

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.7466 of 2009

O R D E R:

In this writ petition, petitioner challenges the order, dated 31.01.2009, passed by respondent No.1-Deputy Commissioner, Endowments Department, Guntur in I.A.No.58 of 2008 in O.A.No.72 of 2007.

Petitioner asserts that she is the owner and possessor of agricultural land admeasuring Ac.1.00 and Ac.0.82 cents in Survey Nos.54 (Old Survey No.46) and 45/2 (Old Survey No.47) respectively, situated at Pulichintalapalem H/o. Kuchipudi Mandal, Guntur District; that on the ground that the said land belongs to it, respondent No.2 – Koganti Ramaswamy Trust filed O.A.No.72 of 2007 under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') before respondent No.1 against her alleging that she has encroached upon the subject land; that in the said O.A., she did not attend the enquiry, as such, she was set *ex parte* on 14.08.2007 and thereby, respondent No.1 passed order, dated 06.12.2007, directing her to remove the encroachment and deliver possession of the subject land; that the petitioner filed I.A.No.58 of 2008 in the said O.A. with a prayer to set aside the aforesaid order stating that she was not aware of the pendency of such proceedings; that she never refused to receive the notice issued by respondent No.1 and that she is 80 years old and suffering from old age ailments and that respondent No.1 after

considering the material on record and taking into consideration the counter filed by respondent No.2, passed order, dated 31.01.2009, dismissing the I.A. holding that there was negligence on the part of the petitioner in attending the O.A. proceedings and thereby, prayed for allowing the writ petition.

Respondent No.2 filed a counter-affidavit opposing the writ petition by dealing with the merits of the matter and clearly narrating as to the issuance of notice to the petitioner and conducting of *ex parte* proceedings by respondent No.1. It states that the petitioner is enjoying the Trust properties and thereby, the loss caused to it is about a sum of 20,00,000/-.

Heard learned counsel for the petitioner and learned Standing Counsel for respondent No.2.

A perusal of the impugned order discloses that after taking into consideration the material available on record, respondent No.1 passed an elaborate order specifically dealing with each aspect of the matter on merits.

It may be noted that though the proceedings might have been conducted by respondent No.1 in the absence of the petitioner, the order passed by him cannot be said to be a cryptic one, as it is a reasoned order. It is well settled that if a party to the proceedings refuses to receive a notice on account of his/her own volition, there is no requirement for the adjudicating authority to

wait further and the said authority is required to proceed further by treating that the notice is deemed to have been served.

It may be noted further that even according to the petitioner, she had an alternative remedy of appeal against the order impugned but instead of availing the same, almost after ten months thereafter, she chose to file I.A.No.58 of 2008 seeking to set aside the order passed in the O.A. It may be noted further that neither there is any power vests in respondent No.1 nor there is any procedure for recalling his order, unlike a Court of law which is governed by C.P.C. and other procedural laws. It may also be noted that except the assertion of the petitioner in the writ affidavit as well as before respondent No.1 that she had not received any notice and she never refused to receive the same, there is no other material placed by the petitioner to satisfy this Court that respondent No.1 erred in passing the impugned order. In the circumstances, it can be said that there are no *bona fides* on the part of the petitioner in filing I.A.No.58 of 2008 as she cannot take advantage of her own wrong.

Therefore, the writ petition is devoid of merit and is accordingly dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:02.08.2018
kdl

