

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.34312 OF 2012

ORDER :

This writ petition, filed under Article 226 of Constitution of India, challenges the orders passed by the Assistant Commissioner of Endowments Department, Rajahmundry-3rd respondent herein in M.A.No.1504/2010 (in Rc./No.A.4/5703/2010), dated 20.07.2010, as confirmed by the Regional Joint Commissioner, Multi Zone-I, Endowments Department, Kakinada-2nd respondent herein vide order dated 03.10.2012, passed in Appeal No.42 of 2010.

Heard Sri Rajesh Babu, learned counsel for the petitioner, learned Government Pleader for Endowments appearing for respondents 1 to 3 and Smt K.Lalitha, learned Standing counsel for 4th respondent.

According to the affidavit filed in support of the writ petition, one Sri Poosala Veeraju was the cultivating tenant, in respect of the land admeasuring Ac.2-41 cents in R.S.No.400, Gadala Village, Korukonda Mandal, East Godavari District, belonging to the 4th respondent institution for more than 50 years. Petitioner No.1 is the wife, petitioner No.2 is daughter in law and petitioner Nos.3 and 4 are the grandsons of the said late Sri Poosala Veeraju. In the year 1989, on the ground that the 4th respondent was attempting to evict from the subject land, Sri Poosala Veeraju filed A.T.C.No.24/1989, on the file of the Special Officer cum Principal District Munsif, Rajahmundry

under Section 10 of the Andhra Tenancy Act, seeking to declare him as cultivating tenant in respect of the subject land and to grant consequential injunction, restraining the respondents from interfering with his tenancy rights, over the subject land. On 08.06.1995, the tenancy court allowed the said application as prayed for. According to the learned counsel for the petitioner, the said order passed by the tenancy court became final and the 4th respondent did not file appeal against this order. Sri Veeraju died on 07.12.2009 and in support thereof, a death certificate is filed along with the writ petition as a material paper. On 06.04.2010, the Executive Officer of the 4th respondent institution caused a legal notice, calling upon Sri Poosala Veeraju to pay the enhanced cash maktha of Rs.9,150/-for the entire land holding, comprising in an extent of Ac.2.41 cts within 10 days from the receipt of the notice, with a further indication that in the event of failing to do so, follow up action would be taken, by way of putting lease hold rights of the land in public auction. In the said legal notice, got issued by the 4th respondent, it was indicated that vide R.C.No.3/19135/2003, dated 07.03.2005, Sri Poosala Veeraju was declared as landless poor person, under the Andhra Pradesh Endowments Act. Infact, the petitioners herein got issued a reply to the said legal notice on 21.04.2010, expressing their willingness to pay the reasonable enhanced annual makhta and for purchase of the scheduled land.

According to the learned counsel for the petitioners, no response was given to the said request made by the petitioners

herein, in their reply notice dated 21.04.2010. Subsequently, when there was an attempt, by the 4th respondent authorities to conduct public auction of the lease hold rights of the subject lands, petitioners herein filed W.P.No.11789 of 2010 before this Court and this Court on 20.05.2010 in WPMP.No.14987 of 2010 passed an interim order, asking the petitioners to make an application to the Assistant Commissioner, Endowments Department, East Godavari District, Kakinada within a period of two weeks from the said date, claiming the status of the landless poor person with a further direction to the Assistant Commissioner, to consider the same and pass appropriate orders, within a period of two weeks thereafter. In the said order, this Court also directed that if the lease hold rights are auctioned, the same should not be confirmed.

Pursuant to the above said order passed by this Court, petitioners herein made an application, for declaration as landless poor person and the Assistant Commissioner, Endowments Department, Rajahmundry-3rd respondent herein passed an order dated 20.07.2010, rejecting the request of the petitioners herein. As against the said order of rejection passed by the Assistant Commissioner, the petitioners herein filed an Appeal before the 2nd respondent herein vide Appeal No.42 of 2010. The 2nd respondent vide order dated 03.10.2010, dismissed the Appeal No.42 of 2010, confirming the orders passed by the Assistant Commissioner of Endowments. This writ petition, challenges the validity and legal sustainability of the said orders, passed by the Assistant Commissioner-3rd

