

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.18330 of 2007

ORDER:

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

“....to issue an appropriate Writ, Order or Direction mostly one which is in the nature of Writ of Mandamus declaring the action of the respondents in taking steps for conducting of auction of lease hold rights of the land admeasuring acres 10.12 cents in survey No.325 of Pasupula village, Kurnool rural Mandal, Kurnool District as illegal, arbitrary, unjustified and unsustainable and direct the respondents holding that the petitioner is entitled to continue in the possession and enjoyment of the said land with absolute rights in view of the long uninterrupted possession and enjoyment of the said land with absolute rights in view of the long uninterrupted possession and pass such other order or orders as it may deem fit.”

(Reproduced Verbatim)

2. I have heard the submissions of the learned counsel for the writ petitioner and the learned standing counsel for the 4th respondent temple. I have perused the writ petition and the counter affidavits of the respondents 2 and 4 and also the material papers.

3. The case of the writ petitioner and the chronology of events which are undisputed, in brief, are as follows:-

“On the representation of one Bheema Bai W/o. Late Lade Subba Rao and her sons that they are the owners and possessors of Acs.10.12 cents of land in survey number 325/Pasupula Village, the writ petitioner had made enquiries in the village and was informed that the above said persons are the owners of the said property. He had, hence, purchased the above said land from the said Bheema Bai and her two sons under registered sale deed bearing document number 1845/1967 dated 18.07.1967 for a consideration of Rs.8,000/- and was continuing in possession and enjoyment of the same since the said date. While so, the Trust Board of the 4th respondent temple informed him that Late Lade Subba Rao, who was the original owner of the

said property, had gifted the same to the temple by virtue of a Gift Deed dated 11.08.1938 and that suppressing such gift, his wife and sons had sold the property to the writ petitioner and that, therefore, he has to proceed against his said vendors. The Writ Petitioner claiming that he is a *bona fide* purchaser had requested the temple to proceed against his said vendors. The Temple's Trust Board had then filed a suit in O.S.No.144 of 1972 on the file of the learned Additional Subordinate Judge, Kurnool and the said suit was decreed holding that the subject lands belong to the 4th respondent temple and that the sale deed obtained by the petitioner is not valid. The first appeal was dismissed; further, this Court had dismissed the LPA No.294 of 1985 by an order dated 02.09.1985. Therefore, the civil litigation had culminated in favour of the 4th respondent temple and it is settled that the petitioner had no right, title and interest whatsoever in subject property. However, the petitioner had obtained the pattadar pass book and title deed book and requested the 4th respondent temple and its authorities to fix reasonable price for sale of the subject lands to him. According to him, certain negotiations had taken place in that direction and that the Deputy Commissioner had initially fixed the market value of Rs.3,500/- per acre and that later an illegal demand to pay Rs.10,000/- per acre was made and that accordingly proposals were also sent to the higher authority to accept the said market value for alienating the subject property in favour of the writ petitioner. Nevertheless, the first respondent/the Commissioner of Endowments had rejected the proposal of the Deputy Commissioner by his proceedings dated 18.07.2001 and directed the second respondent to direct the third respondent Executive Officer of the group of temples to send proposals to sell the land by public auction; pursuant to the said directions, the third respondent had directed the writ petitioner by letter dated 03.09.2001 to handover possession within one week and also proposing to initiate action in case of failure of the petitioner to so vacate the property. Aggrieved of the said action of the respondents, the petitioner had filed W.P.No.4724 of 2002 before this Court. This Court, having noted the chronology of events, had dismissed at the admission stage the said writ petition by orders dated

15.07.2002, however giving liberty to the petitioner to participate in the auction to be conducted by the temple authorities. However, without participating in the auction, the petitioner had submitted a representation to the Minister for Endowments to direct the respondents to consider his case under the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, ('Act 30 of 1987', for brevity) offering to purchase the land at 75% of the market value by offering to pay the same in four equal instalments. As things stood thus, the petitioner had also filed W.P.No.9419 of 2003 before this Court challenging the action of the respondents in not offering the subject land for sale to him. That writ petition was also dismissed at the admission stage on 13.05.2003 along with a batch of writ petitions. Though the petitioner was directed to approach the concerned authority to declare him as landless poor person, he had again requested the concerned authorities to sell the land as requested by him by urging that the order dated 09.08.2003 of this Court is not applicable to his case, as he is not a lessee and as he is claiming ownership. According to the writ petitioner, his possession over the subject land is not disturbed. On receipt of the caveat dated 20.08.2007 lodged by the Executive Officer, the petitioner had come to know that his application requesting to declare him as a landless poor person was dismissed and that the temple had decided to conduct the auction by proceedings dated 09.08.2003 for auctioning the leasehold rights of the subject land. Hence, the present writ petition is filed questioning the auction notice dated 17.08.2007 *inter alia* contending that pursuant to the civil Court decree in favour of the 4th respondent temple, the possession of the subject land was not obtained from the petitioner and that the petitioner is continuing in possession and that he cannot be evicted except under due procedure established by law."

