

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P. Nos.4755 & 4756 of 2009

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COMMON ORDER:

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Since the issue involved in all these Civil Revision Petitions is similar, this Court feels that it is apposite to decide the issue by a Common Order.

2. The Revision Petitioners filed these two Civil Revision Petition Nos. 4755 and 4756 of 2009 under Article 227 of the Constitution of India to set aside the Orders in ATC No.26 of 2006 and ATC No.27 of 2006 respectively on the file of Tenancy Special Officer-cum-Principal Junior Civil Judge, Guntur under A.P.Tenancy Act ('Tenancy Act' for short), which are confirmed by the Tenancy Appellate Tribunal-cum-Principal District Judge, Guntur, by its Orders Dt.18.06.2009 directing the Revision Petitioners to vacate the schedule premises and deliver vacant possession of schedule land on the ground that the revision petitioners committed default in payment of the maktha as agreed to the respondents.

3. The parties to the revision Petitions hereinafter will be referred as revision petitioners and respondents for the purpose of convenience through out the Common Order.

4. The respondent/temple is an old temple and owner of an extent of Ac.13.08 cents in different demarcations and the revision petitioners are the tenants in occupation of the different extents in D.Nos.908 and 911/1 and 2 and they also entered into an oral agreement of tenancy with the respondent temple for payment of maktha @ 12 ½ bags of paddy per acre per year and the maktha

has to be paid either in cash equivalent to the value of the paddy or paddy to the respondent temple. As and when the revision petitioners paid maktha amount, respondent temple used to pass receipts, acknowledging receipt of maktha for the land in question. Though the revision petitioners are in possession and enjoyment of the schedule property as tenants, they are not regular in paying maktha and they committed default in payment of maktha for the period 2004-2005 and 2005-2006. Therefore, the respondent temple filed petitions under Section 13(a) and other provisions of Andhra Pradesh (Andhra Area) Tenancy Act, 1956 and sought eviction of the revision petitioners from the petition schedule land.

5. The revision petitioners filed their counter denying the material allegations made in the petitions contending that they never committed default in payment of maktha while admitting that they are in possession and enjoyment of the property and the relationship of petitioners with the respondent temple as tenant and landlord and cultivation of the schedule land. However, they denied their liability to pay any maktha allegedly due to the respondent temple and finally prayed for dismissal of the Petitions.

6. After full fledged enquiry and upon hearing the argument of both counsel, the Special Officer under Tenancy Act, ordered for eviction of the revision petitioners/tenants from the schedule land in all three petitions.

7. Aggrieved by the Order of the Eviction, the Revision Petitioners herein preferred an appeal before the Appellate Authority-cum-Principal District Judge, Guntur, and all the three appeal were dismissed confirming the Order of the Special Officer-cum-Prl.Junior Civil Judge, Guntur, by an Orders Dt. 18.06.2009.

Thus, both the Special Officer and the Appellate Authority recorded concurrent findings on the default of maktha allegedly committed by the revision petitioners.

8. Aggrieved by the concurrent findings, the revision Petitioners filed these Civil Revision Petitions under Article 227 of the Constitution of India raising several contentions, mostly, the illegality committed by the Special Officer and the Appellate Authority in arriving to the conclusion that the revision petitioners committed default in payment of the maktha as agreed by the Revision Petitioners and the respondent temple and prayed for setting aside the Orders in all two petitions.

9. During hearing, Sri P. Gopal Das, learned counsel for the Revision Petitioner in CRP Nos.4755 and 4756 of 2009 raised a specific contention that the provisions of Tenancy Act have no application in view of the amendment to Section 82 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 ('1987 Act' for short).

10. Learned counsel for revision petitioners mainly contended that though the plea of jurisdiction not raised before the Special Officer and the Appellate Authority under the Act, such jurisdictional aspect can be raised even in the Revision Petition filed under Article 227 of the Constitution of India. In support of their contention that the provisions of the Tenancy Act are not applicable to the lands belonging to a temple i.e., Charitable and Hindu Religious Institutions or Endowments, they relied upon the following judgments:

- 1) **Zuari Cement Limited v. Regional Director, Employees' State Insurance Corporation, Hyderabad and others** ^[1]; and

2) Sri Someswara Swami Vari Temple, Nandigam, Settenapalli, Guntur District v. Degala Koteswara Rao and others^[2]

