**THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

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**WRIT PETITION No.32499 of 2015**

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**DATED : 06.10.2015**

Between :

Gundala Lakshmamma, W/o.Late G.Radha Krishnaiah,

Aged about 68 yrs, Occu : Housewife,

R/o. Yadamvaripalli, Thippireddigaripalli Village,

Chinnagottigallu Mandal,

Chittoor District & 2 others.

.. Petitioners

and

The Commissioner, Endowments Department,

Government of Andhra Pradesh,

Hyderabad & others.

.. Respondents

This court made the following :

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**ORDER** :

The 1st petitioner is the wife, 2nd petitioner is son and 3rd petitioner is the daughter of late G. Radha Krishnaiah. According to the petitioners, in the year 1975, after conducting public auction, lease was granted in favour of late G. Radha Krishnaiah, granting leasehold rights on the agricultural lands belonging to Sri Padavalamma temple, and Sri Chenna Kesava Swamy temple, Thippireddigaripalli village, Chinnagottigallu Mandal, Chittoor District. The petitioners now seek to enforce the lease granted in the year 1975 at this stage and filed this writ petition.

2. According to learned counsel for the petitioners, even though, Late Radha Krishnaiah, was the highest bidder and though the lease was granted, the property was not handed over to the petitioners and they could not enjoy the lease hold rights in consequent to granting of lease legally, and the lands were kept in possession of 3rd respondent and inspite of repeated demands, possession was never given to the petitioners. Earlier granting of lease was challenged by the temple management by filing O.S.No.1218 of 1975 on the file of Principal District Munsif, Madanapalli and the same was dismissed. Even after dismissal of the suit, possession was not handed over to them. Learned counsel further contends that the temples are in dilapidated condition and the properties of temples are not protected and illegally the leasehold rights are being enjoyed and so far no public auction is conducted and the proceeds of the lease hold rights are not utilized for the development of temple.

3. In this writ petition the petitioners seeks the relief of granting lease hold rights on the properties belonging to two temples, as a consequent to lease granted to late Radha Krishnaiah on 24.05.1975. Petitioners made representation to the Deputy Commissioner, and the Deputy Commissioner in turn forwarded the said representation to the Assistant Commissioner. The Assistant Commissioner vide his endorsement dated 04.07.2014, informed the petitioners that even the so called lease granted to the petitioners expired by 28.06.1981 and therefore, the question of handing over possession of lands to the petitioners in consequent to the lease granted in the year 1975 after this long time, does not arise.

4. Apparently, the lease was granted to the petitioners in the year 1975 but the same was never enforced. Even taking the lease period as six years as valid, it is completed by the year 1981. A person in whose favour lease is granted is only a

lessee having entered into possession and enjoyment of the subject property, during the period of subsistence of lease and subject to payment of lease amounts. Even during the subsistence of lease, it is permissible for the owner of the property to seek eviction by following the due procedure.

5. Since the relationship between the lessee and owner of the property is governed by lease agreement and is contractual in nature, such contract would be valid only during subsistence of the lease period, of course subject to fulfillment of all other requirements. Thus, assuming that lease was granted to late Radha Krishnaiah, the enforcement of such lease was valid only during that period. Admittedly, the lease is not subsisting and the period of lease expired long ago. Therefore, the question of granting physical possession to the petitioners and permitting them to cultivate the lands by referring to 1975 lease does not arise. Even enforcement of terms of lease, at this distance of time, is not valid . Therefore, I see no error in the decision of the Assistant Commissioner, communicated to the petitioners, in proceedings dated 04.07.2014. At the most, petitioners could have made valid claim for compensation against non-enforcement of lease agreement or for refund of the amount paid by the petitioners at the time of entering into lease, if the same is available in law. But no writ can be issued as sought by the petitioner, at this distance of time for enforcement of lease agreement of the year 1975.

6. It is settled principle of law that exercise of power of judicial review under Article 226 of the Constitution of India, is discretionary and the Court can refuse to grant relief even if valid claim is available to a party, if such claim is barred by limitation/delayed and it is against public interest. In the instant case it is not in public interest to seek enforcement of alleged lease agreement of the year 1975 and to direct temple authorities to grant lease now. Therefore, I see no merit in the claim of the petitioners.

7. Accordingly, the writ petition is dismissed. It is needless to observe that if the properties of the respondent temples are to be leased, the lease hold rights are to be granted by conducting public auction and to the highest bidder and such lease has to be granted for fixed tenure only. Further competent authority should take appropriate action for protecting the properties of the temple and by granting lease in accordance with the Rules made under A.P. Charitable & Hindu Religious Institutions and Endowments Act, 1987. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

_____ **P.NAVEEN RAO,J**

06th October, 2015.

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