

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.15973 of 2011

ORDER:

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This writ petition is filed to call for the records pertaining to O.A.No.2191 of 2010 on the file of 3rd respondent, dated 26-03-2011 and quash the same as illegal and arbitrary.

The case of the petitioner is that he is carrying on business in kerosene dealership for the last 30 years in the land admeasuring 466 square yards belonging to 2nd respondent by constructing huge underground storage tanks for storing kerosene. During the year 2006, the 2nd respondent-temple authorities requested the petitioner to vacate from north east corner of said site assuring him to provide site on the western side and after several deliberations, the 2nd respondent-temple authorities promised the petitioner to occupy north-west corner belonging to temple admeasuring 590 square yards and resolution was passed to that effect by 2nd respondent-temple fixing rent at Rs.4650/-. The petitioner thereupon made constructions of underground, storage tanks and some structures. When the matter stood thus, the 1st and 2nd respondent filed a petition under Section 83 (4) of A.P. Charitable and Hindu Religious Intuitions And Endowments Act, 1987 (for short" the Act") to the Deputy Commissioner, Kakinada in O.A.No.19 of 2007 and upon the constitution of Endowments Tribunal, his case was transferred and numbered as O.A.No.2191 of 2010 by the Tribunal. Though, the petitioner filed counter and raised several contentions. The 3rd respondent-Tribunal, however considering the said aspect allowed the same by ordering vacation of petitioner. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner submits that though the petitioner filed documents in Ex.R-1, dated 24-06-2006, Ex.R-2, dated 26-11-2007, wherein the Trust Board of the 2nd respondent-temple recommended extension of lease in favour of the petitioner and in view of 2nd respondent-temple submitted report in favour of the petitioner, said aspects were not considered by the temple and ordered eviction. He also submits that permanent structures are raised by investing huge amounts and when recommendations are pending before the authorities of 1st respondent and 2nd respondent ought not to have filed the O.A. for eviction of the petitioner and he also submits that the petitioner is paying rent at Rs.9,000/-, which is market value prevailing and the petitioner is ready to pay enhanced rent at rate excess than 33% over and above the existing rents.

On the other hand Smt.K.Lalitha, learned Standing Counsel for the 2nd respondent-temple submits that the lease in favour of the petitioner that too for different site was only for a period of 1997 to 2000 and later, the same was extended till 2003 and after that the petitioner has occupied another site without any valid lease. She also submits even other wise, there is no valid and subsisting lease beyond 2003 and by referring to explanation to Section 83 of the Act, she submits tenancy at sufferance and tenancy at holding over are deemed to be encroachers as per explanation to Section 83 of the Act and the Tribunal rightly considered the same and treated the petitioner as encroacher and ordered eviction. Though the petitioner is a tenant, but when there is no valid lease deed, no mandamus can be issued for his continuance. She also submits that as per rule 3 of the Immovable Properties and other Rights (Other than Agricultural Lands) Leases and Licenses Rules, 2003 (for short “ Rules, 2003”) all leases of licenses shall be made by way of public auction only. Unless, the Commissioner permits grant on lease otherwise by way of public auction, if he satisfied for the reasons to be recorded.

In the present case, it is to be seen that there is no dispute of

relationship of landlord and tenant between the petitioner and the 2nd respondent-temple and the same is categorically admitted by the petitioner in the Tribunal and the Tribunal also give same finding. The only aspect raised by the petitioner is since as per Exs.R-1 and R-2 recommendations for extension of lease are in favour of the petitioner, which were not considered by the Tribunal. It is for the authorities to consider the case of the petitioner as per rules. Once the matter is before the Tribunal and the Tribunal has to decide whether the petitioner is a encroacher and once the Tribunal has come to conclusion that the petitioner is an encroacher and there is no valid subsisting lease, it cannot be said that the Tribunal erred in declaring the petitioner as encroacher and cannot refuse the order of eviction on the ground of some proposals are pending before authorities for extension of lease and even as per rule 4 (2) (a) of Rules, 2003, no lease of immovable property shall be granted for a period of exceeding three years and as per rule 4 (3) (a) grant of lease in excess of three years is always by the Commissioner of Endowments. In the present case, the petitioner is continuing in premises still though lease was only for the period 1997-2003.

Rule 3 (1) of the Rules, 2003 reads as follows:

“ Provided that the Commissioner may on a request made in writing by the Executive Authority permit the lease of any property or right other wise than by way of public auction, if he is satisfied for reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby. He may grant permission to such executive authority to grant a lease otherwise than by way of public auction”.

This Court and Apex Court many a times held that grant of lease of any property must be by way of tender-cum-public auction and it will be beneficial to the public exchequer and in the public interest.

As it is contended by the petitioner that he has raised permanent structures, that cannot come in the way of ordering

eviction and when the Tribunal also gave finding that the petitioner is an encroacher, this Court also cannot issue Mandamus for continuing the petitioner that too when the petitioner has no valid and subsisting lease.

A perusal of the order of the Tribunal goes to show that the Tribunal has considered all the aspects elaborately and in proper perspective. More so, this Court cannot sit in appeal or as the order of Tribunal by re-appreciating evidence for coming to a different conclusion as held by Apex Court in **M/s.Kalinga Mining Corporation v. Union of India and others.**

In view of above, I do not see any merit in the writ petition and accordingly, the writ petition is dismissed.

Since the petitioner is continuing business for the least 30 years and states that permanent structures are erected, he requires some time for getting suitable accommodation, petitioner shall be granted time for a period of six months from today for vacating the premises. The petitioner shall undertake to pay existing rents and handover vacant possession immediately after expiry of said period and if the respondent authorities wants to conduct auction of the said land, meanwhile it is always open to the petitioner to participate provided he is otherwise qualified. It is open for the authorities to put the place for auction and if the petitioner becomes successful bidder, he can be continued as per fresh tender conditions, otherwise, the petitioner has to vacate the premises within six months.

As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY,J

29-10-2015

Nvl

