

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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+ WRIT PETITION No.19008 of 2015

% Dated 26.06.2015

Smt. Kuthuri Suryavathi W/o.late Kuthuri Bapi Raju

.... Petitioner

VERSUS

\$ The State of Andhra Pradesh, rep. by its Principal
Secretary

and two others

... Respondents

! Counsel for Petitioner: Sri Dadi Radha Krishna

^ Counsel for Respondents: Government Pleader for
Endowments for R.1 and R.2

Smt.K.Lalitha, Standing Counsel

for R.3

< GIST:

> HEAD NOTE:

? CITATIONS:

2006 (6) ALT 173

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 19008 of 2015

ORDER:

Petitioner claims that her ancestors are founders of the 3rd respondent-temple. They have donated the lands for the benefit of the temple and cultivating the said lands and proceeds have been used for the development of the

temple. Subsequently, they have taken the lands on lease and have been paying the lease amount every year. In that manner, they have been cultivating the lands to an extent of Ac.1.14 cents in R.S.No.99/3 and Ac.0.62 cents in R.S.No.106/1 of Vemagiri Village, East Godavari District, for the last more than forty years. While so, on 23.04.2015, the impugned notice, in this writ petition, is issued directing the petitioner to evict from the said lands.

2. Learned counsel for the petitioner contends that the procedure as contemplated in the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act') is not followed in evicting the petitioner, therefore, the same is illegal. By issuing such impugned notice, the petitioner cannot be thrown out of her only source of livelihood and the respondents cannot go for fresh auction.

3. Learned Standing Counsel for the respondents submits that since the petitioner was not granted any lease in accordance with the A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short, 'the Rules'), no manner of right is vested in petitioner to claim continuation of the lease. The impugned notice is validly issued and does not call for interference by this Court.

4. Section 82 (3) of the Act, mandates that manner of granting of lease, period of lease or licence and the competent authority to grant such lease should be as

prescribed. In exercise of power vested by Section 82 read with Section 153 (1) of the Act, Rules 2003 were formulated and notified vide G.O.Ms.No.379 Revenue (Endowment.I), Department dated 11.03.2003. These are the rules which are in force. As per Rule 7, all leases should be by public auction. By dispensing conducting of public auction, lease can be granted subject to fulfilment of conditions mentioned therein, which is an extraordinary circumstance and subserves public interest. Rule 8 prescribes, in normal circumstance, maximum period of grant of lease as three years. Rule enables grant of lease of more than three years, by order of the Commissioner upto 6 years and by order of Government beyond six years. Rule 9 prescribes terms and conditions of lease. According to Rule 18, all lease deeds should be in writing and duly stamped and registered and no person should be placed in possession of the leased land until deed is executed. According to Rule 19, any lease granted, continued or allowed to be continued in contravention of these rules should be null and void and the person in possession should be treated as encroacher within the meaning of Section 83 of the Act.

5. As noticed from the relevant rules referred to above, lease of agricultural land belonging to the endowment can be granted only after public auction is held and such lease can be for a period of three years, in normal circumstance

unless the provision in rule 8(2) is invoked and lease for a longer period is granted. The rules do not envisage extension of lease beyond the period envisaged in Rule 8. Such lease has to be in writing and registered. The possession can be granted only when registered lease deed is executed. Any lease granted, continued or allowed to be continued otherwise than in accordance with Rules is declared as null and void. Thus, a person who successfully participates in the auction is entitled to take agricultural land belonging to the endowment for period as prescribed in Rule 8. After the lease period is over, auction has to be conducted to grant fresh lease. The highest bidder can be the person entitles to cultivate the land during the subsistence of lease. It can be the existing lessee. There is no prohibition of participation of existing leaseholder in the auction nor there is any limit imposed in participating in the auctions successfully conducted. Thus, the rules mandate conducting of auction ordinarily for every three years and if lease for a longer period is granted as per Rule 8(2), after expiry of such period.

6. In **Dega Babi Reddy and others v. Government of A.P. rep.by its Principal Secretary, Revenue (Endowments) Department and others**^[1], this Court held as under:

“3. Rule 7 of the A.P.Charitable and Hindu Religious Institutions and Endowments

Lease of Agricultural Lands Rules, 2003 (for short 'the Rules') and the provisions of similar rules earlier to these; whether made under the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1996 or under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the New Act'), as well as the general principles of Administrative Law and authoritative precedents, obligate Endowment properties to be alienated including by way of lease only by a transparent public process in a manner which would ensure the fetching of a competitive return on Endowment properties and not by clandestine and sub-rosa private understanding between Endowment Officers or managers of temples and private individuals.

The unauthorized occupation of the Endowment lands by the petitioners without a lease deed executed in their favour by or on behalf of the Endowment after following the due process or law; substantive and procedural, would not elevate occupation of the petitioners to the status of cultivating tenants as understood by provisions of the New Act.” (emphasis supplied)

7. In the judgment dated 17.09.2008 in W.P.No.27476 of 2007, this Court held as under:

“Even otherwise, the stand taken by the petitioner in this writ petition is almost challant in nature. He feels that even if his possession is illegal, he can be dispossessed, only by

taking recourse to Section 87 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act. It only exhibits his unshaken confidence that he would be able to thwart the attempts of the temple for few more decades. The conduct of the petitioner cannot be countenanced. Further mere pendency of an appeal or revision before the 4th respondent cannot be the basis for the petitioner to be in possession of the land.”

8. This principle is reiterated in the subsequent decisions of this Court. In W.P.No.23853 of 2008, 27448 of 2008 and 12676 of 2010 and batch dated 18.12.2008, 19.12.2008 and 8.06.2010 respectively, it was contended that even if they were held to be encroachers under Section 83 of the Act, the respondents ought to act strictly in accordance with the procedure prescribed to evict the encroachers. This Court held that the exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and writ is not issued as of right or as a matter of course. Such power need not be exercised in every case where there is an error of law. One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a court of appeal to set right mere errors of law which do not occasion injustice. Even when some defect is found in the decision making process, this Court will

exercise its discretionary power under Article 226 of the Constitution of India with great caution and only in furtherance of public interest and not merely on the making out of a legal point. This Court is required to keep larger public interest in the mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference would it intervene in the matter. Persons, who continue to remain in illegal occupation cannot be heard to contend that though they continue to remain in illegal occupation, the respondents can only have them evicted in accordance with the summary procedure prescribed under Section 83 of the Act. Having delineated the scope of exercise of power by writ Court said contention was rejected. The same principle is followed in W.P.Nos.29268 of 2011 and 25513 of 2010.

9. In the instant case admittedly petitioner is a lessee of temple land and no valid lease exist in favour of petitioner. Petitioner is not sought to be thrown out of the property without notice. In view of Act, 1987, notice was issued on 23.04.2015 directing petitioner to vacate the agricultural land in his possession. Admittedly, by the time writ petition is filed, it was more than two months' time available with him to vacate the land. It is not a case of throwing petitioner out of lease hold land without following due process. Further more, petitioner only sought time to

vacate the land. Thus, this is not a case where grave injustice is caused to petitioner warranting interference by this Court in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India.

10. There are no merits in the writ petition and the same is dismissed. Till auction is finalized, both parties shall maintain status quo. No order as to costs.

11. Miscellaneous Petitions pending, if any, shall stand closed.

P. NAVEEN RAO, J

26th June 2015

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Note: L.R. copy to be marked – Yes.

[\[1\]](#) 2006 (6) ALT 173