

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.1345 OF 2007

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the orders of the second respondent in Appeal No.33 of 2006 dated 18.10.2006, as arbitrary, void and ultra vires of the Constitution of India and to hold that the petitioner is landless poor entitled to the benefits of Section 82 of the A.P. Act 30 of 1987.

2. The case of the petitioner is that he has been cultivating the dry land to an extent of Ac.2.76 cents in R.S.No.160/1 of Ramannapalem Village belonging to the fourth respondent temple since 1971. He has no other property other than the leasehold rights of the aforesaid Ac.2.76 cents and it is the only source of livelihood to their entire family.

The petitioner further submits that he filed W.P.No.21646 of 2003 challenging the vires of Section 3 of A.P. Tenancy Laws (Amendment) Act, 2002 and obtained stay, but the same was dismissed on 24.06.2005, directing him to file an appeal before the second respondent within three weeks and directed *status quo* till then. But, even before completion of three weeks period, the fourth respondent published sale notice to sell the leasehold right of the land. Hence, he filed W.P.No.16307 of 2005, wherein this Court ordered that the auction shall be subject to final orders of the

second respondent. The third respondent dismissed the application of the petitioner on 01.06.2006. Then, he preferred an appeal before the second respondent and the same was also dismissed on 18.10.2006, confirming the order of the third respondent dated 01.06.2006 holding that the petitioner is not a landless poor person and is not entitled for the benefit under Section 82(2) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act')

It is further submitted that the second respondent is not justified in classification of dry or wet land simply on the basis of supply of government water to any land for raising crops. On the basis of the orders of the second respondent in Appeal No.33 of 2006, the fourth respondent is taking steps to evict the petitioner from the land under his cultivation with police aid and once he is evicted and third party is inducted into the land, he will be deprived of his only means of livelihood. In those circumstances, the writ petition is came to be filed challenging the order of the second respondent dated 18.10.2006, passed in Appeal No.33 of 2006, as arbitrary and contrary to the provisions of the Act and ultra vires the Constitution of India.

3. This Court admitted the Writ Petition on 06.09.2007.

4. The third respondent filed counter stating that the grandfather of the petitioner by name Kothapalli Veranna

took the schedule land of Ac.2.76 cents on lease in the year 1960 and he had executed a Kadapa in favour of the temple, wherein it was described as 'wet land' and the rent was 33 bags. The application filed by the petitioner before the third respondent, to declare him as landless poor person, was rejected and the petitioner filed W.P.No.21646 of 2004 before this Court and the same was dismissed with a direction to file an appeal before the second respondent. After the dismissal of the said writ petition, the leasehold rights of the land were put to auction. The petitioner filed an Appeal No.33 of 2006 before the second respondent and the same was also dismissed on 18.10.2006. The petitioner again filed W.P.No.16307 of 2005 along with W.P.M.P.20727 of 2005 sought for stay of the auction. This Court ordered that the auction may go on subject to further orders of this Court. The entries made in adangals, the certificate issued by the Technical Expert of Irrigation Department, Maruteru and the certificate issued by the Secretary of the Village show that the schedule land is a wet land. The said Technical Expert also certified that the schedule land is supplied with water for two crops in a year through pipe No.50 of the canal running from Achanta side. The leasehold rights of the schedule land was put to public auction on 01.08.2005, one Kothapalli Veera Venkata Srinivas became the highest bidder and he has taken possession of the land and that the petitioner is not in possession of the land.

5. The fourth respondent filed counter reiterating all the averments stated in the counter filed by the third respondent.

6. The learned counsel for the petitioner would contend that the provision of Section 82 of the Act being beneficial provision to protect the interests of landless poor tenants, the authorities de hors the same cannot interpret it in their favour. The description in the revenue records must be the sole criterion to determine the classification of land under the cultivation of a tenant. The certificate issued by the irrigation authorities has no value because even for dry lands when water is supplied, irrigation cess is levied and such cess cannot be termed as tax for wet land and it is the discretion of the tenant to raise either wet crops or dry crops and the number of crops to be raised in the land under his cultivation. The order of the second respondent confirming the order of the third respondent is clearly contrary to the provisions of the Act and is liable to be quashed, considering the fact that the petitioner is a landless poor person and entitled to the benefits under Section 82 of the Act. If the preparations of the respondent No.4 to evict the petitioner from the land under his cultivation ignoring the mandatory provision under Section 83 of the Act, could not be stopped, the petitioner would be permanently deprived of his only means of livelihood.

The learned counsel further contended that as per the certificate issued by the M.R.O., Penugonda, dated 24.05.2004, it is clearly mentioned that the land to an extent of Ac.2.76 cents in R.S.No.160/1 belonging to Sri Agasteswara Swamy Temple of Vadali Village, is classified as jirayathi dry land. Even the M.R.O. in his written statement submitted to the Assistant Commissioner of Endowments Department, Eluru dated 11.02.2006, stated that the petitioner used to cultivate the land of Ac.2.76 cents in R.S.No.160/1 of Ramannapalem Village since his grandfather was a lessee, on payment of maktha of Bg.51.39 Kgs. of paddy both for khariff and rabi crops under canal water. It is contended that the third respondent committed grave error in rejecting the certificate issued by M.R.O. and the copy of the R.S.R. for R.S.No.160/1 of Ramannapalem Village. Even the second respondent has committed grave error in confirming the orders of the third respondent by holding that the petitioner does not come under the purview of 'landless poor' as prescribed under Section 82(2) of the Act, and finally prayed to allow the writ petition.

