

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.26791 OF 2006

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of Certiorari calling for the records relating to and connected with the order dated 4.11.2006 passed by the 3rd respondent in Appeal No.84 of 2006, wherein the order passed by the 4th respondent dated 6.7.2006 was confirmed, and to set aside the same by holding it as arbitrary, illegal and contrary to the provisions of Section 82(2) r/w Rule 3 and Section 83 r/w Rule 5(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987.

2. Heard Sri Balaji Medamalli, learned Counsel for the petitioner; the learned Government Pleader for Endowments; Smt. K. Lalitha, learned Standing Counsel for TTD and Sri N.V. Anantha Krishna, learned Counsel for the 5th respondent.

3. The case of the petitioner in brief is as follows:

The petitioner took the dry land of an extent of Ac.3.35 cents situated in Sy.No.66 of Madduru village, Kovvur Mandal, West Godavari District, belonging to the 5th respondent-trust on lease and he has been cultivating the same by paying makthas regularly. On 5.6.2002, the Deputy Commissioner, Kakinada confirmed the lease in favour of the petitioner for a period of three years on annual rent of Rs.20,100/-. While so, the 5th respondent filed a suit for recovery of maktha and that the petitioner paid the arrears of maktha. While so, the 4th respondent issued a notice to the petitioner under Rule 3 of the A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules,

2003 (for short, 'the Rules'), which provides for determination of status of landless person for the purposes of Section 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act'). The petitioner submitted his explanation for the said notice and then, the 4th respondent passed order dated 7.3.2005 stating that the petitioner is not entitled for any relief as E.P. for eviction was pending against him. Aggrieved by the said order, the petitioner filed an appeal before the 3rd respondent and the said appeal was also dismissed. Questioning the same, the petitioner filed W.P.No.11934 of 2005 before this Court. This Court allowed the said writ petition directing the 4th respondent to make fresh determination of the petitioner's status as a landless poor person. Pursuant to the said order, the 4th respondent passed order on 6.7.2006 rejecting the plea of the petitioner and holding that the trust was taken over by the department in the year 1984-85 and prior to the same, the records were not available in the department and that the writ petitioner entered into the lands only since 1984-85 and not prior to 6 years from the commencement of the Act 30 of 1987. Aggrieved by the same, the petitioner filed appeal No.84 of 2006 before the 3rd respondent. The 3rd respondent confirmed the order of the 4th respondent, vide order dated 4.11.2006. Challenging the same, the petitioner filed this writ petition.

4. Respondents Nos.3 and 4 filed separate counter-affidavits stating that the Assistant Commissioner, Endowments, Eluru passed orders on 7.3.2005 rejecting the claim of the petitioner as landless poor and against the same, the petitioner filed appeal and the same was also dismissed. When the Trust authorities were about to put the property to public action, the petitioner filed W.P.No.11934 of 2005 and on 6.2.2006, this Court passed orders directing the authorities concerned to make fresh

determination of the status of the petitioner as landless poor. It is stated that the petitioner is a chronic defaulter and the respondents after giving sufficient opportunity and after following the due procedure rejected the claim of the petitioner as directed by this Court in W.P.No.11934 of 2005. Further, it is stated that the petitioner does not have the approved lease prior to commencement of Act 30/87, and since no approved lease was subsisting the Trust authorities auctioned the lease hold rights of subject lands on 6.1.2007.

5. The 5th respondent filed a counter-affidavit stating that in pursuance to the directions of this Court in W.P.No.11934 of 2005, the 4th respondent after giving sufficient opportunity and following the due procedure, rejected the plea of the petitioner, and that the appeal preferred by the petitioner aggrieved by such rejection, was also dismissed and thereafter, the lease hold rights of the subject land were put to public auction and the son of the petitioner became highest bidder for a period of 2 ½ years and on 6.1.2007 itself the son of the petitioner took delivery of the subject land and that the petitioner is not in possession of the subject land by the date of filing the writ petition and therefore, the writ petition has become infructuous.

6. Learned Counsel for the petitioner submits that the petitioner is the cultivating tenant of the subject land, which was leased out to him about 35 years back and without considering the same, respondents Nos.3 and 4 rejected the claim of the petitioner only on the ground that the Endowment Department does not have the records prior to 1983-84. He further submits that the petitioner is a landless poor person and therefore, he is entitled to be continued as a tenant and therefore, the orders passed by respondents Nos.3 and 4 are not sustainable under law.

7. The learned Counsel appearing for the 5th respondent submits that the orders passed by respondents Nos.3 and 4 do not warrant any interference and that the lease hold rights of the subject land were put to public auction and the son of the petitioner became highest bidder for a period of 2 ½ years and on 6.1.2007 itself the son of the petitioner took delivery of the subject land and that the petitioner is not in possession of the subject land by the date of filing the writ petition and therefore, the writ petition has become infructuous.

8. It is the claim of the petitioner that he is the cultivating tenant for more than 35 years. The relief sought by the petitioner is that he is entitled to be continued as tenant as he is the landless poor. From the order of the 4th respondent dated 6.7.2006, it is obvious that the claim of the petitioner was rejected mainly on the ground that the records prior to 1983-84 were not available. The reason assigned by the 4th respondent for rejection of the claim of the petitioner is unsustainable. If the records are not available with the respondents prior to 1983-84, then the petitioner should be given an opportunity to produce the cist receipts for the period prior to 1983-84 and consider his case on merits, but the respondents cannot reject on the ground of non-availability of records. In view of the same and taking into consideration the amended Rules of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Lease of Agricultural Land) Rules, 2003, vide G.O.Ms.No.425 dated 09.11.2015, this Court feels it just and proper to remand the matter to the 4th respondent to consider the case of the petitioner afresh for grant of lease of the lands of the 5th respondent and pass appropriate orders, within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. Accordingly, the Writ Petition is disposed of setting aside the orders of the 3rd and 4th respondents, dated 4.11.2006 and 6.7.2006. The 4th respondent is directed to consider the case of the petitioner afresh and pass appropriate orders, keeping in view the amended provisions of the Act vide G.O.Ms.No.425 dated 09.11.2015, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 1st May, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.26791 OF 2006



01/05/2018

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