

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.15004 OF 2008

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India, which is in the nature of Writ of Certiorari, questioning the order, dated 23.06.2007, of the Assistant Commissioner, Endowment Department, Rajahmundry-2nd respondent, as confirmed by the order, dated 25.03.2008, of the Regional Joint Commissioner-1st respondent.

2. Petitioner herein claims to be a landless poor person and sought benefit of Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (in short, 'the Act') and the same was rejected by the Primary Authority as well as the Appellate Authority i.e., Assistant Commissioner and the Regional Joint Commissioner.

3. The facts are not in dispute. It is a case where the petitioner, admittedly, came to enter into the land as a tenant in the year 1979-80 and continued as a tenant upto 1985-86. However, after expiry of lease period he continued as a tenant without any approval and also defaulted in payment of makthas and fell arrear for the years 2002-03 to 2004-05. It is now no more *res integra* that the benefit of Section 82(2) of the Act, in relation to the landless poor person, is restricted to such of those tenants who are in existence as on the cutoff date i.e., 28.05.1981. It may be noted that the benefit that is given to landless poor persons in terms of Section 82 of the Act is an exception to Section 82(1) of the Act, whereunder all the leases with effect from the notified date i.e., 28.05.1981, are required to be done only through public auction.

4. In the present case on hand, there being no dispute that the petitioner having come into the land as a tenant only in the year 1979-80, the benefit of Section 82(2) of the Act does not enure to him. Even

if he is a landless poor person, he does not satisfy the requirement of his being tenant of the subject land as on the date of commencement of the Act 30 of 1987 i.e., 28.05.1981. It may also be noted that the benefit given to the existing tenants, as on date 28.05.1981, was keeping in view of the protection to a cultivating tenant under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 enjoined in terms of Section 10 of the A.P. (Andhra Area) Tenancy Act, 1974, to the effect that a tenant of the land as on the notified date was entitled to be declared as a perpetual tenant. The Endowment Act has made the A.P. (Andhra Area) Tenancy Act inapplicable by virtue of the statutory amendments to both the Endowment Act as well as the A.P. (Andhra Area) Tenancy Act.

5. The statutory position being clear, the petitioner, notwithstanding the fact that he satisfies other conditions of being a small farmer, is not entitled to the protection under Section 82(2) of the Act. Therefore, this writ petition is liable to be dismissed.

6. At this juncture, it is submitted by the learned counsel for the petitioner that by virtue of the interim orders of this Court, petitioner continued to cultivate the subject land and at present, there is a standing crop. Hence, the respondents are directed to allow the petitioner to harvest the standing crop for this agricultural season.

7. Accordingly, with the above observation, this Writ Petition is dismissed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed as a consequence. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Date:06.07.2018

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