

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

WRIT PETITION No.7903 of 2009

C.Venkata Subba Rao.

... Petitioner.

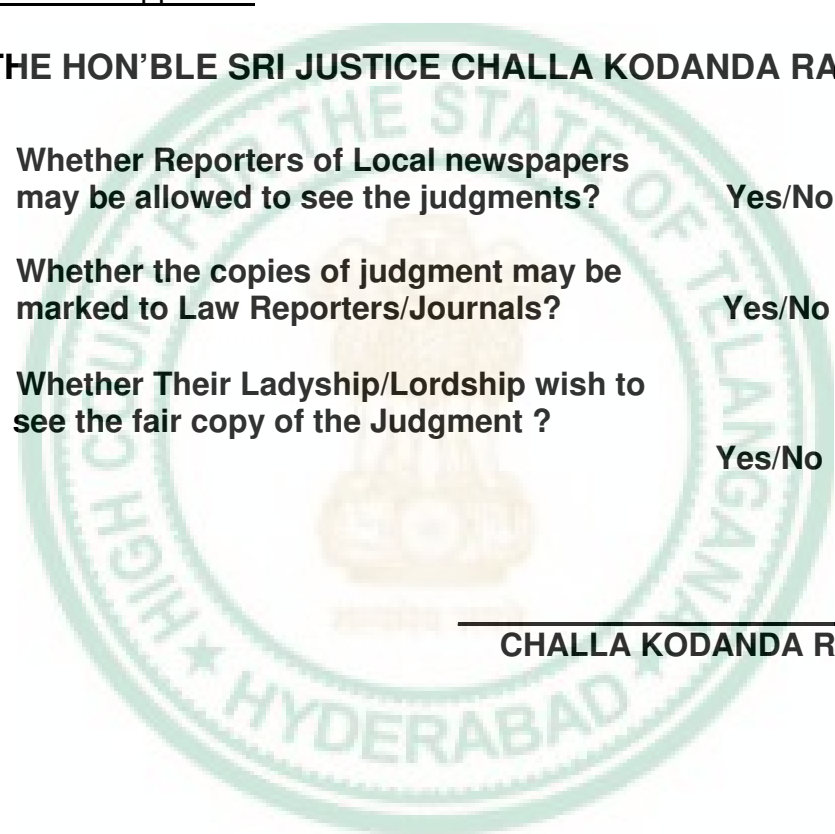
and

The Commissioner and others.

...Respondents.

Date of Judgment Pronounced: 10-10-2018
Submitted for Approval:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgments? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

CHALLA KODANDA RAM,J

* THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ WRIT PETITION No.7903 of 2009

% Dated 10.10.2018

Between:

C.Venkata Subba Rao.

... Petitioners

and

The Commissioner and others.

...Respondents

! Counsel for the petitioner : Sri E.V.V.S.Ravi Kumar

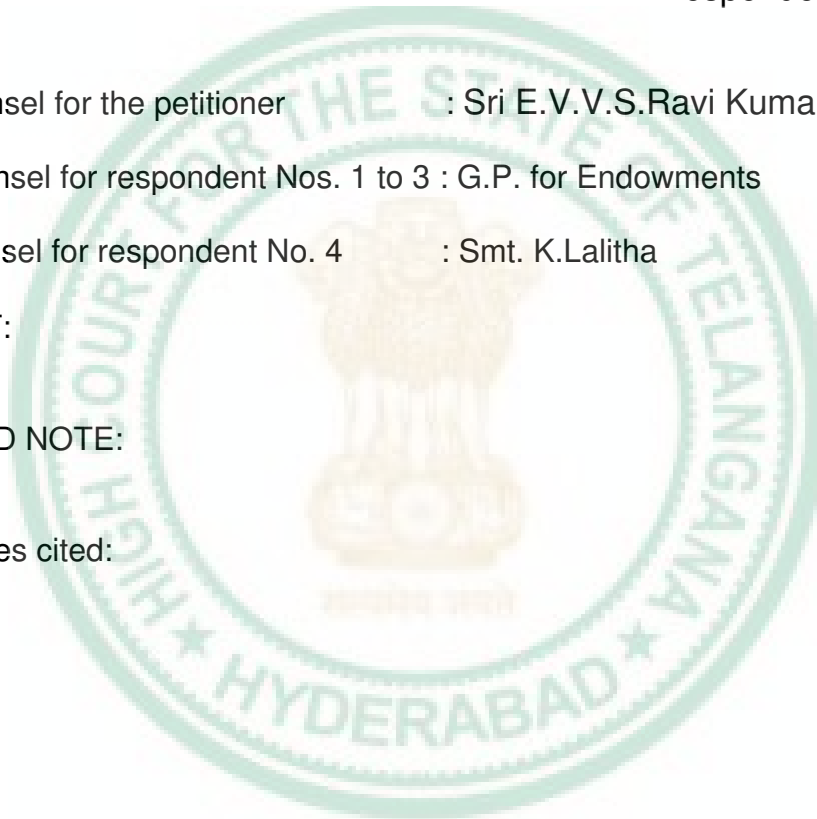
^ Counsel for respondent Nos. 1 to 3 : G.P. for Endowments

