

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

W.P.No.36654 of 2017

ORDER:

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

“to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus, declaring the action of the 2nd respondent in auctioning the petitioner's lands to an extent of Ac.3.94 cents in Sy.No.124/1 of Pottempadu (Sarvepalli-5) Village, Venkatachalam Mandal, SPSR Nellore District, scheduled to be held on 06.11.2017 at 11.00 AM or thereafter vide his notice dated 26.10.2017 is illegal, arbitrary and contrary to law and consequently direct the respondents to continue the petitioner as lessee of the above said lands as usual and to pass such other order or orders”

2. Learned counsel for the petitioner would submit that the petitioner's father was originally a cultivating tenant of the subject land of an extent of Acs.3-94 cents in Sy.No.124/1 situated at Pottempadu (Sarvepalli-5) Village, Venkatachalam Mandal, SPSR Nellore District, and that after the death of the father, the petitioner is continuing as tenant of the subject property since 20 years and that at present, the petitioner is paying rent @ Rs.36,200/- for first crop and Rs.18,100/- for second crop (54,300/- annually) and that while so, the respondents have issued open auction notice for auctioning the leasehold rights of the subject property on 06.11.2017 at 11.00 AM., and that the petitioner is a landless poor person and under the provisions of law, particularly, under Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987 for brevity), the petitioner is entitled to approach the Assistant Commissioner by availing the beneficial provisions of the enactment and he should be given option

to purchase the land on payment of 75% market value or continue as a tenant on payment of 2/3rd of the market rent as lease amount and without giving an opportunity to the petitioner to avail such benefit, the present auction notice was issued and that the petitioner is prepared to continue as a cultivating tenant by paying the annual rent as may be fixed by the Court and that the petitioner may be given an opportunity to approach the Assistant Commissioner and seek appropriate remedies available under law.

3. Learned Standing Counsel appearing for the 2nd respondent temple would submit that with the termination of lease by efflux of time, the petitioner is an encroacher and that the villagers are repeatedly complaining for not conducting auction of the leasehold rights and that the temple is not empowered to extend or grant lease by private negotiations and that under law, an auction has to be necessarily held for leasehold rights in respect of the petition schedule land and that as the petitioner is not a landless poor person, he is ineligible for claiming such relief more particularly, at this distance of time as the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (Rules 2003 for brevity) envisage that such claim shall be made immediately after coming into force of the Rules in the year 2003 and that the petitioner, after coming into force of the said Rules, participated in the auctions for leasehold rights held in respect of the subject land and that till date, he did not file any application claiming the benefits available to a landless poor person and therefore, he is not entitled to any relief in the writ petition and the same is liable to be dismissed.

4. In reply, learned counsel for the petitioner would submit that if a cultivating tenant is continuing in possession of the property as tenant for a period of 6 years or more, he is entitled to avail the benefit of such provisions, which are available to the landless poor person and placed reliance on a decision of this Court in W.P.No.12125 of 2003 dated 25.06.2003, whereby this Court, while considering the similar request, afforded an opportunity to the writ petitioner therein to claim the status of a landless poor person by approaching the Assistant Commissioner of Endowments with appropriate application within two weeks from the date of receipt of a copy of the said order and disposed of the said writ petition with further directions, however, directing the respondents therein not to dispossess the tenant from the property until the status of the tenant is determined by the Assistant Commissioner of Endowments.

5. I have given earnest consideration to the facts and submissions.

6. Having regard to the facts and submissions, this Court is of the considered view that the writ petition can be disposed of with appropriate directions to meet the ends of justice.

7. In the result, the Writ Petition is disposed of, giving liberty to the petitioner to claim status of a landless poor person either in respect of the entire extent of land involved or eligible extent from out of the entire extent of land by approaching the concerned Assistant Commissioner of Endowments by filing an application, within two weeks from the date of receipt of a copy of this order; and, on filing such application, if any, the Assistant Commissioner is

directed to decide the matter in accordance with law and Rules and pass appropriate orders, within four weeks thereafter. However, the auction scheduled to be held on 06.11.2017 at 11.00 AM., shall go on as per procedure. It is made clear that the petitioner is at liberty to participate in the said auction without prejudice to his rights which are exercisable pursuant to the aforesaid directions in the order of this Court. It is made further clear that the authority concerned shall not dispossess the petitioner from the subject land in case the petitioner fails to become the successful bidder and deliver possession of the subject land to the successful bidder in the auction till the Assistant Commissioner concerned takes an appropriate decision in the matter by completing the exercise as stated supra. However, in the event the Assistant Commissioner rejects the claim of the petitioner as landless poor person and holds that the petitioner is not entitled to any reliefs under the relevant provisions of the Act, the authorities concerned are at liberty to deliver possession of the property to the successful bidder in the public auction that is scheduled to be held on 06.11.2017 at 11.00 AM.

No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE M. SEETHARAMA MURTI

2nd November, 2017

Note:

Issue CC tomorrow.

sj