

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.14145, 14152, 14171 & 18840 of 2015

Date: 06.10.2015

W.P.No.14145 of 2015

Between:

V.Yesu Babu, S/o Raghavulu, Cultivation,

Aged 56 years, Vemagiri Village, East Godavari Dist.

.... Petitioner

AND

The State of A.P., rep.by its Principal Secretary,

Endowments Department, Secretariat, Hyderabad

and two others.

.... Respondents

The Court made the following:

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COMMON ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for respondents 1 & 2, and learned standing counsel for respondent no.3.

2. In all these writ petitions, petitioners are the tenants of the lands belonging to Sri Venugopala Swamy Temple, Vemagiri, East Godaviri District (3rd respondent). Petitioners challenge the notices dated 23.04.2015 issued by the Single Trustee of the 3rd respondent temple directing the petitioners to vacate the lands held by them on lease since the authorities have decided to conduct fresh auction to grant lease on the subject lands.

3. Petitioner in W.P.No.14145 of 2015 is cultivating the land to an extent of Ac.2.74 cents in R.S.No.248 of Vemagiri Village. Petitioners in W.P.No.14152 of 2015 are cultivating the land to an extent of Ac.5.66 cents in R.S.No.275 and Ac.0.08½ cents in R.S.No.270/1/2. Petitioner in W.P.No.14171 of 2015 is cultivating the land to an extent of Ac.0.84 cents in R.S.No.265. Petitioner in W.P.No.18840 of 2015 is cultivating the land to an extent of Ac.3.84 cents (dry) in R.S.No.275 and Ac.0.91 cents (wet) in R.S.No.248 of Vemagiri Village.

4. Learned counsel for petitioners contended that petitioners have been cultivating the subject lands for several decades and they have been paying the lease amounts annually and lease amount paid by them is higher than the lease amount prevailing in private lands. It is further contended that recently GVK Power Plant is established adjacent to the lands under cultivation by the petitioners and for the reasons best known the yield capacity of the lands is diminished. Forcing the petitioners to change the cultivation from paddy to that of raising nursery garden, but this is not giving good yield. Learned counsel for petitioners submitted that this is only the land which petitioners are in possession and is only the source of their livelihood. Learned counsel further submitted that when the petitioners are paying the lease amount regularly and the lease amount paid by them is higher than the lease amount prevailing in the area, directing the petitioners to vacate the lands in ten days by the impugned notices and seeking to conduct fresh auction is *ex facie*

illegal. No such notices can be issued directing the vacation of the agricultural lands within ten days. Learned counsel further contended that since the petitioners are in occupation and enjoyment of the agricultural lands belonging to the 3rd respondent temple as a consequence to the lease granted to them, without following due process as required by Section 82 of the A.P. Endowments Act, they cannot be evicted by issuing simple notices.

5. Learned standing counsel submitted that petitioners are in illegal occupation of the lands belonging to the 3rd respondent temple and on account of their illegal occupation, the temple is deprived of appropriate income that can be derived by granting lease of these lands. If the public auction is conducted, temple would get more lease amount than what is being paid by the petitioners. She further contended that no lease can be continued unless the public auction is conducted and in the instant case, no public auction was conducted initially when the lease was granted to the petitioners and there is no lease agreement entered into by the petitioners and all along petitioners are in illegal occupation of the lands. She further contended that merely because of the 3rd respondent has accepted the lease amounts, does not amount to validating the occupation and granting lease in favour of the petitioners. She further submitted that concerning the lands belonging to 3rd respondent temple, similar issue was raised before this Court in W.P.No.19008 of 2015 and on detailed consideration of the principles governing the grants of lease, the writ petition was dismissed. The facts in issue and the principle laid down therein applies in all fours to the facts of these cases. In the said writ petition also, the notice issued on 23.04.2015 along with the notices issued to the petitioners was challenged. This Court upheld the notice issued for eviction and decision to conduct fresh auction.

6. In W.P.No.19008 of 2015, this Court construed the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 and the provisions of the A.P. Endowments Act, 1987. On a detailed analysis of the various provisions of the Rules, this Court held that a valid lease exists only after an open auction was conducted, highest bidder is identified and on completion of due formalities, lease agreement is executed. Ordinarily such lease was for a period of three years and if the competent authority grants specific order,

such lease can be beyond three years. After lease period is over, it is mandatory to conduct fresh auction and award lease of land in favour of the highest bidder. Grant of lease contrary to the provisions of the Rules and without having valid lease agreement is held to be null and void.

7. This Court also considered the decisions of this Court in **Dega Babi Reddy and others v. Government of A.P., rep.by its Principal Secretary, Revenue (Endowments) Department and others** and unreported decision in W.P.No.27476 of 2007 dated 17.09.2008; W.P.No.23853 of 2008, dated 18.12.2008; and W.P.No.27448 of 2008, dated 19.12.2008. In **Dega Babi Reddy**, this Court held that unauthorized occupation of the Endowment lands without a lease deed executed by or on behalf of the Endowment after following the due process of law, would not elevate occupation of the lands to the status of cultivating tenants. In W.P.No.27476 of 2007, this Court did not countenance the contention that even if the possession by a tenant is held illegal, he can be dispossessed only by taking recourse to Section 87 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act. This Court observed that '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'.

8. In the judgment dated 18.12.2008 rendered in W.P.No.23853 of 2008 and in W.P.No.27448 of 2008 dated 19.12.2008, this Court held that even if the action of the authorities found to be illegal and there is violation of the procedural formalities in evicting the tenant, the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India cannot come to the rescue of such a person. Exercise of such jurisdiction is only for in furtherance of public interest and only when it comes to the conclusion that overwhelming public interest requires interference, would it intervene in the matter. It is further held that the person, who continues to remain in illegal occupation of land 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.

9. In the instant case admittedly no valid lease exists in favour of petitioners though they are cultivating lands belonging to 3rd respondent temple. They appear to be in occupation for a long time. No auction was conducted for long time. One of the sources of augmenting funds to the temple administration is leasing of its lands. Better revenue only enables temple administration to provide better services to the devotees. Proper value on lands can be secured only if auction is conducted. For the reasons best known to respondent authorities, earlier auction was not conducted and petitioners were allowed to cultivate. Thus, the decision to conduct public auction to grant lease of its lands cannot be faulted. On the contrary, it is in public interest to conduct open auction. No right vests in the petitioners to continue to occupy temple lands without determination of lease payable and proper lease. Lease payable can be determined only if public auction is conducted. Thus, this is not a case where grave injustice is caused to the petitioners warranting interference by this Court in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. Petitioners are not sought to be thrown out of the property without notice. Notices were issued on 23.04.2015 directing the petitioners to vacate the agricultural lands in their possession. By now, it is more than five months. Thus, it cannot be said that petitioners did not have sufficient time.

10. There are no merits in the writ petitions and the same are dismissed. Respondents shall take immediate steps within a fixed time frame to conduct auction. Petitioners are entitled to participate in the auction. However, petitioners are entitled to continue to hold land till auctions are finalized and shall vacate soon after auctions are finalized, if they are not the successful bidders.

Miscellaneous petitions if any pending in these writ petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date : 06.10.2015

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