

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 10032 of 2011

ORDER:

The present Writ Petition came to be filed seeking issuance of Writ of Mandamus declaring the action of the respondents 1 to 3 in trying to acquire the property of the petitioners in Sy.No.97-6 to an extent of Ac.2.48 cents and land in Sy.No.193-2 to an extent of Ac.4.75 cents situated at Kodiginahalli village, Parigi Mandal, Ananthapur District, at the instance of respondent No.4, without following the procedure as illegal, arbitrary and violative of Article 300-A of the Constitution of India and consequently direct the respondents 1 to 3 not to acquire the petitioners' property in Sy.No.97-6 to an extent of Ac.2.48 cents and Sy.No.193-2 to an extent of Ac.4.75 cents situated at Kodiginahalli village, Parigi Mandal, Ananthapur District.

The averments in the affidavit filed in support of the Writ Petition show that the respondent No.4 who is the Executive Officer, Tirumala Tirupati Devasthanam, Tirupati (in short 'T.T.D.') is the owner of the land referred to above. The petitioners herein are the cultivating tenants since several decades and have been paying rents to 4th respondent. The father of the first petitioner by name Bestha Venkatappa filed A.T.C. No.2 of 1980 on the file of the Junior Civil Judge, Hindupur to declare him as a tenant of the said property against the respondent No.4 but the

same was dismissed on 15.03.1983. Aggrieved by the same, he preferred A.T.A.4/83 on the file of the District Court, Ananthapuram, which was allowed declaring the father of the petitioner as tenant of the said property. When the 4th respondent tried to put the above property to auction, the father of the first petitioner filed a petition for declaration of tenancy rights and also to provide an option to purchase the above property vide A.T.C.No.1/92. It is stated that the said petition was allowed on 11.11.1998 with a direction to follow the provisions of Section 15 of the Tenancy Act and also the procedure as contemplated under Section 82(2) of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. While things stood thus, it is alleged that Tahasildar (3rd respondent) at the instance of local political leaders is making every effort to acquire the same with an intention to cause loss to the petitioners. It is also alleged that 4th respondent in collusion with the 3rd respondent is trying to adopt back door methods with a view to get rid of the petitioners from the said property. The action of the respondents made the petitioners to come before this Court under Section 226 of the Constitution of India.

The 4th respondent filed his counter denying the averments made in the Writ Petition, except those which are specifically admitted by him. It is stated that the petitioners have not come to this Court with clean hands and

suppressed many facts. Earlier the petitioner filed W.P. No.6975 of 1999 challenging the Notification issued by the Government under sections 4(1) and 6 of the Land Acquisition Act in respect of the very same land for providing house sites to the weaker sections. It is stated that the lands in Kodiginahalli village, Parigi Mandal, Ananthapur District, which is subject matter of dispute in the present Writ Petition stands registered in the name of Thirupathi Venkataramana Swamy. In the year 1999 the second respondent initiated proceedings for acquisition of lands to an extent of Ac.4.76 cents in Survey No.193-2 of Kodiginahalli village, for providing house sites to weaker section people and an amount of Rs.1,02,816/- was sent to the office towards 80% of the compensation amount for the above land, informing that the balance 20% compensation will be sent after completion of land acquisition process. At that juncture, W.P. No.6975 of 1999 came to be filed challenging the notification. By an order dated 16.02.2006 the same was dismissed. In the counter it is further stated that the board of trustees of T.T.D. in their proceedings dated 27.11.1991 have resolved to i) dispose of the land in public auction after observing all formalities as laid under rules in force; ii) to issue notice to the lessee to Bestha Venkatappa (father of the petitoenrs herein) to settle the arrears of rentals and court costs of Rs.1,572/- and iii) to confirm the leasehold rights in favour of B.Venkatappa for Rs.400/- being the highest bidder in public auction on 18.05.1990.

Accordingly, a notice under Section 80(b) of the Act 30/87 dt:03.12.1991 came to be issued to the lessee besides public auction as required under the rules. It is stated that at that juncture the father of the petitioner filed A.T.C. No.1/92 to declare him as perpetual tenant of petition schedule properties. By an order dated 11.11.1998 the Court did not grant any relief of declaration of tenancy rights and allowed the petition under Section 15 of the Tenancy Act and also under Section 82(2) of Charitable and Religious Endowments Act, 1987. Since the proceedings initiated by the petitioner vide A.T.C. No.1/92 was rejected, it is stated that the petitioner has come to the Court by suppressing all these facts. Insofar as the allegations of the petitioners that they are cultivating tenants is denied by R-4. It is further stated that u/s.82(2) of Endowments Act, 1979, a "landless poor" means a person whose total extent of land held by him either as a owner or as a cultivating tenant or both should not exceed 1.011715 hectares (2.5 Acs) of wet land or 2.023430 hectares of dry land and whose monthly income does not exceed Rs.250/- per mensum or Rs.3,000/- per annum. Since the father of the petitioners was cultivating land to an extent of Ac.7.25 cents, it is stated that the petitioners do not fall within the definition of landless poor and hence claim under Section 82(2) of the Act is also not made applicable. In view of the above, it is stated that the petitioners are not entitled to any relief as prayed for.

The learned Government Pleader filed counter on

behalf of R-3 denying the averments made in the affidavit. It is admitted that the land which is subject matter of dispute in the present case belongs to 4th respondent and the same was acquired for the purpose of providing house sites to the Weaker sections. The Government issued draft notification under Section 4(1) of the Land Acquisition Act and the same was approved by the Government on 08.02.1999 vide Gazette No.ATR No.54-99. The draft notification proposals were submitted to the Collector Ananthapuram and draft declaration under Section 6 of the Land Acquisition Act was approved by the Collector, Ananthapuram on 23.02.1999. It is stated that an amount of Rs.1,02,816/- was also sent to the 4th respondent being 80% of the compensation. In view of the above, it is stated that there are no merits in the Writ Petition.

But the counter filed by R-4 shows that father of the petitioners was a tenant and the period of lease expired long back. The same was not extended. It is thus stated that as the lease period was not extended, the petitioners are to be treated as encroachers and are liable to be evicted.

From a reading of the counters filed by all the respondents, it is clear that notification for acquisition of land was issued in respect of the land in Survey No.193/2 admeasuring Ac.4.75 cents. The learned counsel for the respondent did not also dispute the said fact. However, in the reply affidavit he states that insofar as the land in which the petitioners are said to be doing cultivation i.e., in Survey

No.97-6 admeasuring Ac.2.48 cents of land, should be allowed to be cultivated by the petitioners till evicted by due process of law. Having regard to the circumstances stated above, if the petitioners are in possession of land in S.No.97-6 admeasuring Ac.2.48 cents, doing cultivation and if the said land is not notified to be acquired under Land Acquisition Act, the possession of the petitioners insofar as land in S.No.97-6, shall not be disturbed without following the due process of law.

Accordingly, the Writ Petition is disposed of. No order as to costs. As a sequel to it, miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 11.08.2015.

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