

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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WRIT PETITION No.1514 of 2008
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ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the writ petitioners seeking the following relief/s:-

“....to issue a Writ of Mandamus or any other appropriate Writ, order or direction declaring the action of the respondents herein in trying to evict the petitioners and others from an extent of Ac.13-10 cents of land in R.S.No.18/1C; 16/F, 18/1-I and 19/2 of Tallagudem Village, Pedapadu Mandal, West Godavari District as arbitrary, illegal and without jurisdiction that too without restoring earlier order of dismissal dt.16-11-2005, ex parte eviction order passed dt.27-9-2007 and I.A.No. 56/2007 to set aside ex parte order in O.A.No.144/2001 before Deputy Commissioner Kakinada is pending adjudication is perse illegal and without jurisdiction and consequently stay of all further proceedings including not to dispossess the petitioners from the schedule land and to pass such other order orders as are deemed fit and.”

(Reproduced verbatim)

I have heard the submissions of the learned counsel for the writ petitioners, the learned standing counsel for the 1st respondent temple and the learned Government Pleader for Endowments (AP) appearing for respondents 2 to 5. I have perused the material record.

The case of the writ petitioners, as set out in the writ petition and as per the submissions made at the hearing, in brief, is this:-

“The writ petitioners are in possession of the land in a total extent of Acs.13.10 cents in R.S.No.18/1C, 16/F, 18/1-I and 19/2 of Tallagudem Village of Pedapadu Mandal of West Godavari District. The subject lands were never treated as temple lands. The respondents in the writ petition have no concern with the said lands. On the Inam application in D.Dis No.2399/2000 D of the 1st respondent earlier filed in the year 2000, an order dated 27.08.2001 was passed by the then Revenue Divisional Officer, Eluru *inter alia* holding that the subject lands are not Inam lands and that Ryotwari Pattas were given to render services to the Devasthanam. In the said proceedings, it was further observed that the writ petitioners herein had failed to prove their possession of the subject lands and that remedial action

under Section 83 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, ('Act 30 of 1987', for brevity) has to be initiated against the writ petitioners. In the appeal petition in misc. petition no.1 of 2001 preferred by the writ petitioners, the Joint Collector, West Godavari by his orders dated 29.01.2001 had held that the Revenue Divisional Officer has no jurisdiction to entertain the aforementioned application under Section 77 of the Act 30 of 1987 and that the subject lands are Ryoti lands belonging to the temple. Thereafter, the 1st respondent had filed O.A.No.144 of 2001 before the Deputy Commissioner Endowments, Kakinada against the petitioners herein and others under Section 83 of the Act 30 of 1987 *inter alia* stating that they are the encroachers. While that petition is being resisted by petitioners herein and others i.e., the respondents therein, an affidavit in lieu of examination in chief of PW1 was filed. But, subsequently, PW1 had failed to appear in the said proceedings; and, therefore, the said O.A.No.144 of 2001 was dismissed for default by an order dated 16.11.2005. Subsequently, the order dated 27.09.2007 was passed ordering eviction of the writ petitioners and others from the subject lands. A perusal of the said order would show that the said order was passed without stating as to when the order dated 16.11.2005 dismissing O.A.No.144 of 2001 for default was set aside and when the OA was restored to file. In fact no order setting aside the dismissal order for default was passed and the OA was not restored to file by following the procedure established by law; and, however, the eviction order was passed as if no order of dismissal was ever passed earlier in the O.A. A perusal of the said order would also show that before passing the eviction orders, no opportunity, in accordance with the procedure established by law, was given to the writ petitioners and others i.e., the respondents therein to contest the aforementioned O.A. Since the said order is an invalid and is an *ex parte* order passed without a valid order for restoration, the writ petitioners were obliged to file an application in I.A.No.56 of 2007 to set aside the *ex parte* order in O.A.No.144 of 2001 *inter alia* contending that the said order is illegal and is one passed without jurisdiction. However, the said application is kept pending and is not being considered and disposed

of in accordance with the procedure established by law. Hence, feeling aggrieved, the writ petitioners had filed this writ petition.”

The learned counsel for the writ petitioners made submissions in-line with the pleadings in the writ petition. The relevant pleadings in the writ petition and the submissions are already stated *spura*, in brief.

The learned standing counsel for the first respondent temple would fairly submit that from the material record it would appear that the *ex parte* order was passed without setting aside the order of dismissal for default and without giving an opportunity to the writ petitioners to contest O.A.No.144 of 2001 after duly setting aside the dismissal order for default dated 16.11.2005. In view of the establishment of the Andhra Pradesh Endowments Tribunal at Guntur and the undisputed facts of the instant case, the learned counsel for the writ petitioners makes a request to direct the said Tribunal to dispose of I.A.No.56 of 2007, which is filed to set aside the order dated 27.09.2007 made in O.A.No.144 of 2001 by the Deputy Commissioner, Endowments Department, Kakinada,. The learned standing counsel would submit that the temple has no objection for the petitioner seeking such a relief.

Recording the submissions of the learned counsel for the parties, this writ petition is disposed of directing that the Deputy Commissioner Endowments, Kakinada shall submit the entire duly indexed record of the case to the Andhra Pradesh Endowments Tribunal, Guntur as expeditiously as possible and at any rate not later than two (02) months from the date of the receipt of a copy of this order; and that on such submission of the records, the Andhra Pradesh Endowments Tribunal, Guntur shall entertain and take up I.A.No.56 of 2007 in O.A.No.144 of 2001 originally pending before the Deputy Commissioner, Endowments Department, Kakinada, and dispose of the said application in strict accordance with the procedure established by law, however, after giving an opportunity of hearing to both the sides. It is made clear that the writ petitioners are at liberty to take all the pleas available to them, which the law permits. There shall be no order as

to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

M.Seetharama Murti, J

30th December, 2015
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