

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.11111 OF 2017
and
CONTEMPT CASE No. 922 OF 2017

COMMON ORDER:

W.P.No.11111 of 2017 is filed for the following relief:

“..... to declare the high-handed and arbitrary action of respondent Nos.1 to 3 in interfering with the possession and enjoyment of the land of the petitioners admeasuring Ac.1.45 cents in Survey No.28/2 of Penuguduru Village, Karapa Mandal, East Godavari District and trying to dispossess the petitioners without following due process of law as illegal, arbitrary, without jurisdiction, and consequently direct respondent Nos.1 to 3 to forbear from interfering in any manner with the possession of the petitioners of the land admeasuring Ac.1.45 cents in Survey No.28/2 of Penuguduru Village, Karapa Mandal, East Godavari District by issue of writ, order or direction, more particularly a writ in the nature of mandamus under Article 226 of the Constitution of India...”

The brief averments in the writ petition are that the petitioners are the tenants of respondent No.4 in respect of the land admeasuring Ac.1.45 cents in Survey No.28/2 and Acs.2.12 cents in Survey No.28/3 of Penuguduru Village, Karapa Mandal, East Godavari District, and are cultivating the same. On an earlier occasion, respondent No.4 filed ATC No.14 of 2006 before the Special Officer-cum-Principal Junior Civil Judge, Kakinada seeking fixation of fair rent and the same was allowed on 11.11.2009 and the petitioners have been paying the fair rent as

fixed by the Special Officer from time to time and are cultivating the above said land without any hindrance. While so, on coming to know that respondent No.4 executed a gift deed in favour of the third parties, the petitioners filed O.S.No.100 of 2015 in the Court of I Additional Junior Civil Judge, Kakinada and the same is pending. They also filed ATC No.7 of 2015 before the Special Officer, Kakinada, for adjudication of the disputes. While the things stood thus, when the officials of the Endowments Department tried to interfere with their possession, the petitioners got issued a legal notice on 11.02.2017 to respondent No.3, who in turn, gave a reply on 22.03.2017 denying the allegations mentioned therein by stating that the Andhra Pradesh Endowments Tribunal, Hyderabad, vide order, dated 02.01.2013 allowed O.A.No.451 of 2012 filed by respondent No.3 by recording a finding that the land in question was encroached by respondent No.4 and that respondent No.2 issued proceedings, dated 01.01.2017 for eviction of respondent No.4.

While admitting the writ petition on 28.03.2017, this Court granted stay of dispossession of the petitioners.

Respondent No.3-Devasthanam filed a counter-affidavit specifically asserting that they are not aware of the disputes between the petitioners and respondent No.4 and further, respondent No.4 on an earlier occasion filed O.S.No.767 of 1997 in the Court of Principal Junior Civil Judge, Kakinada seeking declaration of title and adverse possession of the land in question

and the same came to be dismissed on 22.09.2005. Thereafter, eviction proceedings were initiated against respondent No.4 by filing O.A.No.451 of 2012 before the Endowments Tribunal under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987 and the same was allowed *vide* order, dated 02.01.2013 holding that respondent No.4 is an encroacher; that eviction of respondent No.4 was effected *vide* proceedings, dated 01.01.2017 and that respondent No.2 issued auction notice on 14.02.2017 for conducting auction on 18.02.2017. In the said auction, one Kola Prasad S/o Nageswara Rao, became the highest bidder and the same was approved by respondent No.2 on 07.03.2017. The auction purchaser paid the entire lease amount and possession of the land in question was handed over to him on 25.02.2017. They also assert that respondent No.4 herself does not have any right to lease out the land in question and thus, the possession and enjoyment of the petitioners over the said land is illegal and they are liable to be declared as encroachers.

Learned counsel for the petitioners submits that the petitioners are in possession and enjoyment of the land in question and are cultivating the same and even if they are declared as encroachers of the temple land, the officials have to follow the due procedure for evicting them.

Learned Standing Counsel for respondent No.3 asserts that the petitioners do not have any legal right over the land in

question and hence, they are liable to be evicted. He further asserts that in view of the interim order passed by this Court on 28.03.2017, the petitioners are not evicted as they are in possession of the land in question. He also asserts that necessary steps would be taken in accordance with law for eviction of the petitioners.

It is not in dispute that the petitioners are in possession of the land in question owned by respondent No.4 and the relationship between them is tenant and landlord. In view of the same, it is not understandable as to what necessitated respondent No.3 to initiate proceedings against respondent No.4 before the Tribunal seeking her eviction. the questions as to whether respondent No.4 would fall within the definition of 'landlord' as defined under the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act and whether the petitioners are to be construed as cultivating tenants require to be considered as and when eviction proceedings are initiated against the petitioners.

Even assuming that the petitioners are encroachers of the land in question, ignoring the tenancy agreement between the petitioners and respondent No.4, on account of the assertion of respondent No.3 that respondent No.4 does not have any right in the land, necessary proceedings have to be initiated by them seeking eviction of the petitioners. Admittedly, no such proceedings were initiated, but, only based on the order, dated 02.01.2013 passed by the Tribunal against respondent No.4,

respondent No.3 tried to evict the petitioners and the same is impermissible.

In those circumstances, the writ petition is disposed of with the direction to respondent Nos.1 to 3 not to interfere with the possession and enjoyment of the petitioners over the land in question, without following the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act or any other applicable law.

In pursuance of the order, dated 28.03.2017 passed by this Court in WPMP.No.13793 of 2017, the petitioners are harvesting the crop on the land in question. When the officers of Devasthanam and respondent No.4 removed the harvested crop forcefully, the petitioners filed C.C.No.922 of 2017.

In view of disposal of the writ petition, the contempt case is closed.

Consequently, miscellaneous applications, if any shall stand closed.

CHALLA KODANDA RAM, J

Dt:13.06.2018

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