

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.14249 of 2010

ORDER :

It is the case of the petitioners that the land to an extent of Ac.7.62 cents in Sy.No.215, Ac.6.00 cents in Sy.No.205/1 and Ac.3.00 cents in Sy.No.210, situated in Virawada Village, Pithapuram Mandal, East Godavari District belongs to M.S.N.Charities i.e., 1st respondent, Jagannadhapuram, Kakinada-2, East Godavari District was leased out to the father of the petitioners in the year 1976 and he had been cultivating the same as a lessee by paying the Maktha to the 1st respondent regularly. The father of the petitioners died in the year 1993 and since then, they are continuing as lessees being legal heirs of their father by taking Ac.2.00 cents each and eking out their livelihood independently by separation and Makthas being paid collectively. When the 1st respondent is trying to conduct auction in respect of these lands, they have been stopped on the representation of the petitioners. While so, the impugned auction notice dated 12.06.2010 had been issued for auctioning the lands on 24.06.2010 at 3.00 p.m for a period of three years commencing from 2010-11 to 2010-2013, which are being cultivated by the petitioners, without issuing any notice whatsoever to the petitioners, though there is no fault on their part in paying Makthas. Aggrieved by the same, the present writ petition is filed.

2. Counter affidavit is filed by the 1st respondent stating that all the petitioners are encroachers from the year 1993 and they are paying damages from then onwards for their illegal use and occupation of costly agricultural wet land totally measuring

Ac.16.62 cents. It is stated that all the petitioners are defaulters and each one of them owes lot of amount towards damages and all the eight petitioners put together are due an amount of 378 bags of paddy approximately to a tune of Rs.2.80,000/- towards two crops for the years 2008-09 to 2009-10 and the 1st respondent institution has filed O.S.No.178/2007 on the Court of the Senior Civil Judge, Pithapuram against all the petitioners for Rs.1,66,467/- towards recovery of arrear Makatha and the same is under trial. It is also stated that the sub-division of land is not permitted under the relevant agricultural land rules. All the petitioners were issued individual notices in Form-I under Rule 5(1) of lease rules on 30.04.2003 pursuant to which, they had made petition/application for declaration as land less poor persons and the same was rejected by the Assistant Commissioner, Endowments Department, Rajahmundry vide orders in M.A.No.507/2005 dated 28.05.2005, which was served to all the petitioners on 22.06.2005 and the same have been acknowledged by the petitioners. It is stated that Sri Dasam Appa Rao in his life time was himself an encroacher of the Ac.16.62 cents after expiry of lease period for 1974-75 to 1979-80. It is stated that the public auction was held on 24.06.2010 and though 20 persons were present, the same was postponed due to non participation of anybody due to pendency of this writ petition.

3. Heard Sri Y.Vivekananda Swamy, learned counsel for the petitioners and Smt. K.Lalitha, learned Standing Counsel for the 2nd respondent.

4. Learned counsel for the petitioner submits that the since the petitioners are landless poor persons, respondents cannot

evict them without following due process of law as envisaged under Section 82 (1) of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act of 1987'). He would further contend that the procedure envisaged under Rules 3 and 5 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Land Rules, 2003 (for brevity 'the Rules of 2003') [vide G.O.Ms.No.379, Revenue (Endo.I) dated 11.03.2003] has not been followed.

5. On the other hand, Smt. K.Lalitha, learned Standing Counsel for the 2nd respondent submits that since the lease expires, notices under Rules of 2003 were issued and the applications of petitioners under Sections 82 (2) of the Act of 1987 for determining them as landless poor persons have been rejected, as such, the petitioners are liable to be evicted.

6. In view of the factual back ground, it is to be seen that admittedly, even according to the petitioners, they are lessees of first respondent temple. Except stating so, there is nothing on record to show that their lease is in existence. More over, even according to the petitioners, they are claiming themselves as landless poor persons under Section 82 (2) of the Act of 1987. In the counter affidavit it is specifically stated that the applications of the petitioners for declaring them as landless poor persons under Rule 3 of the Rules 2003 read with Section 82 (2) of the Act of 1987 have been rejected. It is pertinent to note that no reply affidavit is filed disputing the same. When once the application filed under Rule 3 read with Section 82 (2) of the Act of 1987 is rejected, the question of treating the petitioners as landless poor persons does not arise. The respondents have also filed copy of the order in M.A.No.507 of 2005, dated 28.05.2005 wherein the

application of the petitioners for declaring them as landless poor persons was rejected. Therefore, it cannot be said that the petitioners cannot be evicted. However, copy of notices under Rule 5 of the Rules 2003 alleged to have been issued to the petitioners, have not been filed.

If the notice under Rule 5 of the Rules 2003 is not issued to the petitioners, the respondents may issue the same to the petitioners and after due procedure as envisaged in the Rules 2003, the respondents may take action for evicting them.

With the above direction, this writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

23.09.2014
kvs

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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