7. The learned Government Pleader for Endowments would contend that the petitioner does not come under the purview of 'landless poor person' and not entitled for benefits as per Section 82(2) of the Act. He further contends that agricultural lands which are under projects and which receive water from any government irrigation source for a period not

less than five months in a fasli year shall be treated as 'Wet' and the petitioner would not come under the category of 'landless poor person' as he is holding land in an extent of Ac.2.76 cents more than the prescribed limits. Further, the paddy is raised for two crops under government irrigation source and the temple is paying water tax accordingly. The learned Government Pleader also contends that the subject land was included in the ayacut of canal and water is being supplied through pipe No.50 of Achanta canal and irrigation water is being supplied for khariff and rabi sasons. It is also contended that at present the petitioner is not in possession of the subject land and ultimately prayed to dismiss the writ petition.

8. In the facts and circumstances of the case and in the considered view of this Court, the subject land to an extent of Ac.2.76 cents in R.S.No.160/1 of Vadali Village belonging to Sri Agasteswara Swamy Temple is double crop wet land. As seen from the certified copy of Adangal for R.S.No.160/1 issued by the M.R.O., Penugonda, it is clear that the subject land is being cultivated with paddy crop both for khariff and rabi seasons with canal water. As seen from the letter submitted by the Assistant Technical Expert, Irrigation Department, Marteru to the Manager of the subject temple, the land to an extent of Ac.2.76 cents in R.S.No.160/1 of Ramannapalem Village belonging to Sri Agasteswara Swamy Temple, Vadali, is situated in the ayacut lands under Pipe

No.50 of Achanta canal and irrigation water is being supplied for khariff and rabi seasons.

9. Admittedly, the Mandal Revenue Officer has issued certificate stating that the land under cultivation of the petitioner is double crop wet land. However, by virtue of the orders passed in W.P.No.16307 of 2005, a fresh enquiry was conducted. In his order, the third respondent states as per the amendment issued to B.S.O.15(10)(2) in G.O.Ms.No.1019, Revenue (Assignment-I) Department, dated 05.10.1994, wherein it is stated that agricultural lands which are under projects and which receive water from any Government Irrigation source for a period not less than five months in a fasli year shall be treated as wet land. Considering the said Government Order, the third respondent treated the land of the petitioner as 'Wet'. Even the second respondent in his order stated that mere classification found in revenue records, which were not updated, cannot be taken into consideration and held that the land in possession of the petitioner is irrigated double crop wet land basing on the report of the Irrigation Department and payment of taxes for double crop. Therefore, I am of the considered view that the petitioner is not a landless poor person as he had cultivated double crop wet land to an extent of Ac.2.76 cents, not entitled for benefit under Section 82(2) of the Act.

10. The second respondent, in his impugned order, stated that as per the G.O.Ms.No.379 of 2003, wherein it is mentioned as under:

“Any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowments subsisting on the date of commencement of this Act shall notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person stand cancelled under Section 82(1).

Explanation: For the purpose of this sub-section “landless poor person” means a person whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed Ac.2.50 cents wet and Ac.5.00 dry land and Rs.12,000/- per year.”

11. The Explanation appended to Section 82 of the Act reads as under:

“Explanation:- For the purpose of this sub-section ‘landless poor person’ means a person whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed 1.0111715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land and whose monthly income other than from such lands does not exceed thousand rupees per mensem or twelve thousand rupees per annum. However, those of the tenants who own residential property exceeding two hundred square yards in Urban Area shall not be considered as landless poor for the purpose of purchase of endowments property.

As per the said explanation, it is amply clear that any person who possess wet land exceeding two and half acres as a cultivating tenant cannot be treated as landless poor person. Therefore, in the instant case, the petitioner, who is admittedly a lessee of wet land admeasuring Ac.2.76 cents, is not a landless poor person.

12. Admittedly, the appellate authority as well as the primary authority held that under Section 82 of the Act and as per Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules, 2003'), the petitioner is not a landless poor person on facts based on the evidence on record and same could not be found fault with. Therefore, the order of the second respondent is not ultra vires to the provisions of Section 82 of the Act because the land held by the petitioner as lessee exceeds the limit prescribed under Explanation to Section 82 to come under landless poor person and thereby the petitioner cannot seek the benefit under Section 82(2) and (4) of the Act.

13. Further, unless there is a declaration from the competent authority i.e. Assistant Commissioner as per Rule 3 of the Rules, 2003, declaring that the petitioner is a landless poor person. Under Section 82(2) of the Act, petitioner cannot claim any right for selling the land in his favour on market value by merely claiming that he continued in possession of the land by virtue of lease granted in favour of his grandfather. Further, in view of the averments stated in the counter that as the leasehold rights of the subject land was given to one Kothapalli Veera Venkata Srinivas in the public auction conducted on 01.08.2005, he was put into possession of the land and the petitioner is not in possession of the subject land. Hence, I am of the considered view that

the writ petition is devoid of merit and is liable to be dismissed.

14. Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

29-03-2018
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THE HON'BLE SRI JUSTICE M.GANGA RAO



WRIT PETITION No. 1345 OF 2007

29-03-2018

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