

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 15166 of 2008

ORDER:

Heard and perused the records.

2. The present Writ Petition came to be filed seeking issuance of writ of Mandamus declaring the high handed action of the respondents in attempting to dispossess the petitioner from 12 cents of land and the coconut trees within the compound wall of the first respondent Choultry i.e., items 1 and 2 in the lease proceedings dated 11.12.1978 situated in Kothapeta (V & M), East Godavari District and obstructing him from removing the coconuts inspite of the permanent injunction granted in A.T.C.No.11 of 1991 (Old ATC No.5 of 1985) and the subsisting lessee being a landless poor and a small farmer, as illegal and arbitrary.

3. The averments in the affidavit filed in support of the writ petition would show that the petitioner is a landless poor person and the first and second respondents leased out two items of property in the year 1978. Out of the two items, first item is 12 cents of land and the second item is coconut trees within the compound wall of choultry. While things stood thus, when the first respondent attempted to dispossess the petitioner forcibly from the land, the petitioner filed A.T.C.No.5 of 1985 (re-numbered as A.T.C.No.11 of 1991) on the file of Special Officer cum District Munsiff, Kothapeta for declaration of tenancy rights and for permanent injunction. The A.T.C. was allowed on 12.08.1993 and since no appeal was preferred by the respondents therein, the petitioner continued to be in possession of the property in dispute by paying rents regularly. Thereafter, first respondent issued notices to the petitioner demanding him to vacate the premises on the ground that arrears of rent are due, though the petitioner claims to have paid the entire amount. Later, the first respondent issued a public notice for conducting public auction of lease hold rights for five rooms in the choultry along with six coconut trees for usufruct of the

trees though the said trees are under the lease of the petitioner and the coconut trees in the choultry was shown as item No.6 of the proposed auction notice. However, due to an objection raised by the petitioner, no auction was conducted for item No.2 of the lease of the petitioner regarding coconut trees pursuant to original lease proceedings. But the first respondent started interfering with the petitioner's enjoyment of coconut trees from March, 2008 onwards and removed the trees within the compound wall of choultry. Hence, the petitioner sent a legal notice to the first respondent on 13.05.2008 and when the same was not received by first respondent, a second notice was sent on 26.05.2008 for which the first respondent replied vide reply notice dated 30.06.2008 stating that the said land was leased out to the third respondent in the month of February, 2008 and as such petitioner has no right over the same. At that point of time, the present writ petition came to be filed questioning the claim of the petitioner over the land and the proceedings dated 11.12.1978.

4. On 15.07.2008, this Court, while issuing *rule nisi*, directed the first respondent not to interfere with the possession of the petitioner in respect of the property in question, without following due process of law. A counter came to be filed disputing the averments made in the writ petition. It is contended that in view of Section 82 of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act (Act 30/87), the order passed in ATC cannot be made the basis for a claim over the land. However, it is stated that prior to filing of the writ petition possession of the land in dispute was already handed over to the third respondent and as such the petitioner cannot claim any right over the land.

5. As per Section 82 of the new Endowments Act, all the provisions of A.P. Tenancy Act shall not apply to any leases of the lands belonging to or given or endowed for the purpose of charitable or religious institutions or endowments as defined under the Endowments Act. This provision was given effect to from 2008. Though the learned counsel for the petitioner tried to contend that the auction

alleged to have been conducted by the second respondent is illegal and arbitrary, the prayer in the writ petition is different. He mainly relies upon the proceedings dated 11.12.1978, to show that he is in possession of the property and has been dispossessed without following due process of law. A reading of the proceedings would show that the period of lease was from 07.12.1978 to 07.12.1984. Thereafter, record shows that said lease period was extended. The averments in the counter would show that the choultry has taken possession from the petitioner for the land admeasuring Ac.0.12 cents in R.S.No.193/20 after serving a notice on him on 04.08.2007. Further, the land admeasuring 576 square yards with six coconut trees were taken over by the choultry in the month of September, 2007 and from then onwards both the properties are within the custody and enjoyment of the choultry. It is also stated in the counter affidavit that the commissioner-Endowments permitted lease of the land by private negotiations to the third respondent for a period of five years, possession was given to the third respondent on 13.02.2008 and the lease deed was executed by the third respondent. It is further stated that no one has come forward on 15.11.2007 to bid for six coconut trees shown as item No.5 in the auction notice.

6. It is to be noted that as stated earlier, the prayer in the writ petition is with regard to proceedings dated 11.12.1978. As per the proceedings, lease period was from 07.12.1978 to 07.12.1984. The period of lease stood expired on 07.12.1984. The subsequent proceedings which are alleged to have been initiated are not subject matter of challenge in the present writ petition. Though learned counsel tried to argue with regard to the action taken by the second respondent for granting lease to the third respondent, no request for cancellation of the said action is taken by the second respondent, as sought for in the present writ petition. Further, it is an admitted fact that possession of the land was taken by the choultry after expiry of lease period.

7. Having regard to the above circumstances, this Court is of the view that there are no merits in the claim made by the petitioner and as such the writ petition is liable to be dismissed.

8. Accordingly, the writ petition is dismissed. However, if the petitioner claims any possession, the third respondent is directed to take steps in accordance with law, if he is entitled for the same. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C. PRAVEEN KUMAR

07.03.2017
vnb

