

MAROTI AND ORS.

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v.

DEVRAO AND ORS.

NOVEMBER 17, 1998

[SUJATA V. MANOHAR AND G.B. PATTANAİK, JJ.]

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*Hyderabad Tenancy and Agricultural Lands Act, 1950 (As amended by Amendment Act, 1955) : Sections 8 2(w), 34, 37A (1)—Proviso 87.*

*Protected tenancy—Right to claim of—Dispute between original appellant and original respondent—Certificate of a protected tenant under Section 34 granted to original respondent by Deputy Collector on 19.12.1956—Claim of original appellant that he was in possession of land on 12.3.1956 when Section 37A was inserted in the Act—He obtained a certificate of protected tenant under Section 37A—Claim made by him that rights of respondent stood extinguished under Proviso to Section 37A—Held—Proviso makes it clear that Section 37A(1) shall not affect the rights of any person who already holds a certificate as a protected tenant or whose rights as a protected tenant under the unamended Act are under investigation before a competent authority—Where no Tribunal has been constituted under Section 2(w)(ii) the Deputy Collector or other officer authorised under sub-section (4) of Section 87 will be the Tribunal—In the present case since the claim of the respondent to be a protected tenant was being investigated by the Deputy Collector who was also the Tribunal for the purposes of the proviso to Section 37A(1), the High Court has held that a separate application was not necessary and the pursuit by the respondent of the proceedings claiming protected tenancy—In these circumstances, can be considered as also an application to the Tribunal for safeguarding his rights under the proviso to Section 37A—This is entirely because the authority before whom the application was pending is the same authority as the Tribunal under the proviso—The same Tribunal has ultimately granted to the respondent the certificate of protected tenant on 19.12.56—The rights which are granted under this certificate cannot be held as extinguished in these circumstances—The High Court rightly upheld the claim of the original respondent.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5417 of 1994.

From the Judgment and Order dated 3.4.90 of the Bombay High Court

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A in W.P. No. 1347 of 1986.

S.V. Tambwekar for the Appellants.

V.N. Ganpule, S. Biswajit Meitei and S.K. Agnihotri for the Respondents.

B The following Order of the Court was delivered :

By an earlier judgment & order of this Court dated 11th March 1969 in Civil Appeal No .306 of 1966 between the original appellant and the original respondents in the same proceedings, this Court gave the following directions:

C “The order passed by the High Court is set aside and the proceeding stands remanded to the Tahsildar with the direction that he do determine whether Dadarao continued to remain a protected tenant till the date on which he claimed to exercise his right to purchase the land and whether Nivrutti acquired the rights of a protected tenant and if so, whether he was entitled to exercise the right of purchase the land, and if both Dadarao and Nivrutti were entitled to purchase the land or any part thereof the extent to which each of them was entitled and to what extent. The Tribunal will decide the question with the least practical delay and dispose of the rights and obligations of the parties according to law. No order as to costs.”

E These directions were given because there was a dispute between the original appellant Nivrutti and the original respondent Dadarao in respect of the right to claim protected tenancy under the Hyderabad Tenancy & Agricultural Lands Act, 1950 and the benefit under Section 38 flowing therefrom.

F The dispute related to 10 acres and 34 gunthas of land in Survey No. 73, Sutarçara in village Pathan Mandwa Taluka Mominabad, District Bhir. The original respondent claimed to be a protected tenant in respect of the said land. He relied upon Revenue entries in his favour as a protected tenant since 1950-51. He had made an application for correction of revenue entries of subsequent years. Ultimately, the entries were corrected and a certificate as a protected tenant under Section 34 of the said Act was granted by the Deputy Collector on 19.12.56.

