

***THE HONOURABLE SRI JUSTICE P. NAVEEN RAO**

+ WRIT PETITION No.17322 and 17334 of 2015

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% 09-07-2015

Nalla Sai Prasad s/o. Nalla Ranga Rao
Age: 55 years, Occu: Business,
C/o. Shop NO.1, D.No.11/43,
Main Road, Tiruvuru Village and Mandal,
Krishna district and others.

....Petitioner

Vs.

\$ The State of Andhra Pradesh,
rep.by its Principal Secretary (Endowments),
Secretariat, Hyderabad

.... Respondents

!Counsel for the petitioner : Sri Kowturu Vinaya Kumar

Counsel for the respondent No.1 to 4 : G P for Endowments (AP)

Counsel for the Respondent No.5: Smt. K Lalitha

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.17322 and 17334 of 2015

Dated : 09 .07.2015

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W.P.No.17322 of 2015

Between:

Nalla Sai Prasad s/o. Nalla Ranga Rao, Age: 55 years, Occu: Business,
C/o. Shop NO.1, D.No.11/43, Main Road, Tiruvuru Village and Mandal,
Krishna district and others.

.... Petitioners

And

The State of Andhra Pradesh, rep.by its Principal Secretary (Endowments),
Secretariat, Hyderabad and others.

.... Respondents

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.17322 and 17334 of 2015

COMMON ORDER:

Heard learned counsel for petitioners Mr Kowturu Vinay Kumar, learned Government Pleader for Endowments and learned Standing Counsel for 5th respondent temple Smt K. Lalitha.

2. In both these writ petitions, petitioners challenge conducting of auction for lease of shops notified vide notification dated 19.6.2015 and trying to dispossess them forcibly under the guise of said auction.

3. In W.P.No. 17322 of 2015, petitioners claim to be lease holders of shop Nos. 1 to 4 (A), 4 (B), 5 to 7, 12 and 15 and in W.P. No. 17334 of 2015 petitioners claim to be lease holders of shop Nos.8 to 11, 13, 14 and 16. These shops are located in R.S. No. 154 and 170 of Tiruvuru village, Krishna district and belong to Sri Ramalingeshwara Swamy temple located near RTC Bus station, Tiruvuru village and mandal-5th respondent herein.

4. Case of the petitioners is that long years ago petitioners/their ancestors have taken on lease vacant sites belonging to 5th respondent temple with an understanding that they would build their shops at their own cost and continue to pay rents to the temple for carrying the business from the said shops. In terms of the said understanding, by incurring huge expenditure, the shops were constructed and they are in possession and enjoyment of the same and paying the rents and house tax to the Gram Panchayat regularly.

5. Having regard to the construction of shops and their enjoyment and possession for long time, petitioners represented to the State Government for allotment of the said shops in their favour permanently. Considering the said request, Government issued orders in G.O.Ms.No.843 dated 30.8.1993 granting permission to the Executive Officer of the 5th

respondent temple to sell the site measuring 872 sq yards of the temple situate in R.S.No. 154 and 170 to occupants without conducting public auction by following the procedure contemplated under Section 80 (1) (C) of A.P. Charitable and Hindu Religious Endowments Act, 1987 (for short Act, 1987). In consequent to the said orders of the Government, Commissioner issued proceedings dated 23.8.2002 according permission to the Executive Officer to implement orders of the Government in G O Ms No. 843 dated 30.8.1993. However, at the instance of third parties and without affording opportunity of hearing, Government withdrew said orders vide orders passed in G.O.Ms.No.141 dated 23.4.2015.

6. While so, relying on orders passed in G.O.Ms.No.141 dated 23.4.2015 respondent issued notices to petitioners on 25.5.2015 asking them to vacate the shops in their occupation. Petitioners further aver that as lease earlier granted expired on 31.12.2014, on 8.6.2014 they have submitted representations to 5th respondent to extend the lease period from 1.1.2015 for further period of three years on enhancement of rent by 50 % of the rent being paid, no reply was given and on the contrary impugned tender notification was issued on 19.6.2015. Hence, these writ petitions.

