

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT APPEAL No.659 OF 2016

-

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order in Writ Petition No. 24367 of 2016, dated 25.7.2016 holding that the auction of leasehold rights of an extent of Acs. 5.90 cents of land in Tikkareddypalem Gram Pancyhayat, Borravaripalem Village, Prathipadu Mandal, Guntur District, shall be subject to the final outcome in the writ petition.

Sri D.V. Sitarama Murthy, learned Senior Counsel appearing on behalf of the writ petitioners, would contend that, since the petitioners were in possession of the subject land for nearly a century, they cannot be illegally dispossessed from the subject land without following the procedure prescribed under Sections 82 and 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act'); the action of the respondents in subjecting the lands, belonging to the petitioners, to auction is ex-facie illegal; and as the learned Single Judge has merely made the auction subject to the final outcome in the writ petition, the petitioners will be deprived of their right to cultivate the subject land in the interregnum.

On the other hand, Mrs. K. Lalitha, learned Standing Counsel for the 5th respondent, would draw our attention to an earlier order passed by this Court in W.V.M.P. No. 2408 of 2016 in Writ Petition No. 20250 of 2016, dated 11.7.2016 to contend that, while the pahani for the year 2012-13 shows the temple as the owner of Acs.5.90 cents of the subject land in Survey No. 63, the pahani dated 30.1.2016 has eliminated the name of the subject temple completely, and the entire extent of land of Acs.12.64 cents in Survey No. 63 has been shown in the name of the petitioner and others; and as it is evident, from the pahani for the year 2012-13, that the temple is the owner of Acs.5.90 cents, auction of the leasehold rights of the very same extent is in accordance with law. She

would further submit that the highest bidder in the auction was put in possession of the subject land; and the order passed by the learned Single Judge, making the auction subject to the result of the writ petition, does not necessitate interference.

The factual disputes aforementioned can only be adjudicated after a counter affidavit is filed on behalf of the 5th respondent, i.e., the trustee of the temple. The question whether the petitioners were in possession of the subject land, and could not therefore have been dispossessed therefrom without complying with the procedural requirement of Sections 82 and 83 of the Act, are among the questions which can be examined after a counter affidavit is filed. Learned Standing Counsel would request three weeks time to file a counter affidavit. As the petitioners' interests, if the contention urged by the learned Senior Counsel were to be accepted, may well be prejudiced by the auction being made subject to the result of the writ petition, we consider it appropriate to modify the order passed in the writ petition to an order passed in W.P.M.P. No. 30032 of 2016 in Writ Petition No. 24367 of 2016. The auction of the subject land shall be subject to further orders in W.P.M.P. No. 30032 of 2016, and the W.P.M.P. shall be listed after three weeks to enable the 5th respondent to file a counter-affidavit.

The writ appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

4th August 2016

pnb

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

WRIT APPEAL No.659 OF 2016

-

Date: 03.08.2016

pnb