H The original appellant claimed to be in possession of the said land on 12.3.56 when Section 37A was introduced in the said Act. He has obtained a certificate as a protected tenant under Section 37A in respect of 6 acres and 16 gunthas of land on 7th of September, 1957. According to the appellant, the

rights of the respondent are extinguished by virtue of the proviso to Section 37A of the said Act. A

After remand it has been found that the appellant Nivrutti was in possession of the said land on 12.3.56 as a tenant. The respondent Dadarao is a protected tenant under Section 34. We have to examine whether under the proviso to Section 37A (1) as it then stood, the rights of the respondent as a protected tenant have been extinguished. Section 37A, at the relevant time, was as follows: B

“37-A (1) Notwithstanding anything contained in this Act, every person who at the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1955 holds as tenant any land in respect of which he is not deemed to be a protected tenant under this Act, shall be deemed to be a protected tenant if the total area of the land owned by the land-holder 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; C

Provided that nothing in this section shall affect the rights of any other person who already holds a protected tenancy certificate in respect of such land or whose rights as protected tenant are under investigation before a competent authority, if such other person applies to the Tribunal for safeguarding his rights within a period of six months from the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act. 1955”. D

This Section was introduced by reason of the Hyderabad Tenancy and Agricultural Land (Amendment) Act. 1955 which came into force on 12.3.56. Under the newly added Section 37A(1) a person holding any land as a tenant on 12.3.56 though not deemed to be a protected tenant prior to the said Amendment Act, shall, on and from 12th of March, 1956 be deemed to be a protected tenant of the land. The proviso to Section 37A(1), however, makes it clear that Section 37A(1) shall not affect the rights of any person who already holds a certificate as a protected tenant in respect of the said land or whose rights as a protected tenant under the unamended Act are under investigation before a competent authority. Thus the existing right as a protected tenant and the existing right to be declared a protected tenant is preserved if such a person applies to the Tribunal for safeguarding his rights within six months of 12.3.56. E F G

The High Court has come to the conclusion that the right of the H

A respondent whose claim as a protected tenant was under investigation when Section 37A came into force, is not extinguished by virtue of the proviso to Section 37A(1). The respondents' claim as a protected tenant was during the relevant period from 12.3.56 and for six months thereafter, being investigated before the same Tribunal to which an application for safeguarding his rights by such a person is contemplated under the proviso to Section 37A(1). His application was, in effect an application to safeguard his rights.

“Tribunal” is defined under Section 2(w) of the said Act as “Agricultural Lands Tribunal” constituted under sub-section (1) of Section 87 for the area concerned. Where no such Tribunal has been constituted under Section 2(w)(ii) the Deputy Collector or other officer authorised under sub-section (4) of Section 87 will be the “Tribunal”. The proviso to Section 37A contemplates an application to the “Tribunal” so defined. In the present case since the claim of the respondent to be a protected tenant was being investigated by the Deputy Collector, who was also the Tribunal for the purposes of the proviso to Section 37A(1), the High Court has held that a separate application was not necessary and the pursuit by the respondent of the proceedings claiming protected tenancy, in these circumstances, can be considered as also an application to the Tribunal for safeguarding his rights under the proviso to Section 37A. This is entirely because the authority before whom the application was pending is the same authority as the Tribunal under the proviso. The same Tribunal has ultimately granted to the respondent the certificate of protected tenant on 19.12.56. The rights which are granted under this certificate cannot be held as extinguished in these circumstances.

It was submitted by the appellant that the Tribunal under the proviso to Section 37A(1) was the Tahsildar and not the Deputy Collector. Therefore, the respondent does not fulfil the requirements of the proviso to Section 37A. The High Court, however, in its impugned judgment has pointed out that the authority to whom an application is to be made under the proviso to Section 37A was designated to be the Tahsildar only by Notification of 11.10.56. At the material time, in the absence of any Notification, Section 2(w)(ii) would be applicable, as rightly held by the High Court. The Tribunal at the material time, was the Deputy Collector.

In the premises the High Court has rightly upheld the claim of the original respondent. The appeal is, therefore dismissed. There will, however, be no order as to costs.

H T.N.A.

Appeal dismissed.