7. Learned counsel for petitioners Sri Kowturu Vinaya Kumar submits that petitioners have developed the property by spending huge money and eking out their livelihood by carrying on business from the said shops. Having regard to the fact that petitioners are in possession and enjoyment for several decades, Government initially granted orders favorable to them but without appreciating these facts, erroneously withdrew the orders. He further submits that having regard to the fact that petitioners have developed the property and shops were constructed by spending money on their own, at least, lease ought to have been renewed on the terms offered by them. Not renewing the lease on the terms offered by the petitioners is illegal.

8. Learned counsel for petitioners further contends that petitioners have submitted representations on 8.6.2015 seeking for renewal of the lease and even without disposing of the said application, respondents ought not to have issued further tender notification and such action amounts to arbitrary

exercise of power and authority.

9. Learned counsel further submits that petitioners have been in possession consequent to valid lease granted in their favour and they cannot be dispossessed without following the due procedure as envisaged under Section 83 and 84 of the Act, 1987. Without evicting the petitioners by following the due procedure as envisaged in the Act, 1987 no fresh auction can be conducted and no forcible possession can be taken from petitioners.

10. Learned Standing Counsel for respondent submits that due procedure was followed to evict the petitioners. Competent Authority initiated proceedings under Section 83 of the Act, 1987 for eviction of the petitioners by following eviction proceedings before the Deputy Commissioner, Endowments Department, Kakinada. Based on the petitions filed before the Deputy Commissioner Endowments, O.A.Nos.34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48 and 56 of 1993 were registered against each of the petitioners in these two writ petitions. After elaborate consideration of the rival contentions, the Deputy Commissioner passed orders on 30.6.1998 holding the petitioners in these two writ petitions as encroachers and directed them to vacate the petition schedule properties within 30 days from the date of receipt of order. The Deputy Commissioner categorically held that there was no valid lease granted in favour of petitioners. Aggrieved by the said orders of the Deputy Commissioner, all the petitioners in W.P.No.17334 of 2015 and petitioner No. 8 in W.P.No.17322 of 2015 have instituted writ petitions before this Court. Others have not even challenged the orders of the Deputy Commissioner and the said orders have become final. Division bench of this Court by orders dated 17.11.1999 disposed W.P.Nos.10372, 10440, 10466, 10361 and 10359 of 1999, granting continuation of lease to the petitioners therein for a period of three years starting from 1.1.2000 to December, 2002 on payment of Rs.1000/- per month in the form of licence fee. Court further directed that before expiry of the period, petitioners therein should vacate the shops/land and put the 4th respondent therein in vacant possession of the land. Court further directed to pay the lease fee regularly and should not put up any permanent structures. Those orders have also become final. Thus, insofar as petitioners who have instituted writ petitions, they were entitled to continue as licensee for a period of three years on

payment of fee but they were directed to vacate the premises before completion of licence period i.e., December, 2002. Insofar as others are concerned, as no writ petitions were instituted, orders passed by Deputy Commissioner have become final. Learned counsel therefore submits that it is incorrect to contend that procedure is not followed to evict the petitioners.

11. Learned counsel further submits that as G.O.Ms.No.843 dated 30.8.1993 was in force till the Government passed orders in G.O.Ms.No.141 dated 23.4.2015, no further action was taken. She further submits that orders in G.O.Ms.No.843 were challenged before this Court by aggrieved persons opposing sale of the properties belonging to temple in W P No. 17459 of 2002 and by judgment dated 13.9.2013 said writ petition was disposed of directing the Government to take a decision whether they would like to continue with the decision taken in G O Ms No. 843 or otherwise. As a consequence to the said decision, Government issued orders in G O Ms No. 141 dated 23.4.2015 withdrawing the orders passed in G.O.Ms No. 843 dated 30.8.1993. Thus, as earlier orders are withdrawn and orders passed in O.As/W.Ps filed by the petitioners have become final consequential action is taken. She therefore submits that there is no illegality in asking the petitioners to vacate and to go for fresh auction.

