

HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.2088 of 2007

ORDER

Heard learned counsel for the petitioner, learned Government Pleader for Endowments for respondents 1 to 3 and Smt K.Lalitha, learned Standing Counsel for respondent No.2.

In the present writ petition, challenge is to the order passed by the Assistant Commissioner of Endowments-3rd respondent herein *vide* proceedings in Rc.No.A3/5353/2006/Adm, dated 11.09.2006, as confirmed by the order dated 15.12.2006 passed by the Regional Joint Commissioner, Kakinada-2nd respondent, in appeal No.148/2006.

According to the petitioner, he is the cultivating tenant of the 4th respondent-temple lands admeasuring Ac.3.46 cents situated in R.S.No.58, Venkatapuram Village, Polavaram Mandal, West Godavari District, since the year 1976. Subsequent to the advent of Andhra Pradesh Charitable and Hindu Religious Institutions Endowments lease of Agricultural Lands Rules, 2003 notified vide G.O.Ms.No.379, Endowments dated 11.3.2003, the Executive Authority of the 4th respondent-temple issued a notice No.46-7/2003, dated 17.4.2003 asking the petitioner to handover the possession of the subject land within 30 days of the receipt of the notice. According to the petitioner, questioning the said notice, the

petitioner herein filed W.P.No.17281 of 2006 before this Court and this Court disposed of the said writ petition with a direction to the petitioner herein to approach the Assistant Commissioner of Endowments, by way of an application claiming the status of landless poor person under Section 82 of the Endowments Act. Pursuant to the above said order, the petitioner herein filed an application before the Assistant Commissioner of Endowments, claiming the status of landless poor person. Admittedly, the said property is a dry land. The Assistant Commissioner of Endowments by way of proceedings in R.C.No.A3/5353/2006 Adm, dated 11.9.2006, rejected the said application filed by the petitioner herein on the ground that the petitioner herein entered into the subject land in the year 1978 without lease approval and that he should be treated as an encroacher. Assailing the validity of the said order passed by the Assistant Commissioner of Endowments, the petitioner herein filed appeal under Rule 4 of the Rules. The Regional Joint Commissioner/Appellate Authority-2nd respondent herein passed an order on 15.12.2006, dismissing the Appeal No.148 of 2006 filed by the petitioner herein, confirming the order passed by the Primary Authority i.e., Assistant Commissioner of Endowments. Challenging the validity and legal sustainability of the orders passed by the Primary and Appellate Authorities, the present writ petition is filed.

This Court while ordering Rule Nisi on 6.2.2007 in W.P.M.P.No.2675 of 2007 granted interim stay of all further proceedings pursuant to the impugned order subject to the condition of the petitioner clearing all the arrears of rent @ Rs.8,500/- upto the year 2005-06 and continue to deposit the rent for the subject lands at the rate of Rs.10,000/- per year from 2006-07, pending further orders. Subsequently, the said order was made absolute on 10.10.2011.

According to the learned counsel for the petitioner, the orders passed by the Primary and Appellate Authority, which are impugned in the writ petition, are arbitrary, illegal, unreasonable and contrary to the provisions of the Act 30 of 1987 and the rules framed thereunder. It is the further submission of the learned counsel that the interpretation sought to be given by the respondents is contrary to law and opposed to the object of the provisions of the Act. It is the further submission of the learned counsel that the petitioner herein submitted a number of documents, in support of his case, including the certificates issued by the Panchayat and Revenue authorities and also the order of the Tenancy Tribunal in ATC No.3/92. The respondent authorities did not make any endeavour to consider the said documents. It is the further submission of the learned counsel that sub-Section (2) of Section 82 of the Act only refers to the lease not less than six years

and does not stipulate anything with regard to the lease approval. According to the learned counsel, the same missed the attention of the Primary and Appellate authorities. Further submission of the learned counsel is that the tenancy of the petitioner herein is admitted.

On the contrary, it is submitted by the learned Government Pleader so also learned Standing Counsel for the 4th respondent that there is absolutely no infirmity in the impugned orders and in the absence of the same, the questioned orders are not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted that the orders passed by the Primary and Appellate Authorities are strictly in accordance with the Rules notified *vide* G.O.Ms.No.379, Endowments dated 11.3.2003.

The material available before this Court clearly discloses that along with the application filed by the petitioner, claiming status of landless person, he enclosed certificate dated 9.6.2008 issued by the Mandal Revenue Officer, Polavaram, the certificate issued by the Panchayat Secretary Gram Panchayat and also the order dated 7th July, 1987 passed by the Special Officer, Principal District Munsif, Kovvur, West Godavari District in ATC No.3

According to the petitioner herein, he has been continuing as a lessee in respect of the subject properties from the year 1976. It is

also not in dispute that as on today, the petitioner herein is cultivating the subject lands.

A perusal of the order passed by the Special Officer in ATC 3 of 1992, in clear terms discloses that the petitioner therein who is the 4th respondent herein stated in the application filed for fixation of fair rent that the schedule land was leased out to the petitioner herein in the year 1976 on an annual rent of Rs.550/- and that he has been cultivating the subject land by paying the said rent. It is also the submission of the learned counsel that sub Section 2 of Section 82 of the Act stipulates the condition of holding lands for not less than six years continuously from the advent of Act 87 and the same does not stipulate the approval as mandatory.

In fact, the above said aspects were not considered either by the Primary Authority or the Appellate Authority in the impugned orders. This Court finds sufficient force in the contention of the learned counsel that having admitted about the tenancy of the petitioner in ATC 3/92, it is not open for the respondent to say that the petitioner is an encroacher. In the considered opinion of this Court all these aspects require consideration by the primary authority, i.e. the 3rd respondent-Assistant Commissioner of Endowments.

For the aforesaid reasons, the writ petition is allowed. The impugned orders are set aside and the matter is remanded to the

Assistant Commissioner of Endowments-1st respondent for consideration of issue afresh and to pass appropriate orders after giving opportunity of hearing to all the affected parties including the petitioner herein. Till the exercise attains finality, status quo as on today with regard to possession shall be maintained subject to the petitioner paying from the year 2017-18 a sum of Rs.20,000/- to the 4th respondent towards maktha and continue to pay the same.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.V.SESHA SAI

13th November, 2017
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