

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.29915 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

‘..to issue a writ, order or direction more so, a writ in the nature of mandamus by declaring the action of the 3rd respondent as arbitrary, illegal, high handed and opposed to principles of natural justice and consequently to direct the Respondents not to dispossess the petitioner from the land of an extent of Ac.1.00 cents in D.N.506/ 1 at Chebrolu village and Mandal, Guntur District without following due process of law under the provisions of A.P. Charitable and Endowments Act and may pass such other order or orders as this Hon'ble Court may be pleased to deem fit and proper in the interests of justice and equity.’

2. Heard the submissions of *Sri G.Vasantha Rayudu*, learned counsel for the petitioner; learned Government Pleader appearing for the respondents 1 and 2; and of *Smt. K.Lalitha*, learned Standing Counsel appearing for the 3rd respondent. Perused the material record.

3. The case of the writ petitioner, in brief, is as follows: - ‘In the year 1936, the property admeasuring Ac.1.00 cents in D.No.506/ 1 at Chebrolu village and Mandal of Guntur District, was donated to Sri Adisankaraswamy Devasthanam and Matam of Chebrolu, (hereinafter, ‘institution’ for brevity) by one Nandipati Nagaratnamma, W/o Narasimha Rao, by way of samarpana dasthaveju (gift deed), dated 24.05.1936. The said land was donated for maintenance of the temple and the institution for meeting the expenses of ‘dhupa deepa naivedhyam’. The said land has been in the possession of the ancestors of the petitioner and the petitioner; and, the income derived from the land was and is being used for maintenance of the temple and for the archakathvam services. The father of the petitioner, late Krishna Murthy, did

archakathvam; and, before him, the grandfather of the petitioner, Narasmiha, did archakathvam. The family of the petitioner has been doing so since the year 1936 and onwards; and, the petitioner has since been continuing as Archaka of the institution, that is, as hereditary pujari. While so, the petitioner filed O.S.No.2096 of 2004 on the file of II Additional Senior Civil Court, Guntur, seeking permanent injunction against one D.V.Raghava Rao. The Court below granted decree in favour of the petitioner. However, the said D.V.Raghava Rao filed a petition before the RDO, Tenali, seeking cancellation of the pattadar passbook and title deed issued in favour of the petitioner herein. The RDO, Tenali, passed orders directing the MRO, Chebrolu, to cancel the pattadar passbook. Against the said orders of cancelation, the petitioner filed an appeal before the Joint Collector, Guntur. The same was dismissed, on 16.02.2009. However, the Joint Collector directed the Assistant Commissioner of Endowment to take possession of the land from the petitioner by following due procedure. Against the orders of the District Collector, confirming the orders passed by the RDO, Tenali, the petitioner herein filed W.P.No.9858 of 2009. This Court dismissed the said writ petition. The petitioner's writ appeal was also dismissed. After disposal of the Writ Appeal, no proceedings are taken up by the Endowment Department and the petitioner continued as an archaka of the institution. While so, the 3rd respondent, who is no way concerned with the institution, has been trying to forcibly dispossess the petitioner and induct others into possession of the property high-handedly, illegally and unlawfully. No notice or proceedings were issued to the petitioner and he was not even called upon to hand over possession of the land. The Endowment Department has no authority to take forceful possession of the land. No Trust Board is in existence. The petitioner is taking care of the maintenance of the institution. There is no opposition or protest from any quarter. The petitioner is a small farmer and, therefore, he has to be given

preference even without conducting the auction for the leasehold rights of the land of the institution. No auction has been conducted as the Executive Officer, Rajeswara Rao, was transferred to Addepalli, Bhattiprolu Mandal from Chebrolu. Therefore, he cannot exercise any powers over the institution, which is not within his jurisdiction. The petitioner got issued a legal notice to the Assistant Commissioner of Endowments for not following the procedure established by law. There was no response to the said notice. This petitioner already raised a crop in the schedule land. If the petitioner is high-handedly dispossessed, he will be deprived of his valuable rights. The 3rd respondent is threatening the petitioner with dire consequences. As long as the petitioner performs his duties as Archaka, he shall not be dispossessed from the land of the institution, much less without following the procedure established by law. The 3rd respondent never bothered about the maintenance of the institution for several years. Third parties are interfering with the possession of the petitioner over the subject land. Hence, the writ petition is filed.'