^Counsel for respondent No. 4 : Smt. K.Lalitha

<GIST:

>HEAD NOTE:

? Cases cited:



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.7903 of 2009****O R D E R:**

In this writ petition, petitioner challenges the order, dated 03.02.2009, passed in Appeal No.25 of 2008 by respondent No.2-Regional Joint Commissioner, Multi Zone-I, Endowments Department, Kakinada, confirming the order, dated 02.07.2007, passed in M.A.No.1425 of 2017 (in Rc.No.A2/7487/2003) by respondent No.3-Assistant Commissioner, Endowments Department, Rajahmundry, East Godavari District.

The case of the petitioner is that in their respective orders, respondent Nos. 2 and 3 have failed to appreciate the crucial fact that O.S.No.31 of 1978 was filed by his father for declaring him as a cultivating tenant, that he (petitioner) came to be impleaded therein on the demise of his father as his legal representative and the Court below declaring him as cultivating tenant of respondent No.4-Sri Laxmi Narasimha Swamy Temple, Antharvedi Village, Sakinetipally Mandal, East Godavari District. His further case is that in O.S.No.187 of 2007 filed by him, the Court below, while decreeing the same, directed the respondents to issue maktha receipts in his favour, which fact would establish the factum of his being the tenant of respondent No.4; that O.S.No.92 of 2003 filed by him in the Court of the Principal Junior Civil Judge, Razole, for

declaration that he is entitled to purchase the land admeasuring Acs.2.10 cents in Survey Nos.91/2A, 91/2B and 93/3 of Tatipaka, Razole Mandal, @ 75% of the market value, was decreed and during pendency thereof, respondent No.4 filed O.A.No.117 of 2003 before the Deputy Commissioner of Endowments Department, Kakinada, seeking his eviction, but, later, it withdrew the same; that respondent No.3 issued notice on 29.08.2003 calling upon him to inform whether he is willing to enhance the rent or purchase the subject land, within 15 days from the date of receipt thereof and on the same day, the Special Officer, representing respondent No.4, issued another notice to the petitioner to furnish details with regard to the properties owned by him along with confirmation letter to respondent No.3 within one week from the date of receipt thereof and he replied to the same by categorically asserting that he is willing to purchase the property and that while the things stood thus, respondent No.3 issued a notice to the petitioner on 19.09.2003 proposing to conduct an enquiry so as to determine whether he is a small farmer and if so, he is eligible for the benefits therefor. It is also the case of the petitioner that ignoring the specific arguments advanced particularly with respect to various proceedings ensued between him and respondent No.4, respondent No.2, placing reliance on the orders, dated 05.08.2003 and 21.08.2006, passed in W.A.No.1302 of 2003 and W.P.No.17281 of 2006 respectively,

wherein this Court held that the benefits under Section 82 of the Act are available only to a person, who is a cultivating tenant, having obtained lease through public auction, as stipulated under the relevant statutory rules, governing the grant of lease of agricultural lands belonging to religious and endowment institutions and that an individual by merely depositing Makthas in favour of the institution cannot claim that he is a cultivating tenant, passed the impugned order confirming the order, dated 02.07.2007, passed by respondent No.3 rejecting the claim of the petitioner that he is a small farmer in terms of Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act').

A counter-affidavit is filed by respondent No.4 stating that the petitioner is not a tenant of respondent No.4 in terms of the procedure prescribed under the Act, as such, he is not entitled to the benefits under Section 82 of the Act and that respondent No.2, placing reliance on the orders of this Court dated 05.08.2003 and 21.08.2006, passed in W.A.No.1302 of 2003 and W.P.No.17281 of 2006 respectively rightly passed the impugned order.

Heard learned counsel for the petitioner, learned Government Pleader for respondent Nos.1 to 3 and learned Standing Counsel for respondent No.4.

