

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.5161 of 2015

ORDER:

Petitioner is aggrieved by the action of the 1st respondent Devasthanam in stipulating condition No.9 in auction notice dated 20.02.2015 to the effect that the persons who are litigating and having dues with the Devasthanam and their relatives are not permitted to participate in the open auction proposed to be conducted on 02.03.2015 for grant of leasehold rights in respect of the agricultural land belonging to the Devasthanam in an extent of Ac.4.24 cents in Sy.No.707 of Pitchinaidupalli Village, Chandragiri Mandal, Chittoor District.

Petitioner states that he does not have any litigation or dues with the 1st respondent Devasthanam, but his brother by name B. Gurava Reddy filed a writ petition vide W.P.No.3129 of 2009 claiming right over the subject land and that the said writ petition was dismissed and challenging the same, he filed a writ appeal and the same is pending. It is the case of the petitioner that he and his brother are residing separately and that he does not have any legal or financial nexus with his brother and in spite of the same, he is not allowed to participate in the auction, in view of condition 9 of the auction notice, which is arbitrary, illegal and unconstitutional.

This Court, on 03.03.2015, while issuing notice before admission, passed interim orders granting stay of finalization of auction proceedings until further orders and it was further ordered that if the same has already been finalized, there shall be stay of all further proceedings pursuant thereto.

The 1st respondent Devasthanam filed a counter-affidavit, wherein it is *inter alia* stated that the petitioner and his brother Gurava Reddy were cultivating the subject land from the year 1970 to 1976 and after expiry of lease, the brother of the petitioner, in whose name the lease was granted, continued in possession and enjoyment of the land as an encroacher. Thereupon, the Deputy Commissioner of Endowments suo motu initiated proceedings in O.A.No.25 of 1998 and the same was allowed declaring Gurava Reddy as encroacher. Challenging the same, the

said Gurava Reddy filed W.P.No.3129 of 2009, while on the other hand, one Dhanunjaya Reddy filed W.P.No.18555 of 2010 seeking implementation of the orders issued by the Government to handover the 1st respondent Devasthanam to TTD for better management. Both the writ petitions were heard together and finally, the writ petition filed by Gurava Reddy was dismissed and the other writ petition filed by Dhanunjaya Reddy was allowed. The said Gurava Reddy preferred W.A.No.1620 of 2014 against the dismissal of W.P.No.3129 of 2009, which is pending. It is further stated that on one pretext or the other, the petitioner and his brother Gurava Reddy continued in possession of the subject land as encroachers for the past 45 years and ultimately the Devasthanam succeeded in taking possession of the land and put the same for public auction. It is further stated that the petitioner, after obtaining interim order dated 03.03.2015, has approached the respondent Devasthanam with a representation dated 07.03.2015, wherein he has stated that he has been cultivating sugarcane crop in the subject land for the past five years. Thus, the statements made by the petitioner in the writ affidavit that he is no way concerned with the subject land and that there is no nexus between him and his brother Gurava Reddy are absolutely false and the petitioner approached this Court with unclean hands. It is further stated that the auction was over and it was also confirmed by the time the interim order of this Court was communicated and handing over of possession is stopped in view of the interim orders of this Court.

In the reply-affidavit, the petitioner has taken a stand that in view of ill-health of his brother, he has been cultivating the land and except undertaking cultivation, he has never raised any dispute against the Devasthanam. He further stated that in a hurry, he failed to mention about the same, which is only due to inadvertence and not deliberate. He reiterated his contentions about the illegality on the part of the 1st respondent Devasthanam in stipulating condition No.9 in the impugned auction notice.

Heard the learned counsel for the petitioner, learned Standing Counsel for the 1st respondent Devasthanam and the learned Government Pleader for Endowments (A.P.).

In the writ affidavit, there is no whisper by the petitioner about his connection with the subject land and he stated only with regard to the dispute between his brother and the 1st respondent Devasthanam and contended that on that ground, he

was being prevented from participating in the auction. Later, it was brought to the notice of this Court by the 1st respondent Devasthanam that the petitioner has been cultivating the subject land and in support of the said contention, the 1st respondent Devasthanam has filed a copy of the representation dated 07.03.2015 submitted by the petitioner to it along with a copy of the interim order passed by this Court. From a perusal of the said representation, it is evident that the petitioner has been cultivating the subject land for the past five years by raising sugarcane crop therein. In his reply-affidavit, the petitioner did not dispute the said representation, but tried to cover up his laches by stating that due to ill health of his brother, he has been cultivating the subject land and he failed to mention the same in the writ affidavit inadvertently. The fact that the petitioner has been cultivating the subject land for the past five years is a material fact and this Court cannot treat the suppression of such material fact as an inadvertent mistake. Further, the petitioner, having averred in his writ affidavit that he has no nexus with his brother, came up with a contrary plea in his reply-affidavit that due to ill health of his brother, he is cultivating the subject land. Further, while the auction notice was issued on 20.02.2015, the petitioner has approached this Court on the date of auction i.e. on 02.03.2015. All this shows that the petitioner, with an evil design to stall the auction proceedings by hook or crook, has approached this Court with unclean hands by suppressing the material facts and making misleading statements. The remedy under Article 226 of the Constitution of India is a discretionary and equitable remedy and the person, who seeks to avail the said remedy, shall approach the Court with clean hands. Normally, this Court grants interim orders based on the averments made in the writ affidavits. If the litigants suppress the material facts in their affidavits and come to Court with misleading statements and this Court grants interim orders based thereon, then there will be no sanctity to the oath and there will be sheer abuse of process of Court. No doubt, there is some force in the contention of the petitioner that stipulating a condition disentitling the persons who are having litigation or dues with the Devasthanam or their relatives from participating in the auction is unconstitutional, but however, this Court is not inclined to go into the same in view of the fact that the petitioner has approached this Court with false statements. If the writ petitions of this nature are entertained, it gives scope to unscrupulous elements to approach this Court with unclean hands and obtain orders. To curb this attitude and prevent abuse of process of Court, this Court feels that the petitioner should be penalized by way of costs, besides dismissing the writ petition.

Accordingly, the writ petition is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only) payable to the A.P. State Legal Services Authority, within a period of two weeks from the date of receipt of a copy of this order. If the petitioner fails to pay the costs, the A.P. State Legal Services Authority is at liberty to take appropriate action against him.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

A. RAJASHEKER REDDY, J

21st April, 2015

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