

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.8147 of 2018

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for respondent Nos.1 to 3 and 5 and Sri A.Sreekanth Reddy, learned Standing Counsel for respondent No.4-Mutt, representing by the Manager-cum-Assistant Commissioner of Uravakonda, Anantapur District and perused the prayer in the writ petition with supporting affidavit and impugned notice, dated 24.02.2018, issued by the Assistant Commissioner to the petitioner and the order in W.P.No.274 of 2018, dated 05.01.2108.

2. The prayer in the writ petition reads as follows:

“.....to issue a writ, an order or direction, more particularly, one in the nature of Writ of Mandamus declaring the proceedings dt.24.02.2018 issued by the 3rd respondent, calling upon me to remove all the permanent and temporary constructions in the site in Sy.No.475-A1 and deliver vacant possession of the site to the 3rd respondent, as illegal, void, arbitrary, unjust and same being passed without any reason and without considering the explanation submitted by the petitioner on 15.02.2018 and set aside the proceedings dt.24.02.2018 issued by the 3rd respondent, in the interest of justice and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. It is the supporting affidavit averment that the 4th respondent-Mutt executed rental agreement, dated 13.04.1977, for five years with effect from 14.10.1976 and the petitioner is running a Saw Mill

business therein, which is bearing Sy.No.475/A/1 of Uravakonda village of Anantapur District, by paying the rentals and the lease was extended time to time including by proceedings, dated 10.02.2009, by the Assistant Commissioner recommending to the 5th respondent- Deputy Commissioner by fixing monthly rent of Rs.1,600/- per month in addition to the earlier rent for the bunks at Rs.200/- per month each for three years up to 31.03.2010 and while so on 03.09.2017 and 03.10.2017, the Assistant Commissioner, who is Manager of the Mutt, issued notices asking to remove the bunks and the sheds and hand over the site, came with police to evict pursuant to the notice, which made the petitioner to file earlier W.P.No.274 of 2018 with the following prayer:

“.....to issue a writ, an order or orders and direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd Respondent in issuing the impugned notices dated 03.09.2017 & 03.10.2017 in the names of 7 co-workers and asking to remove the sheds and hand over the site to the 4th respondent mutt is highly illegal and arbitrary and it is also in violation of statutory rules, consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the leased out land and to pass such other order or orders as this Hon'ble Court may deems fit, just and proper in the circumstances of the case.”

4. The Court after hearing, passed the order, as follows:

“The authority concerned of the fourth respondent – Mutt shall issue a notice to the petitioner within two weeks from the date of receipt of a copy of this order and on receipt of such notice, the petitioner is at liberty to submit his explanation, if he so desires, within two weeks thereafter. After receiving the

explanation, if any, submitted by the petitioner, the authority concerned of the fourth respondent – Mutt shall consider and dispose of the same in accordance with the procedure established by law and communicate the decision taken thereon to the petitioner within a week thereafter.

Till the above exercise is completed, the respondents are directed not to take any coercive action against the subject property of the petitioner, which is more fully described in document at page 51 of the material papers filed along with the writ petition. It is made clear that if no explanation is given by the petitioner as directed supra, the 4th respondent-Mutt shall be at liberty to proceed further in the matter in accord with the procedure established by law.”

5. It is pursuant to which, the impugned notice, dated 24.02.2018, preceded by earlier notice, dated 10.02.2018, which is reference No.2 therein, therefrom it is the submission that he has no other source of income except from the sheds and bunks from the site covered by Sy.No.475-A1 of Uravakonda Village and he cannot be evicted from the property.

6. The learned Government Pleader for Endowments and the learned Standing Counsel for the Mutt supported the impugned notice in saying as per the Rules, the Manager of the Mutt has no power to grant any lease that too by public auction beyond three years and if at all to extend is only by the Commissioner of Endowments up to maximum five years from the beginning of lease and even for the Government to extend maximum 11 years from the beginning of the lease and beyond that none got any power, but for to participate in the

auction to be conducted like any other public subject to the auction terms to be satisfied and thereby encroacher can be asked to vacate, there is no wrong in the impugned notice and writ petition is liable to be dismissed.

7. The earlier writ petition order referred supra speaks that Mutt to issue notice to the petitioner and he must submit his explanation within two weeks therefrom and consider and dispose of the same according to the procedure established by law within one week thereafter and meantime not to take any coercive steps. Mutt undisputedly issued notice, dated 10.02.2018 and his explanation is 15.02.2018, wherein as referred in the impugned proceedings, dated 24.02.2018, para 2 is simply asked to execute lease deed in his favour and the lease cannot be given by private negotiations and he is liable to be evicted thereby asked to vacate.

8. Undisputedly, it is his say from the earlier writ petition and present writ petition averments of the lease commenced way back in 1977 and squatting on the property one way or the other right from his father or brother, as the case may be, after efflux of time, once he is continuing against the will of the owner of the premises-the Mutt, is no other than a tenant by sufferance in the eye of law a trespasser, he cannot ask to continue or squat on in the property. Having regard to the above, there is no wrong in the impugned proceedings of the Manager and Assistant Commissioner, dated 24.02.2018.

9. Accordingly, the writ petition is disposed of by reiterating that the petitioner cannot be dispossessed except through due process of law and he is liable to pay in the meantime damages for use and occupation for the two bunks and the premises at Rs.5,000/- (Rupees five thousand only) per month.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

13th March 2018

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