

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 11794 of 2010

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ORDER :

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It is the case of the petitioners that they are cultivating tenants in respect of wet land to an extent of Acs.5.04 cents in Sy.No.427/3 of Talluru Village, Gandepalli Mandal belonging to 3rd respondent choultry since 2007. Originally the 3rd respondent authorities leased out the lands to the grand father of the petitioners in the year 1956 and he cultivated the lands till his death i.e.,20.09.1997 and later the father of the petitioners cultivated the lands till his death i.e., 07.11.2007 and after his death, the petitioners started cultivating the lands by paying makta to the 3rd respondent authorities. After issuance of G.O.Ms.No.379 Revenue (Endowments-I) dated 11.03.2003 by the 1st respondent, the father of the petitioners late Govindarajulu made an application in the year 2005 to the 2nd respondent to declare him as landless poor as per Section 82 of the Andhra Pradesh Charitable & Hindu Religious Institutions and Endowments Act, 1987 (for brevity 'the Act of 1987'). Though the 2nd respondent received the same, no enquiry was conducted. Subsequently, the petitioners made representation to the 2nd respondent to declare them as landless poor under Section 82 of the Act of 1987 on 04.05.2010. Though the 2nd respondent received the same on 08.05.2010, no orders have been passed. Except the above land, petitioners do not possess any land. It is stated that the petitioners paid an amount of Rs.10,000/- towards makta and the 3rd respondent accepted the same. While so, the 3rd respondent issued impugned proceedings for conducting public auction on 24.05.2010 for granting leasehold rights in respect of the land, which is in occupation of the petitioners. Aggrieved by the same, present writ petition is filed.

2. Counter affidavit is filed by the 2nd respondent stating that as per the records, one Obinni Sattैया, S/o.Govindu of Thalluru village was tenant in respect of Ac.5.04 cents wet land in R.S.No.427/3 of Thalluru village in

Gandepalli Mandal, East Godavari District belongs to 3rd respondent Choultry. After his death in the year 1997, his son Govindaraju cultivated the said land till his death in the year 2007. After amendment to Section 82 of the Endowments Act 30/87, the lands of the Charitable, Hindu Religious Institutions and Endowments are exempted from the purview of A.P. Tenancy Act and that there is no heritance of tenancy in pursuant to the said amendment for both the Acts as Section 10 of A.P. Tenancy Act is not applicable to the lands of 3rd respondent choultry. After the death of Obinni Satteyya, even though his son Govindaraju cultivated the said land till his death in the year 2007, but his status is only an encroacher as per the statute. There is no valid lease either to the 1st petitioner or his predecessors. The first petitioner is only an encroacher and he is not entitled to claim benefits of landless poor as per Section 82 of the Endowments Act 30/1987 and also the Rules framed under G.O.Ms.No.379, dated 11.03.2003. As per the records the 2nd petitioner is not the encroacher/tenant of the land at any time and the damages were paid by 1st petitioner alone. The 3rd respondent did not recognize the 2nd petitioner even as an encroacher and there is no privity of contract for recognizing the 2nd petitioner as an encroacher. After the death of the father of the petitioners, they do not have *locus standi* to claim as landless poor persons under the Act 30 of 1987.

3. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the writ petition stating that as per the records, the 2nd petitioner is not the encroacher-tenant of the land and the rent was paid by the 1st petitioner alone. The 3rd respondent authorities did not recognize the 2nd petitioner even as an encroacher. This respondent is not aware whether the petitioners joined as the legal representatives to the deceased Govinda Rajulu in the proceedings pending before the Assistant Commissioner and that this respondent never tried to dispossess the petitioners forcibly from the leasehold land. As per Section 82 of the Act, even if the tenant claims right as landless poor, he must pay 2/3rd of the market rate as rent.

4. Heard Sri V.L.N.Gopala Krishna Murthy, learned counsel for the petitioners and Smt K.Lalitha, learned Standing Counsel for the 3rd respondent.

4. It is to be seen that the petitioners have not produced any material to show that they are tenants for a period of six years preceding the Act 30 of 1987 or before the Rules framed thereunder in the year 2003, as such, the question of claiming status of landless poor persons and claiming benefit under Section 82 (2) of the Act does not arise. The possession of the 1st petitioner is admitted by the 3rd respondent in the counter and also stated that the first petitioner is an encroacher. As far as the 2nd petitioner is concerned, no documents are produced to show that she is in possession of the subject land. Hence, the prayer of the petitioners for declaring them as landless poor persons cannot be accepted. When once they cannot claim status of landless poor and there is no valid and subsisting lease in favour of the petitioners, they cannot object for conducting of public auction in respect of the subject land. Since the possession of the 1st petitioner is admitted, the 3rd respondent to take appropriate steps for his eviction, by following due process of law.

Accordingly, this writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

06.10.2015.

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HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 06-10-2015

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