

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.26566 OF 2005

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Endowments appearing for respondent Nos.1 and 2 and Smt.K.Lalitha, learned counsel for the third respondent.

Petitioner herein claims to be the permanent resident of Pithapuram Village and Mandal, East Godavari District and he also claims to be the cultivating tenant of the third respondent-Devasthanam in respect of an extent of Ac.0.68 cents of dry land situated in R.S.No.250/9 of the said village and mandal. Petitioner submitted an application before the Assistant Commissioner of Endowments, Rajahmundry-second respondent herein, claiming status of small farmer under the provisions of Section 82 of the Endowments Act, 1987 (for brevity 'the Act'). The Assistant Commissioner of Endowments, Rajahmundry-second respondent herein, by way of an order in M.A.No.688 of 2005, dated 20.06.2005, rejected the request of the petitioner herein for declaration as a small farmer on the ground that the petitioner herein holds more than the land as stipulated under Section 82 of the Act. Aggrieved by the said order of rejection, petitioner herein filed Appeal No.358 of 2005, under Rule 4 of the A.P.Charitable and Hindu Religious Institutions and Endowments Lease of

Agricultural Lands Rules, 2003, before the Regional Joint Commissioner-first respondent herein. The first respondent, by virtue of an order, dated 20.09.2005, dismissed the appeal, confirming the order passed by the Assistant Commissioner of Endowments, Rajahmundry-second respondent herein.

In the above background, the present Writ Petition came to be filed assailing the orders passed by respondent Nos.1 and 2 herein. This Court, while ordering Rule Nisi, on 13.12.2005, granted interim suspension.

According to the petitioner the questioned orders are highly illegal, arbitrary, unreasonable and are opposed to the very spirit and object of the provisions of the Act and the Rules notified vide G.O.Ms.No.379 Revenue (Endowments), dated 11.03.2012. It is submitted by the learned counsel for the petitioner that the primary and the appellate authorities, passed the orders under challenge, without properly considering the evidence available on record and without affording complete opportunity to the petitioner herein. It is the further submission of the learned counsel that the land under lease is a dry land, as admitted in the counter filed by the Executive Officer of the temple before the appellate authority, as such, the finding of the appellate authority, as to the nature of the leased property as wet land, is contrary to the material available on record. It is the further submission of the learned counsel for the

petitioner that as per the certificate, dated 23.08.2004, issued by the Mandal Revenue Officer, Pithapuram, the petitioner herein owns only an extent of Ac.2.01 cents of wet land and, even if the said land is taken into consideration, the extent of land will be only within the permissible limits.

On the contrary, it is vehemently contended by Smt.K.Lalitha, learned Standing Counsel for the third respondent-temple, that there is no illegality nor there exists any infirmity in the impugned order 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 also the submission of the learned Standing Counsel that, since the petitioner herein does not fulfil the requirements of Section 82 of the Act, the respondent Nos.1 and 2 are perfectly justified in rejecting the request of the petitioner herein for declaring him as landless poor person.

Admittedly, the extent of the property under lease is Ac.0.68 cents situated at Pithapuram village, East Godavari District. The primary authority i.e. the Assistant Commissioner of Endowments, by taking into consideration the aspect that the petitioner herein owns an extent of Ac.1.55 cents of wet land at Pithapuram, an extent of Ac.1.75 cents of wet land at Veeravada village and also owns a sawmill and a pacca house building, came to a

conclusion that the petitioner herein would not fulfil the requirements under Section 82 of the Act. Coming to the order of the appellate authority, the Regional Joint Commissioner found that, even according to the petitioner, he owns an extent of Ac.1.96½ cents of wet land besides the subject land of Ac.0.68 cents belonging to the third respondent. Finally the first respondent-appellate authority found that the total extent would come to Ac.2.64½ cents of wet land and, while holding so, the first respondent herein rejected the request of the petitioner herein. The certificate, bearing Rc.No.C/478/04, dated 23.08.2004, issued by the Mandal Revenue Officer, Pithapuram filed by the petitioner herein along with the present Writ Petition, discloses that the petitioner herein owns a total extent of Ac.2.01 cents of wet land in the said Mandal. It is also required to be noted that the Executive Officer of the third respondent-temple filed a counter-affidavit before the first respondent-Regional Joint Commissioner and at paragraph No.9 of the said counter-affidavit he deposed that the subject land, belonging to the third respondent herein, is a dry land. Therefore, this Court finds sufficient force in the contention of the learned counsel for the petitioner that the finding of the first respondent that the said land is a wet land is contrary to the said averment in the counter. It is also the submission of the learned counsel that, if the subject property of the third respondent is taken into account as a

dry land, the petitioner herein would be within the ceiling limit as prescribed under Section 82 of the Act. This Court finds sufficient force in the said submission of the learned counsel for the petitioner. Therefore, this Court is of the considered opinion that it is a matter which requires re-consideration by the appellate authority after taking into consideration all the above aspects.

For the aforesaid reasons, the Writ Petition is allowed in part, setting aside the order passed by the Regional Joint Commissioner, Kakinada-first respondent herein in Appeal No.358/2005, dated 20.09.2005, and the said appeal stands restored to file for consideration of the same by the first respondent, strictly in accordance with law, after giving opportunity to the petitioner herein. Till the said exercise attains finality, the interim order granted by this Court shall continue to remain operative.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed. There shall be no order as to costs.

06th November, 2017
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A.V.SESHA SAI,J