

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.18196 of 2011

ORDER:

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

“....to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of respondents 3 and 4 in notifying auction of leasehold rights in respect of landed property admeasuring Ac.4.38 cents in Survey Nos.45/2 and 49/2 of Gowripalli Village, scheduled to be held on 02.07.2011 in spite of subsistence of the petitioner's lease for the period from 2010-11 to 2012-13 and insisting the petitioner to vacate from the said land as illegal, irregular, arbitrary, without jurisdiction, violative of principles of natural justice and provisions of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 and rules framed thereunder and offends Articles 14 and 21 of Constitution of India and consequently direct the respondents to continue as tenant during the period of lease granted in Proceedings D.Dis.No.4/7193/2010, dt.12.07.2010 issued by the 2nd respondent and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

I have heard the submissions of the learned counsel for the writ petitioner and the learned standing counsel appearing for the third respondent. I have perused the writ petition as well as the counter affidavit of the third respondent.

The learned counsel for the writ petitioner while making submissions in line with the writ petition requested for issuance of a writ order as prayed for. A perusal of the material record would show that the term of lease of the writ petitioner had expired long time back. The said fact is fairly conceded. It is undisputed that the lease was neither renewed on fresh terms nor was fresh lease granted in favour of the writ petitioner. The learned counsel for 3rd respondent would submit that the writ petitioner's term of lease is not only over but he is also a defaulter and that he is not entitled to any relief either under the statute or under equity. A perusal of the counter affidavit of the 3rd respondent would also show that the petitioner had failed to deposit the security deposit and also to pay the maktha for the first year and therefore, the 3rd respondent was constrained to issue a fresh auction notice

for auctioning the lease-hold rights of the subject property. The petitioner did not fairly state in his petition that he did not make the security deposited and that he had failed to pay the makta for the 1st year though the said facts are not disputed at the hearing. Thus, it is not in dispute that the petitioner had not complied with the requirements, which he is supposed to comply with, as a lessee. Though the petitioner is a defaulter and his term of lease had expired, he however now seeks indulgence of the court and seeks protection from this court in this writ petition. The law is well settled that he who seeks equity must do equity. The law is also well settled that a litigant who comes to Court and invokes its writ jurisdiction must come with clean hands and that he cannot prevaricate and take inconsistent positions. [vide the decision of the Supreme Court in **Amar Singh v. Union of India**, (2011) 7 SCC 69, paragraph 50]. In the facts and circumstances, the question is whether this Court would be justified in showing indulgence to the petitioner. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. (**Vide C.R.Reddy Law College Employees' Association, Eluru, West Godavari District v. Bar Council of India, New Delhi**)^[1]. The High Court having regard to the facts of the case has discretion to entertain or not to entertain a writ petition. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, the same must be exercised along recognised lines and subject to certain self-imposed limitations. The expression 'for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Court must exercise the same with certain restraints and within some parameters. [vide **Director of Settlements, A.P. v. M.R. Apparao** (2002) 4 SCC 638)]. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions in the exercise of this power. [See: **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.** (AIR1999SC22)]. "The High Courts do not, and should not, act as Courts of appeal under article 226. Their powers are purely discretionary and though no limits can be placed

upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of cases unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be.” (Vide **Samgram Singh v. Election Tribunal, Kotah**)^[2].

Having regard to the facts of the instant case, this Court finds no reason to exercise the discretion under Article 226 of the Constitution of India in favour of the petitioner.

Viewed thus, this Court finds that the petitioner, who has come to Court seeking an equitable relief, is not entitled to the relief or indulgence of this Court, as the facts of the case disclose that the term of the lease of the petitioner had expired long time back and that he is a defaulter on account of non-payment of makta due for the 1st year; as a sequel, it must be held that the 3rd respondent is entitled under facts and law to auction the leasehold rights of the subject property afresh and that such an action of the 3rd respondent cannot be found faulted.

Having regard to the reasons, this Court finds that there is no merit in the writ petition and that the impugned auction notice, therefore, brooks no interference. Accordingly, the writ petition is dismissed. It is made clear that the 3rd respondent may proceed in strict accordance with the procedure established by law with the auction of the leasehold rights in respect of the subject land, afresh, if necessary. No costs.

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

M.Seetharama Murthi, J

30th December, 2015
Bvv

[\[1\]](#) 2004(5) ALD 180 (D.B)

[\[2\]](#) AIR 1995 SC 425