4. The averments in the counter of the 3rd respondent, in brief, are as follows:

There are disputes between the petitioner herein and the adjacent land owner. The petitioner filed O.S.No.2096 of 2004 and obtained an injunction against the said person/ tenant. The institution is not a party respondent to the said suit. The petitioner with an evil intention, obtained pattadar passbooks and title deed in his name and the said Raghava Rao preferred an application before the RDO and got them cancelled. The appeal of the petitioner before the Joint Collector was dismissed, on 16.02.2009. The said orders were confirmed by the Collector. The writ petition and thereafter the writ appeal were also dismissed directing the petitioner to approach the competent civil Court for establishing his right and title over the property. The property belongs to the institution and the petitioner has no right over the same. The

institution has issued an auction notification, on 25.07.2017, for conducting auction, on 05.08.2017. One A.Sunil Kumar became the highest bidder for Rs.70,000/- and for the extent of Ac.1.36 cents two persons participated and one K.Rajasekhar has become the highest bidder for an amount of Rs.81,000/-. The petitioner was very much present during the auction proceedings. Immediately after the auction, the highest bidders have paid half of the highest bid amounts and they were inducted into possession as they have paid half of the highest bid amounts. Further, the highest bidder had raised the crop in the subject land and is cultivating the same. Having lost before the revenue authorities in the proceedings for mutation of his name in respect of Ac.1.00 cents belonging to the institution, the petitioner came to this Court without having any right in the land. The writ petition is liable to be dismissed.

5. The petitioner filed a reply affidavit stating *inter alia* as follows:

The material allegations in the counter affidavit are false. There is no temple at all and it is only a Sri Adishankara Matam. The same is being maintained by the petitioner as its archaka. Before him, his father and grandfather maintained the same from the date of the donation of the land admeasuring Ac.1.00 cents in D.No.506/ 1 at Chebrolu village to the institution in the year 1936. The suit filed by the petitioner against one D.V.Raghava Rao was decreed in favour of the petitioner. Conducting auction without taking physical possession of the land is contrary to law. Even as per the contention of the 3rd respondent also, the land belongs to the institution and that it was given for the maintenance of the Matam. The proposed auction is a high-handed attempt to dispossess the petitioner from the said land of Ac.1.00 cents. This petitioner raised protest for conducting the auction. The same was being mis-stated as participation of the petitioner in the auction. Sunil Kumar had not paid the entire bid amount, as per the terms of the auction conditions.

Therefore, the petitioner is unable to understand as to how the said person can be considered as a bidder entitled for the leasehold rights. The highest bidder must deposit the entire bid amount. The auction was held without following the known procedure. Conducting auction of leasehold rights of land in possession of this petitioner is in gross violation of the principles of natural justice. It is false to state that the said Sunil Kumar is in physical possession and that he has raised the crop in the subject land. The high-handed action of the 3rd respondent is liable to be declared as one opposed to the principles of natural justice.

6. Learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the 3rd respondent temple made submissions in line with the respective pleadings of the parties, which are stated supra, in detail.

6.1 Learned counsel for the petitioner would further submit as follows:

The grandfather & father of the petitioner cultivated the said Ac.1.00 cents of land of the institution. After them, the petitioner is continuing to cultivate the said land being the hereditary Archaka of the institution. The said land was and is in possession and enjoyment of the family of the petitioner since the year 1936. As long as the petitioner continues to render service as an Archaka of the institution, he is entitled to continue in possession and enjoyment of the said land. The 3rd respondent/ Executive Officer has no jurisdiction over the said land and the institution, as he was transferred. The auction was not validly held. Mere presence of the petitioner at the time of auction and raising a protest cannot be considered as his participation in the auction or his consent for auction of the leasehold rights of the land of the institution. Unless possession of the land is obtained from the petitioner, by following the procedure established by law, the auction of the leasehold rights of the subject land of Ac.1.00 cents cannot be held by the Endowments

Department. Unless the petitioner is evicted by following the procedure established by law, public auction of the leasehold rights cannot be held and possession cannot be given to the successful bidder in the auction. The successful bidder at the auction admittedly deposited half of the highest bid amount. Therefore, he is not entitled to have possession of the land as he has not paid the entire amount as per the auction conditions. Possession is given to the highest bidder in the auction is false. The petitioner raised crop in the schedule land. If he is dispossessed forcibly, he would suffer serious and irreparable loss.

