

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.15118 OF 2008

ORDER:

This writ petition is filed seeking the following relief –

“....to issue an appropriate Writ or any other appropriate writ, order or direction declaring the action of the respondents in proposing to acquire the land measuring 18 acres in Sy.Nos.8, 9, 10, 216, 317, 149/1 and 316 of Rajahmundry Town and asking the petitioners to vacate the said land as illegal and arbitrary and for a consequential direction directing the respondents not to interfere with the peaceful possession and enjoyment of the petitioners lands and pass such other or further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

The petitioners claim that they are the tenants of the 3rd respondent-temple land, measuring 18 acres, situated in Sy.Nos.8, 9, 10, 216, 317, 149/1 and 316 of Rajahmundry Town and they have been cultivating the said land for the last 55 years by paying maktha. The petitioners submit that on account of the construction of Godavari Barrage and floods in Godavari River, the water got stagnated in the subject land and they were unable to raise paddy crop, as the land became water-logged land, however, since 1995, they have been growing green grass, which is being used as a cattle food. On earlier occasion, when the respondent authorities sought to evict the petitioners, they filed W.P.No.13473 of 2001, which came to be disposed of on 26.02.2002, recording the undertaking of the respondents that if they would proceed to dispossess the petitioners, they would follow the due process of law. Subsequently, the Government announced Indiramma

Programme, whereunder, weaker sections of the society are being provided with houses or house sites. Therefore, the petitioners were informed that the land, which is in their occupation, belonging to the 3rd respondent, is proposed to be acquired for Indiramma programme. The petitioners, therefore, filed W.P.No.22936 of 2006 and this Court directed the learned Government Pleader to obtain instructions, who, in turn, had informed that there was no proposal pending for acquisition of the subject land. Recording the said submission the Writ Petition was disposed of on 08.11.2006. In W.P.M.P.No.5257 of 2008 in W.P.No.10547 of 2006, the learned Government Pleader had filed an application stating before this Court that the temples would be given alternative lands in Pedda Brahmadevam village and Peddapurapupadu village, in lieu of the lands that are sought to be acquired. The petitioners assert that they are all small farmers and if they are asked to move from the land, they would be left with no livelihood. It is finally stated that the Notification under Section 4(1) of the Land Acquisition Act was published, the action of the respondents is arbitrary and illegal. Hence, they seek to declare the action of the respondents in proposing to acquire the subject land as arbitrary and illegal. A consequential direction is also sought to the respondents not to interfere with their peaceful possession and enjoyment.

Counter-affidavits are filed on behalf of the 3rd respondent-Devasthanam, as well as by the 1st and 6th respondents. In the counter affidavits, they refuted the allegations of the petitioners that they are the tenants of the 3rd respondent-temple. It is asserted that the petitioners are encroachers in the land belonging

to the temple. It is also admitted that the temple would be given alternative land in lieu of the land proposed to be acquired. It is further asserted that the permission of this Court was granted for acquiring the land for distribution of house sites under Indiramma programme and, as a matter of fact, the Government has taken possession and handed over Ac.62-25 cents of agricultural land as compensation. The assertion that the A.P. (Andhra Area) Tenancy Act has application to the endowments land is denied. It is further asserted that the petitioners had filed W.P.No.23376 of 2008 and the same came to be dismissed by the Court vide orders dated 28.11.2008.

In the counter affidavits filed by the 3rd and the 6th respondents, it was elaborately stated that how the individual petitioners were in possession of the land for a limited period and further, it is asserted that the 1st petitioner is a Corporator in Rajahmundry Municipal Corporation and in terms of G.O.Ms.No.379, dated 11.03.2003 all leases were cancelled with immediate effect. The 2nd and the 3rd petitioners are doing petty business and the 6th and the 7th petitioners are employees and not residing in Rajahmundry and the 8th petitioner is no way concerned with the subject property.

The learned counsel for the petitioner has passed away. On being informed, this Court directed the Registry to issue notice to the petitioners, so as to enable them to engage a counsel to argue the case. The notices sent to the petitioners returned unserved with an endorsement that 'addresses are insufficient'. A perusal of the postal covers discloses that there was no door numbers mentioned, except the names of the persons. It is impossible for

the Postal Department to serve the notice to such addresses, which is inadequate in all respects. However, considering the averments in the affidavit that the petitioners are all in occupation of the land belonging to the 3rd respondent-temple and cultivating the land, this Court made a request to the learned counsel Sri Guru Gopal to assist the Court by arguing the matter on behalf of the petitioners. Accordingly Sri Guru Gopal assisted the Court as an Amicus Curie.

On going through the papers, learned Amicus Curie submitted that virtually, the petitioners do not have any right over the land belonging to the temple, and no document has been produced to show that the petitioners were granted lease. He further submits that on account of the amendments brought to the Endowments Act, the provisions of the Tenancy Act has no application and the earlier protection that was given to the cultivating tenants, is not available with effect from 2002. He would also submit that as per the material made available to him and as per the counter affidavit of the 1st respondent, the petitioners were evicted and the land was handed over to the Government for the purpose of housing scheme.

Learned Government Pleader appeared for the institution placed on record the proceedings, dated 25.08.2008, under which the 3rd respondent-temple was given alternative land over an extent of Ac.27.82 cents, as against the 13 acres of land taken from the temple.

Having regard to the facts and circumstances and in view of the fact that there being no right in the petitioners nothing survives in the Writ Petition and the same is liable to be dismissed

as the action of the 3rd respondent in handing over the land in favour of the government, by accepting the alternative land, cannot be found fault in any respect.

Accordingly, the Writ Petition is dismissed. No costs.

As a sequel, pending miscellaneous petitions, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Dated: 24.09.2018.

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