respondent herein and the Regional Joint Commissioner-2nd respondent herein, rejecting the request made by the petitioners, for landless poor person status. It is contended by the learned counsel for the petitioners that the orders passed by the primary and the appellate authorities, are highly erroneous, contrary to law and opposed to the very spirit and object of the provisions of Endowments Act and Andhra Pradesh Charitable and Hindu Religious Institutions And Endowments Lease of Agricultural Land Rules, 2003, notified vide G.O.Ms.No.379, Revenue (Endo-I) dated 11.03.2003. It is the further submission of the learned counsel for the petitioners that the reasons assigned by the primary and appellate authorities in the impugned order, cannot be sustained in the eye of law, in the absence of any evidence to show that petitioners are not landless poor persons, as defined under Section 82 of the Endowments Act. It is further submitted by the learned counsel that the authorities failed to take into consideration, the declaration issued by the Special Officer cum Principal District Munsif, Rajahmundry in A.T.C.No.24 of 1989 under Section 10 of the A.P. (Andhra Area) Tenancy Act. It is further argued by the learned counsel that the authorities failed to take into consideration the categorical indication in the legal notice dated 06.04.2010, got issued by the 4th respondent, wherein it was stated that in R.C.No.3/19135/2003 dated 07.03.2005, late Sri Poosala Veeraju was declared as landless poor person, under the A.P.Endowments Act.

On the contrary, it is submitted by the learned Government Pleader appearing for respondents 1 to 3 and Smt K.Lalitha, learned Standing counsel for the 4th respondent that since the primary and appellate authorities concurrently found against the petitioners herein, the said finding of fact recorded by the authorities, in the absence of any perversity, are not amenable for any judicial review under Article 226 of the Constitution of India. It is further contended that since the orders under challenge, are strictly in accordance with the provisions of the Endowments Act and the Rules made thereunder, the interference of this Court under Article 226 of Constitution of India, is not warranted. It is further submitted that since the orders impugned, are supported by valid and convincing reasons, petitioners herein are not entitled for any relief from this court.

Pursuant to the orders of this Court in WPMP.No.14897 of 2010, petitioners herein approached the Assistant Commissioner of Endowments under Rules 3 of Andhra Pradesh Charitable and Hindu Religious Institutions And Endowments Lease of Agricultural Land Rules, 2003, for declaration of their status, as landless poor persons and the Assistant Commissioner vide order dated 20.07.2010 rejected the claim of the petitioners herein under Section 82 of the Endowments Act, on the ground that there was no lease approval orders from the concerned authorities from the years 1966-67, till the death of Veeraju in the year 2009 and the LR's of the deceased cultivator have no right of succession to the land as there is no sub-

division of the land and there is no registered lease agreement by the authorities. Assailing the correctness of the said order, passed by the Assistant Commissioner, petitioners herein filed appeal before the 2nd respondent herein on 14.08.2010. A copy of the said appeal is placed on record, during the course of hearing, by the learned counsel for the petitioner. In the memorandum of grounds of appeal, the petitioners herein, urged a number of grounds but the order passed by the appellate authority/Regional Joint Commissioner does not refer to any one of the ground raised in the said grounds of Appeal. In the considered opinion of this Court, the said exercise undertaken by the statutory appellate authority/2nd respondent can neither be approved nor countenanced. Being a statutory appellate authority, it is incumbent and obligatory on the part of the 2nd respondent, to consider the grounds of appeal raised and to answer them in accordance with law. The said exercise is conspicuously absent in the present case. The appellate authority, simply reiterated the reasons assigned by the primary authority in the impugned order. Therefore, this Court deems it appropriate, to remit the matter to the appellate authority, for fresh consideration in accordance with law, after giving notice and opportunity of hearing to all the stakeholders.

For the aforesaid reasons, the writ petition is partly allowed, setting aside the order dated 03.10.2012 in Appeal No.42 of 2010, passed by the Regional Joint Commissioner, Multi Zone-I, East Godavari, kakinada-2nd respondent and consequently, the said appeal stands restored to file for fresh

consideration of the same, in accordance with law, after giving notice and opportunity of hearing to all the stake holders. Till said exercise attains finality, status-quo obtaining as on today, with regard to subject property shall be maintained. No costs.

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

A.V.SESHA SAI, J

05.07.2017
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