11. Sri N. Mohana Krishna, learned counsel for respondent temple would contend that when the amended Act came into force on 26.08.2002 i.e., amendment to Section 82 (1) of 1987 Act, the tenancy stood cancelled by virtue of Section 82 (1) of 1987 Act. Therefore, there was no relationship between the petitioners and the respondent temple as tenants and landlord. However, the Revision Petitioners are not entitled to continue in the petition schedule land without payment of maktha and prayed to exercise power under Article 227 of the Constitution of India directing the Revision Petitioners to pay maktha to the respondent temple. In support of his contention, he placed reliance on the following decisions:

1) Kuthuri Suryavathi v. State of Andhra Pradesh and others^[3]; and

2) Duvvur Niranjan Reddy v. Executive Officer, Sri Kailasantha Swamy Temple, Brahmadevam Village, Muthukur Mandal, Nellore District and another^[4].

12. The respondent temple, admittedly, filed eviction petitions before Rent Controller under AP Tenancy Act, 1956 in the year 2006 and it is not in dispute that respondent is a temple under the control of Endowment Department. After amendment to Section 82(1) of 1987 Act with effect from 26.08.2002, any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment subsisting on the date of commencement of this Act shall, notwithstanding anything in any other law for the time being in force, held by a person who is not a

landless poor person stands cancelled. Therefore, from 26.08.2002 onwards the relationship of landlord and tenant is deemed to have been extinct. But, the revision petitioners have been continuing in possession and enjoyment of the property even according to own admissions of the respondent in tenancy petition and even according to their argument.

13. A similar question came up before this Court in **Sri Someswara Swami Vari Temple's** case (2 supra), wherein this Court held that the proceedings initiated by the respondent temple under the Tenancy Act are not maintainable and Special Officer has entertained the tenancy cases filed by the respondents without any authority of law and without any jurisdiction and the appellate Court also exercised the power without any jurisdictional authority under the said Act. Even according to the provisions of Tenancy Act, the lands belonging to temple are exempted. By virtue of the above clause F to 18(1) of A.P.Tenancy Act, the provisions of Tenancy Act shall not apply to any agricultural land belonging to or given or endowed for the purpose of any institution or endowment as defined by the provisions of Endowment Act. Thus, it is clear that no proceedings in respect of lease of agriculture land either for the termination or for continuation or for settlement of disputes relating to institutions cannot be decided by the authorities under the Tenancy Act. Therefore, the question of deciding any dispute pertaining to agricultural land belonging to Hindu Religious Endowments and Charitable Institutions, which are governed by the provisions of 1987 Act.

14. Even if the contention of the respondent temple is accepted, the tenancy between the revision petitioners and the respondent temple is deemed to have been cancelled, in view of Section 82(1)

of 1987 Act. Therefore, by the date of filing of the petitions in the year 2006, the Tenancy Special Officer is ceased to have jurisdiction to decide any dispute between the tenant and the landlord in respect of the land belonging to Hindu Religious Endowments and Charitable Institutions etc. When the relationship of landlord and the tenant is ceased to exist by virtue of Section 82 (1) of 1987 Act, as amended, the possession of the revision petitioners in the land belonging to the respondent temple is deemed to be a possession of an unauthorized occupation and the remedy to the respondent temple is somewhere else and the Tenancy Special Officer is incompetent to pass an Order of eviction as it lacks jurisdiction.

15. In other two revision petitions i.e., in CRP Nos.4755 and 4756 of 2009, the revision petitioners did not put forth such objection in their counter. However, in view of the law declared by the Apex Court in a judgment reported in **Zuari Cement's** case (1 supra), the Apex Court held that neither Order of High Court nor act of respondent Corporation subjecting itself to jurisdiction of ESI Court, which did not have, would confer jurisdiction upon ESI Court to determine question of grant and validity of exemption from operation of ESI Court as powers are vested with appropriate Government and High Court under Article 226 of Constitution, respectively. Therefore, the High Court erred in directing appellant to approach ESI Court for claiming relief of exemption is untenable and the objection as to want of jurisdiction can be raised at any stage when the Court lacks jurisdiction.