7. Learned Standing Counsel for the 3rd respondent institution would submit as follows:

Any service Inam including the right to enjoy the land while rendering service as an Archaka of the institution stood abolished with the coming into force of the new A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act no.30 of 1987). The petitioner was an encroacher of the land of the institution as his right, if any, to enjoy the land while rendering service as an Archaka stood abolished with the coming into force of the new Act. The institution is not empowered to extend or grant any leases by private negotiation. Under law, an auction has to be necessarily held for leasehold rights in respect of Ac.1.00 cents of land. The petitioner never claimed any rights in respect of the land under any of the beneficial provisions of Act no.30 of 1987 or the relevant Rules made thereunder. The institution is entitled to conduct auction of the leasehold rights. The allegation that the Executive Officer was transferred and he has no jurisdiction over the subject land of the institution and the institution is false. The petitioner was very much present at the time of auction of the leasehold rights of the subject land. After the leasehold rights were auctioned, though the successful bidder deposited half of the bid amount, possession was delivered to him; and, he

raised the crop in the subject land. The writ petition without impleading such successful bidder at the auction, who is in possession, is not maintainable. The petitioner baldly stated that he raised crop without mentioning any details as to what was the crop raised etcetera. His earlier writ petition and the writ appeal were dismissed. He did not follow the directions in the earlier orders of this Court. Since possession is already taken and is delivered to the successful bidder, the writ petition is liable to be dismissed.

8. I have given earnest consideration to the facts and submissions. In the above stated facts, circumstances and submissions, the question that arises for consideration in this writ petition is:

Whether this Court is justified in showing indulgence to the petitioner?

9. The petitioner did not produce any patta or document showing that the land was given to him or his ancestor as a service holder or the employee of the institution/endowment for the purpose of rendering service to the institution or endowment. Even otherwise, the petitioner was an encroacher of the land of the institution as his right to enjoy the land while rendering service as an Archaka stood abolished with the coming into force of the new Act. However, on a query from the Court, it was fairly stated that in view of the provisions of the Act no.30 of 1987, even if a deed or grant or a document of transfer relating to the subject land of the institution/endowment is there, it shall be deemed that no such right in respect of the land is never to have been granted or transferred. Therefore, no right or title in such land shall vest in any person in view of the prohibition of transfer of lands granted for rendering service to a religious or charitable institution or endowment. In fact, the orders cancelling the patta passbook and title deed book have become final. Thus, the petitioner was an encroacher of the land of the institution as his alleged right, if any, to enjoy the land while rendering service as an Archaka stood

abolished with the coming into force of the new Act. The petitioner, therefore, cannot be heard to say that he can continue in the land and retain possession of the land even without a fresh lease being granted to him in respect of the subject land. The A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 {"the 2003 Rules" for brevity} postulate that all leases shall be by way of tender-cum-public auction on annual advance rental basis and the rent shall be fixed by cash only. As per law, once the right to remain in possession has come to an end and the lease, if any, granted has also come to an end by the efflux of term of lease, the institution is not empowered to extend or grant fresh lease by private negotiation. Under law, all leases shall be by way of tender-cum-public auction and the executive authority shall conduct tender-cum-public auction compulsorily by following the procedure established by law. The petitioner till date has not claimed that he is a landless poor person and did not claim or apply for any rights in respect of the land in question by having recourse to any of the beneficial provisions of Act no. 30 of 1987, or the Rules made there under. One of the contentions of the learned standing counsel appearing for the institution is that the petitioner is not a landless poor person and that the petitioner having not claimed the benefits, if any, to which he is entitled to immediately on coming into the force of the relevant Rules, is not entitled to claim any such alleged benefits at this distance of time. The next contention is that since the petitioner is an encroacher of the land of the institution/endowment, the institution is entitled to conduct auction by following tender-cum-public auction procedure for lease of the subject land and that the allegation that the Executive Officer was transferred and he has no jurisdiction over the subject land of the institution and the institution, is false. Merely because the petitioner is presently doing service as an Archaka, he cannot claim any rights much less vested rights over the land of the

