

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

W.P.No.21441 of 2017

ORDER:

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

2. According to the petitioner, he belongs to Schedule Caste and was in possession of small extent of land in Sl.No.118 of Annavaram, East Godavari District and she is eking her livelihood by collecting the cashew nuts from the said land. In the year 1998, the Government acquired Ac.300-00 and handed over the same to the third respondent temple. It is further stated that the society working for the welfare of the Schedule Castes approached the third respondent temple and made a representation on 27.02.2012 to allot shops/sanitary work in the temple in lieu of the lands taken from the members of the society and when no favourable orders were forthcoming, they were constrained to file W.P.No.16928 of 2012 before this Court and the cause which prompted the petitioner therein to file writ petition was the notification dated 24.05.2012 issued by the third respondent, inviting sealed tenders for the works of sanitation, housekeeping and gardening in Harihara Sadan and Vishnu Sadan at Saptagiri Hills. It is further stated that though the Joint Collector addressed a letter to the temple on 27.02.2012 to consider their request, the first respondent was proceeding with finalizing the tenders and therefore a direction was sought to the Executive Officer to allot the said works to the petitioner society and not to conduct the auction. The said writ petition was disposed of on 18.07.2012. The operative portion of the said order at paragraphs 8 and 9 reads as under:

"8. Point:

It is true that the petitioner appears to be a registered society under the Andhra Pradesh Registration of Societies Act, 2001 with the members shown in the list of Governing Body as different office bearers. The list of encroachers in R.S.No.118/1 of Bendapudi furnished by the Tahsildar, Thondangi is not the subject of scrutiny in the present writ petition and it consists of 118 persons and it is seen from the letters of the Mandal Revenue Officer, Thondangi that there were 109 encroachers by means of cashew nut trees and mango trees in an area of 103 acres, while the eligibility in respect of those encroachments had already been taken up. It is further shown that out of 110 encroachments, 52 encroachments belong to the scheduled caste persons and the Revenue Divisional Officer, Peddapuram forwarded some petitions received for providing employment opportunities to the displaced persons, to the Tahsildar for enquiry. While the result of the enquiry is not known, the petitioner society primarily places its reliance on the communication from the Executive Officer of the temple, dated 13-10-2010 to the District Collector with reference to the different letters received from the Collectorate and a representation received from the petitioner. The Executive Officer has stated that after completion of developmental works on Satyagiri, the requests of the societies will be taken into consideration at the time of allotment of sanitary works. The letter contained no promise to allot such works in favour of any particular society nor can the statement to take such requests into consideration be considered to be an enforceable promise to have such allotment only in favour of such societies. The pleadings on record are as though the identity of the displaced persons vis-à-vis the membership of the petitioner society itself is in question apart from the fact that there appeared no enforceable agreement or arrangement between the displaced persons and the temple and the other official respondents to positively provide any employment opportunities to them in lieu of displacement, whether compensation was paid to all the persons, who were found to be encroachers in those lands, and any yielding trees were found or not. The material on record does not disclose any enforceable right for the petitioner society

to insist on the works in question being allotted in deviation of the normal procedure or without calling for competitive tenders. The offer to match the lowest tender in the auction cannot be preferred in view of the positive intervention of the rights of third parties who participated in the tender process and the only concessional treatment that may be given to the members of the petitioner society is to the extent of displaced encroachers recognized by the survey team and the revenue authorities with reference to either the three identified packages indicated in the additional counter-affidavit of the 1st respondent or such other works which may arise for execution within the jurisdiction of the 1st respondent, which can be competently executed by such displaced encroachers among the members of the petitioner society. The displaced encroachers entitled to the preferential treatment shall be identified in accordance with the report of the survey team and the records of the revenue authorities.

9. Therefore, the 1st respondent shall positively consider entrustment of any of the three identified packages stated in the additional counter-affidavit of the 1st respondent or any other works that arise in future which can be competently handled and executed by the displaced encroachers among the members of the petitioner society in terms of the statement made in the communication from the Executive Officer to the District Collector, dated 13-10-2010 to take into account the requests of such societies for allotment of such sanitation works, subject to such relevant terms and conditions as may be prescribed. The writ petition is disposed of accordingly with the above direction. No costs."

3. It is further stated that during the pendency of the said writ petition, petitioner was allotted place with 10'x10' dimension for vending coffee/tea and she was permitted to erect a kiosk and since then she is continuing. It is further stated that a complaint was filed against the third respondent/Executive Officer before the Lokayuktha, alleging bias and partiality in the matter of allotting the stalls and the Commissioner in order to get over the pending case in the Lokayukta appears to have issued

proceedings on 15.05.2017 asking the third respondent to conduct public auction for license rights for running Coffee/Tea vending machines instead of continuing the existing persons to avoid public criticism and to have transparency. As a consequence of the same, vide proceedings in Rc.No.C1/2176/2015, dated 23.06.2017, the third respondent cancelled the permission and according to the petitioner, the said orders were not communicated to her. Subsequent to the said orders dated 23.06.2017, the third respondent issued show cause notice vide Rc.No.C1/2176./2015 dated 03.06.2017, asking the petitioner to show-cause as to why the license should not be cancelled and the petitioner was called upon to file objections to the same. According to the petitioner, on 09.06.2017, she submitted objections/reply to the said show-cause notice dated 03.06.2017. Vide impugned proceedings dated 23.06.2017, the third respondent herein cancelled the license of the petitioner. In the above background, the present writ petition came to be filed.

4. This Court, on 16.08.2017 passed an interim order directing that the proposed auction in respect of subject shop may go on, but the same shall not be finalized.

5. Admittedly, the petitioner herein is in possession of subject stall and the fact remains that the third respondent issued show cause notice on 03.06.2017 asking the petitioner herein to file explanation. It is also an admitted fact that the petitioner herein in response to the said show-cause notice filed an explanation on 09.06.2017 urging number of grounds including the orders passed earlier in W.P.No.16928 of 2012.

6. A perusal of the order dated 23.06.2017, passed by the third respondent, discloses in clear terms that the third respondent herein did not consider the objections of the petitioner herein raised in the explanation

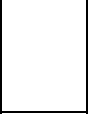
offered in response to the show-cause notice having issued show-cause notice and having acknowledged the explanation offered by the petitioner herein. This Court absolutely does not find any justification on the part of the third respondent in failing to consider the contents of the said explanation. The said mode and manner in which the third respondent considered the issue, in the considered opinion of this Court, is highly illegal, arbitrary and on the said ground alone the present writ petition is liable to be allowed and the order dated 26.03.2017 is liable to be set aside.

7. For the aforesaid reasons, the writ petition is partly allowed, setting aside the order passed by the third respondent vide Rc.No.C1/2176/2015, dated 23.06.2017 and the matter is remitted to the third respondent for fresh consideration and to pass final orders after taking into consideration the explanation offered by the petitioner and after giving opportunity of hearing to the petitioner herein. Till the said exercise attains finality, the interim order dated 16.08.2017 passed by this Court shall continue to operate. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 04.09.2017

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



W.P.No.21441 of 2017

Dated 04.09.2017

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