16. In view of the law declared by the Apex Court, the objection regarding lack of jurisdiction can be raised at any time. Therefore, the Revision Petitioners in CRP No. 4755 and 4756 of 2009 are

entitled to raise an objection regarding jurisdictional Special Officer and the appellate authority under Tenancy Act when both Courts lacks jurisdiction to entertain any petition under Andhra Pradesh Tenancy Act. But, both the officers i.e. Special Officer and the Appellate Authority under the Tenancy Act erroneously entertained the petitions and ordered for eviction of the revision petitioners from the petition schedule property in all three petitions on this ground alone, the Orders passed by both the authorities i.e., Special Officer and the Appellate Authority are liable to be set aside.

17. Learned counsel for respondent temple Sri M.N. Narasimha Reddy requested this Court to issue a direction for payment of maktha to the revision petitioners since the powers of this Court under Article 227 of the Constitution of India are not limited and drawn the attention of this Court to a decision reported in ***Duvvur Niranjan Reddy's*** case (4 supra), wherein this Court held that on commencement of amendment to Section 82 (1) of 1987 Act came into force, the lease between the tenant and the landlord is ceased to exist, except in the cases of landless poor, who are entitled to purchase the property subject to conditions contained under Section 82 (2) of the Act. A similar view was expressed by a single judge of this Court in ***Kuthuri Suryavathi's*** case (3 supra), wherein it was held that the tenancy stood terminated from the date of commencement of amendment to Section 83 of the Act and such of lease must be by way of public auction. Even accepting the principal laid down in two judgments, the relationship of landlord and the tenant between the respondent and the revision petitioners is ceased to exist and thereby the possession of the revision petitioners is deemed to have unauthorized possession. Hence, these two decisions is of no use

to support the contention of learned counsel for the respondent temple.

18. The main grievance of the learned counsel for respondent is that to protect the interest of the temple, a direction has to be issued for payment of maktha for their continuation in the petition schedule property in all these petitions.

19. The powers of this Court under Article 227 of the Constitution of India are limited and this Court exercising supervisory jurisdiction over the Subordinate Court and Tribunals etc., and more than half a century ago, the Constitution Bench of the Apex Court in ***Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam and others***^[5] settled that power under Article 227 is limited to seeing that the Courts below function within the limit of its authority or jurisdiction. There are long line of decisions on expressing similar view i.e., ***Nibaran Chandra Bag v. Mahendra Nath Ghughu***^[6], ***Mohd. Yunus v. Mohd. Mustaqim and others***^[7], ***Laxmikant Revchand Bhojwani and another v. Pratapsing Mohansingh Pardeshi***^[8], ***Rena Drego(Mrs.) v. Lalchand Soni and others***^[9] and ***Virendra Kashinath Ravat and another v. Vinayak N. Joshi and others***^[10]. In all these judgments, the Apex Court consistently held that the limited power under Article 227 of the Constitution of India cannot be invoked except for ensuring that the subordinate courts function within its limits. But, such power cannot be exercised to issue a direction to the revision petitioners for payment of maktha though the relationship of tenancy and landlord between the revision petitioner and the respondent ceased to exist, in view of the amendment to Section 82(1) of 1987 Act since

the issue of such direction is beyond the limits of jurisdiction conferred on this Court under Article 227 of the Constitution of India. However, the respondent temple is at liberty to initiate appropriate proceedings before appropriate authority to evict the petitioners in occupation of the schedule property belonging to the respondent temple under the 1987 Act.

20. In view of my foregoing discussion, I find that the Orders passed by both the Special Officer and the Appellate Authority under Andhra Pradesh Tenancy Act are without any jurisdiction and consequently, they are liable to be set aside.

21. Accordingly, all the two Civil Revision Petitions are allowed while dismissing the Orders dt. 27.02.2009 in A.T.C.Nos.26 of 2006 and 27 of 2006 by the Tenancy Special Officer, which are confirmed by the Appellate Authority by their Orders dt. 18.06.2009 in ATA Nos.4 of 2009 and 5 of 2009, giving liberty to the respondent temple to initiate appropriate proceedings for eviction or any other appropriate relief.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 28-07-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Dt. 28-07-2016

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[\[1\]](#) (2015) 7 SCC 690

[\[2\]](#) 2003 (4) ALT 632

[\[3\]](#) 2015(5) ALD 714

[\[4\]](#) 2014(5) ALD 285

[\[5\]](#) AIR 1958 Sc 398

[\[6\]](#) AIR 1963 SC 1895

[\[7\]](#) (1983) 4 SCC 566

[\[8\]](#) (1995) 6 SCC 576

[\[9\]](#) (1998) 3 SCC 341

[\[10\]](#) (1999) 1 SCC 47