There is no dispute that the petitioner satisfies the criterion mentioned in Explanation and Explanation II of sub-section (2) of Section 82 of the Act. It may be noted that the judgment and decree passed by the learned Principal Senior Civil Judge, Razole, in O.S.No.92 of 2003 filed by the petitioner would be binding on the respondents as they would confirm the status of the petitioner that he is a small farmer and is a tenant of respondent No.4. It may be further noted that a close reading of the order in W.P.No.17281 of 2006 discloses that the facts of the said case are entirely different for the facts of this case and the grievance of the petitioner therein was with regard to non-disposal of the appeal by the appellate authority with respect to the land in his possession claiming himself to be a tenant and this Court, making certain observations, disposed of the said writ petition directing respondent No.2 therein to consider and dispose of the issues that have been raised in the remand order of respondent No.1 therein. The said observations are as follows:

“The 2nd respondent should bear in mind that the benefits under Section 82 of the Act are available only if a person is a lawful cultivating tenant having obtained lease after a process of public auction as stipulated under the relevant statutory rules governing grant of leases of agricultural lands belonging to the religious and endowment institutions and if such person owns or is in cultivation of lands in accordance with the limit specified in Section 82 of the Act. A person does not become a lawful cultivating tenant by merely depositing Makthas which are received either by the Manager or a Trustee of the institution or even by the officials of the Endowments

Department. De facto occupation or cultivation of lands due to the negligence or connivance of the endowment department officers does not elevate the status of such occupier to a lawful cultivating tenant and such unlawful occupier or cultivator is neither entitled to the benefits under Section 82 of the Act nor to a declaration that he/she is landless poor person within the expression under Section 82 of the Act.”

From a perusal of the judgment and decree in O.S.No.92 of 2003, it is clear that the petitioner is a tenant and is entitled to purchase the subject land in terms of Explanation and Explanation-II of sub-section (2) of Section 82 of the Act. It may be noted that O.S.No.31 of 1978 was filed by the father of the petitioner much prior to the amendment made to Section 82 of the Act on 26.08.2002 with retrospective effect, as such, the petitioner came to be declared as a cultivating tenant under the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956.

It is an admitted fact that the father of the petitioner was a tenant of respondent No.4. In terms of Section 10 (5) of the Andhra Pradesh (Andhra Area) Tenancy Act, the petitioner is a cultivating tenant as defined under Section 2 (c) thereof. Even on that ground also, rejection of the claim of the petitioner for extension of the benefits available to a small farmer, holding that he cannot be treated as a cultivating tenant is unsustainable. The order, dated 05.08.2003, passed in W.A.No.1302 of 2003 has no application to the present case as in the said case, partition was

effected by the cultivating tenant to claim the benefit of a small farmer under Section 82(2) of the Act.

In the context of deciding the contention whether there was a dispute with regard to the observations made in the order or in the context of deciding the dispute whether the parties therein could be declared as cultivating tenants, the requirements under sub-rule (2) of Rule 3 of the A.P. Charitable Hindu Religious institutions and Endowments Lease of Agricultural Land Rules, 2003 (for short 'the Rules, 2003') are required to be satisfied. Therefore, based on the declarations made by the civil Courts, the petitioner is a cultivating tenant as on the date of coming into force the amendment to Section 82 of the Act. In view of the same, rejection of the claim of the petitioner for extending the benefits available to a small farmer in terms of Section 82(2) of the Act, placing reliance on the orders dated 04.08.2003 and 21.08.2006, passed in W.A.No.1302 of 2003 and W.P.No.17281 of 2006 respectively, is unsustainable. It may be noted that the impugned order is dated 02.07.2007 and the writ petition came to be filed in 2009. At this juncture, learned counsel for respondent No.4 submits that in terms of the Rules, 2003, to claim the status as tenant, the petitioner is required to satisfy, for every three years, the condition that he continues to be a landless poor person, for extending the benefits available to a small farmer, hence, prays for remanding the matter to the respondent

authorities for determining whether as on date, the petitioner would be entitled to the benefits available to a small farmer in terms of Section 82 of the Act. His request cannot be acceded to as the petitioner challenges only the validity of the impugned order passed by respondent No.2 rejecting his claim to be declared as a small farmer, in terms of Section 82 of the Act.

For the reasons stated above, the writ petition is allowed and the impugned order is set aside. However, in the event the respondent authorities find that as on date, the petitioner is not entitled to the benefits under Section 82 (2) of the Act, they shall take appropriate steps in terms of the Act. It is needless to mention that to avail such benefits, the petitioner shall satisfy the condition mentioned therein that he continues to be a small farmer.

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

CHALLA KODANDA RAM, J

Dt:10.10.2018

Note: LR copy to be marked.
kdl