institution/ endowment. There is no subsisting lease in his favour and he had no right to continue in possession of the property as on the date, the auction for the lease of the subject land was proposed to be held. The photographs filed along with the writ petition show the presence of the petitioner at the time of the auction of the leasehold rights. The petitioner also does not dispute his presence at the time of auction of the leasehold rights of the land. At one breath, the petitioner contends that the auction was not at all held and at another, he contends that the procedure was not followed in conducting the auction and that merely on the ground that auction was conducted, his possession cannot be disturbed without following the procedure established by law. Be that as it may. When the petitioner has no right whatsoever to continue in possession of the property, the Endowments Department is entitled to hold public auction for lease of the land of the institution/ endowment and put the successful bidder in possession of the property, as per the procedure established by law after taking possession from the person, who is in illegal or unauthorised possession of the land. It is well settled law and it is not in dispute that the Commissioner or the Regional Joint Commissioner or the Joint Commissioner of Endowments are not having powers to grant lease hold rights in respect of any endowed property otherwise than by a tender-cum-public auction. This Court, in a common Order, dated 08.06.2010, passed in W.P.Nos.12674, 12686, 12691 of 2010 (unreported), having referred to the precedents and the provisions of law, which are relevant, had held that the persons, who continue to remain in illegal occupation of the property belonging to a charitable trust, cannot be heard to contend that, though they continue to remain in illegal occupation, the respondents can only have them evicted in accordance with the summary procedure prescribed under Section 83 of the Act. In this context, it is profitable to refer to Section 83 of the Act, which reads as under:

“Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers:

(1) Where the Assistant Commissioner having jurisdiction, either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this Chapter referred to as ‘encroacher’) any land, building tank, well, spring or water-course or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provisions of this Act the Assistant Commissioner shall report the fact together with relevant particulars to the (Endowments Tribunal) having jurisdiction over the division in which the institution or endowment is situated

Explanation:- For the purpose of this Chapter, the expression ‘encroacher’ shall mean any person who unauthorisedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building or space after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.

(2) Where, on a perusal of the report received by him under sub-section (1), the Endowment Tribunal finds that there is a prima facie case of encroachment, it shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified in the notice should not be made. A copy of the notice shall be sent to the trustee of the institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Whereafter considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such enquiry as may be prescribed, the Endowment Tribunal is satisfied that there has been an encroachment, it may, by order, require the encroacher to remove the encroachment and deliver possession of the land or, building or space encroached upon to the trustee before the date specified in such order”.

(5) The order of the Endowment Tribunal under sub-section (4) shall be in writing and shall contain the grounds on which he has passed the order.

(6) During the pendency of the proceedings, the Endowment Tribunal shall order the encroacher to deposit such amount as may be specified by it in consideration of the use and occupation of the properties in question in the manner prescribed.”

10. In the light of the facts and the legal position obtaining, the petitioner's contention that, even if he is held to be an encroacher under Section 83 of Act no.30 of 1987, this Court should direct the respondents to act strictly in accordance with the procedure prescribed under the Act is a contention only to be noted to be rejected as this Court would not be justified in showing indulgence to the persons like petitioner who are encroachers of property of charitable/ religious institutions or endowment. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. (See: *C.R.Reddy Law College Employees' Association, Eluru, West Godavari District v Bar Council of India, New Delhi*¹). The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognised lines and subject to certain self imposed limitations. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case, unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law, which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. (See: *Samgram Singh v. Election Tribunal, Kotah*)².

¹ 2004 (5) ALD 180 (DB)

² AIR 1995 SC 425

11. In *Kalinga Mining Corporation v. Union of India and others*³, it was held as follows:

“ 62. It is by now well settled that judicial review of the administrative action/quasi judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be re-appreciated by the court in exercise of its powers of judicial review. The court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the court would be justified to interfere in the decision. The scope of judicial review is limited to the decision making process and not to the decision itself, even if the same appears to be erroneous.

Even when some defect is found in the decision making process, this Court will exercise its discretionary power, under Article 226 of the Constitution of India, with great caution and only in furtherance of public interest and not merely on the making out of a legal point. This Court is required to keep larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference, it would intervene in the matter. (*Air India limited v. Cochin International Airport Limited*: [2000(2) SCC 617].

12. Having regard to the facts and circumstances of the instant case and the legal position obtaining, this Court finds no reason to exercise the discretion under Article 226 of the Constitution of India in favour of the petitioner. Viewed thus, this Court finds that there is no merit in the Writ Petition and the writ petition is liable to be dismissed.

13. In the result, the Writ Petition is dismissed. No costs.

³ (2013) 5 SCC 252

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

M. SEETHARAMA MURTI, J

20th November, 2017

Note:- Issue CC by 04-12-2017
(B/o)
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