy Rights Certificate in respect of land falling in Survey Nos. 53, 54, 55 and 56 is null and void and inoperative.

H

- A        51. The protected tenant shall be entitled to restoration of possession in terms of explanation to Section 38-E(1) read with Section 32 of the Tenancy Act. The Tehsildar to ensure that the possession is delivered to the protected tenant within 3 months.
- B        52. Thus, the present appeals are dismissed except to the extent of land falling in Survey Nos. 61 and 62 in respect of which the occupancy certificate granted to the purchasers on 19.2.1982 would be valid.

Divya Pandey

Appeals dismissed.