4. In this backdrop of contentions of the petitioner and the admitted chronology of events, the case of the contesting respondents 2 and 4, as set out in the counter affidavits, is that the subject temple was a 6(b) temple under the provisions of Act 30 of 1987 and as per the publication dated 10.08.1987 of the Commissioner of Endowments, Hyderabad and that the

land in question originally belonged to Lade Subba Rao and that he had gifted the same to the fourth respondent temple by virtue of a Gift Deed dated 11.08.1938 and that since then, the temple is in possession of the property and that the vendors of the petitioner have no right, title and interest in the property to alienate the same to the petitioner and that a finding to that effect was recorded in the civil proceedings and that the said finding has attained finality and that the title deed and pattadar pass books are fabricated by the petitioner and that as per the provisions of Act 30 of 1987, the public auction was conducted on 27.08.2007 for auctioning the leasehold rights for a term of three years and that in the said public auction, two persons namely N.Farooq Ahmed and N.Firoz Basha became the successful bidders for the Acs.5.06 cents each on payment of maktha of Rs.7,700/- and Rs.7,300/- respectively per annum and that the said bidders had also deposited makthas for one year each and the possession of the said extents of land has been delivered to them on the same day and that they have raised sunflower and green gram crops in their individual extents of lands and that the said bidders, who are in the possession, are the sons of one Basheer Ahmed, who is the own brother of the petitioner herein and that therefore, the writ petition is devoid of merit and is liable to be dismissed.”

5. At the hearing, the learned counsel for the writ petitioner fairly conceded that the fourth respondent temple is the owner of the subject land as the said issue has already become final, but, in view of the long possession of the petitioner and the fact that he is a *bona fide* purchaser, he is entitled to purchase the land and that when he is continuing in possession of the property, the auction conducted on 27.08.2007 is illegal and that his possession cannot be disturbed except in strict accordance with the procedure established by law even assuming for a moment he is an encroacher. The learned counsel for the writ petitioner would also submit that denying the averments in the counter affidavits of respondents 2 and 4, a reply affidavit has also been filed by the petitioner reiterating the case of the writ petitioner. Be that as it may.

6. In this backdrop, the short question is – ‘whether the petitioner, who

seeks indulgence of this Court is entitled to any relief in this writ proceeding?' It is undisputed and it is also admitted that that the writ petitioner is not paying any amounts to the fourth respondent temple, though he claims to be in possession of the subject land, which is a large extent of the land. The petitioner also did not file any documents like copies of the revenue records like the copies of the adangals or pahanies or land revenue receipts to show that he was and is in possession and cultivating the subject lands. All the previous proceedings, which were adverted to in the writ petition and referred to supra, culminated in favour of the 4th respondent temple and the temple was also permitted to auction the leasehold rights of the subject lands giving liberty to the petitioner to participate in the public auction to be conducted by the temple authorities. Having not participated in the public auction, now the petitioner seeks indulgence of this Court still asserting that he is the *bona fide* purchaser of the subject land and that he is entitled to purchase the temple land at 75% of the market value and that he is in possession since long time and that he cannot be evicted except in accordance with the procedure established by law. The temple is a 6-b temple and the claim of the petitioner to purchase the subject property was already rejected. Admittedly, he did not enter into possession of the land of the temple as a lessee. Therefore, the petitioner could not establish any right to remain in possession of the subject land. His case that he is entitled to purchase the land and the alternate claim in regard to his entitlement to continue in possession of the subject land till he is evicted in accordance with the procedure established by law as made in the successive writ petitions was negated by this Court and he was only given liberty to participate in the public auction, which the temple is permitted to hold for auctioning the leasehold rights of the subject land. Therefore, he cannot now be heard to say that he is still entitled to purchase the temple land or that he cannot be evicted except in accordance with the procedure established by law. As already noted, he did not file even a single document to show his possession over the subject land. This Court in a common order dated 08.06.2010 passed in W.P.Nos.12674, 12686, 12691 of 2010 (unreported) having

referred to the precedents and the provisions of law, which are relevant, had held that the persons, who continue to remain in illegal occupation of shops/property belonging to a charitable trust 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. In this cited decision, this Court also held that the petitioners therein are also entitled to participate in public auction as and when held by the 1st respondent Trust and made it clear that the petitioners shall be entitled to remain in occupation of the shops only till a lease agreement is entered into with the highest bidder in the public auction and not thereafter. In fact, even in the writ petitions filed by the petitioner herein, this Court held that the petitioner is only entitled to participate in the public auction that the temple may hold in regard to auction of the leasehold rights of the subject lands. Therefore, as per settled law, the petitioner is not entitled as of right, either to remain in possession, if really he is in possession or for grant of fresh lease, and at best he would only be entitled to participate in the public auction as and when held by the competent authority, in case the authority concerned decides to auction the lease hold rights and otherwise not. In the case on hand, the petitioner did not admittedly participate in the public auction held already by the temple in the year 2007. Having regard to the fact that the petitioner could not file any document to show his possession over the subject land and in view of the further fact that he was and is not paying any amount to the temple since a long time and in view of the orders of this Court in the writ proceedings, which are adverted to supra, the assertion in the counter affidavits of the respondents 2 and 4 to the effect that the property was already auctioned in the year 2007 and that the successful bidders, who are closely related to the writ petitioner, were already put in possession of the property and the further assertion that they have raised sunflower and green gram crops therefore, deserves acceptance, in the well considered view of this Court and as a sequel, it must be held that the claim of the petitioner that he is in possession of the subject land, which is unsupported by any material much less documentary evidence, cannot be countenanced.

7. 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**)^[1]. 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 there is no merit in the writ petition.

8. Accordingly, the Writ Petition is dismissed. No costs.

As a sequel to the dismissal of the writ petition, WPMPs pending, if any, are dismissed as infructuous.

07th January, 2016
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[\[1\]](#) AIR 1995 SC 425