12. Admittedly in the O.As filed against the petitioners, a declaration was given by the Deputy Commissioner that there was no valid lease granted in favour of the petitioners and petitioners are liable to be evicted from the properties belonging to 5th respondent temple. The Deputy Commissioner granted 30 days time for eviction from the date of receipt of the order which was made on 30.6.1998. Though the said order is not interfered by this Court, however, Court granted continuation of the petitioners in the said properties as licensees for a period of three years ending December, 2002 on payment of licence fee. Court further ordered that they should vacate the subject premises before the expiry of the licence period. Irrespective of the Government's decision to sell the subject shops to the petitioners was in force, in terms of the mandate given by this Court, all these petitioners were required to vacate the subject premises before December, 2002. They have no manner of right to continue in possession beyond December, 2002. Further more, in terms of the orders passed by this Court such of those

petitioners are only licensees and after December, 2002 no such license exists in their favour, therefore their continuation in the premises after December, 2002 is illegal. Merely because authorities of the 5th respondent temple allowed them to continue in such shops beyond December, 2002, does not vest in them any right to claim that they are entitled to continue to occupy the subject shops for any number of years.

In fact, it was illegal on the part of the Assistant Commissioner, Vijayawada to extend the lease contrary to the orders of this Court referred to above. Further more, insofar as other petitioners who have not even instituted writ petitions against the orders passed by the Deputy Commissioner, the said orders stand against them and they were having been declared as trespassers, are liable to be evicted and if they do not vacate, liberty was granted to the temple to proceed against them under Section 84 of the Act. Thus, they have no manner of right to continue in the subject shops and granting of lease illegally by the Assistant Commissioner, does not give them any right or claim for further continuation of lease. Their continuation in the subject shops after orders of the Deputy Commissioner and further continuation beyond December 2002 by such of those writ petitioners who have instituted earlier writ petitions, is *ex facie* illegal.

13. Admittedly petitioners do not have valid lease executed as required under the Immovable Properties and (other than Agricultural Lands) Leases and Licenses Rules, 2003 (for short, 'Rules, 2003'). A detailed procedure is envisaged by the Rules for the properties belonging to temple and if the temple authorities want to grant lease of the properties, tender notification has to be issued, public auction has to be conducted and to the successful bidder in the public auction, lease has to be granted. Lease has to be in the form of written lease executed and registered and once such lease is granted after public auction, it is valid for only three years. There is no provision for renewal of lease without conducting public auction. If the authorities intend to grant lease beyond the period of three years, prior approval has to be obtained from the Commissioner which shall not be exceeding 5 years and even for the Commissioner to grant such approval, he has to call for objections and suggestions before taking such a decision. Beyond 5 years period, Government alone is competent. The purpose of

granting lease of temple properties is to augment resources for over all development of temple and to provide better amenities to the pilgrims, it is not intended to provide a business tool for few people. A better lease amount can be secured only if public auction is conducted and such auction must be the norm at regular intervals. Extension of lease should be an exception and be granted only if it is beneficial to the temple.

14. Admittedly, petitioners are in possession as lessee/licencees for a period unreasonably longer than what is specified in the Rules and they do not have valid lease executed in their favour as required under the Rules. They have disobeyed orders of this Court and the Endowment Tribunal. Thus, no manner of right vests in the petitioners to contend that they are entitled to continue with the lease and on the terms indicated by them without conducting public auction. Thus, I see no irregularity or illegality in conducting public auction as notified vide orders dated 19.6.2015. Petitioners have to immediately vacate the shops and handover vacant possession.

15. Accordingly, both the writ petitions are dismissed. No costs. Miscellaneous petitions, if any, pending in these writ petition shall stand closed.

P.NAVEEN RAO,J

Date: 09-07-2015
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