

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.15562 OF 2007

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the action of the first respondent in getting the public auction notification published by the second respondent under the instructions of the third respondent as illegal and consequently to direct the respondents to refrain from taking any steps to seek to dispossess the petitioners as cultivating tenants of the lands held by them and to permit the petitioners to enjoy the benefits for which they are entitled in the light of the provisions contained in Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act').

2. The petitioners claimed to be the cultivating the temple lands leased out to their parents, being successors to the leasehold rights of the lands held by their parents, questioned the validity of the notices issued proposing to grant the licences to cultivate the lands in question by way of public auction for a period of three years in this writ petition under Article 226 of the Constitution of India.

3. The case of the petitioners is that they are cultivating the temple lands by succeeding to the leasehold rights granted to their parents and they are permanent lessees of the temple lands. Some of the petitioners are the lessees of

the temple lands. They claimed that their leases are subsisting on the date of commencement of the Act.

4. This Court, on 20.07.2007, while directing notice before admission, ordered that the auction proposed under the impugned auction notice may go on, but the same shall not be confirmed insofar as the lands which are in possession of the petitioners are concerned. Thereafter, this Court admitted the writ petition on 04.12.2007.

5. The purport of the counters filed by the respondents is that the second petitioner was the tenant from 08.09.1984 to 30.04.1989 and the lease was approved, and thereafter, his lease was ceased and after 30.04.1989, he is continuing unauthorizedly as an encroacher. The petitioners 1, 3 and 4 are the sons of the second petitioner and Form-I notice was issued to the second petitioner on 24.04.2003 and he has not applied to the Assistant Commissioner of Endowments, Eluru to declare him as landless poor person. The petitioners 1, 3 and 4, sons of second petitioner, have no juridical relationship of any sort with the temple and they are encroachers. The petitioners 1 to 4 are in illegal occupation of land to an extent of Ac.3.50 cents in Survey No.54 of Malleswaram Village. The petitioner No.5 is also an encroacher and his father late Sri Parasuramudu died three years back and he was an approved lessee from 1983-84 to 1988-89. Sri Parasuramadu was declared as landless poor

person on 15.12.2003 for the land to an extent of Ac.1.54 cents in Survey No.54 and since then, his son – 5th petitioner has been in illegal occupation of the land and he is in continuous occupation of the land as an encroacher along with his two sons of the land in an extent of Ac.3.25 cents in Survey No.21/1 (Ac.2.18 cents) and Survey No.33/2 (Ac.1.07 cents) of Malleswaram Village. Form-I notice was issued to the 11th petitioner on 24.03.2003 and he has not made any application to declare him as a landless poor person. The 10th petitioner is an encroacher of the land to an extent of Ac.2.40 cents in Survey No.56/8 and his father was also an encroacher for the same land. The application of 12th petitioner for declaration as landless poor person was rejected on 17.12.2003 and he is, at present, in illegal occupation of Ac.2.99 cents (Ac.1.17 cents in Survey No.19/4 and Ac.1.82 cents in Survey No.39/3 of Malleswaram Village). The 6th petitioner's husband late Sri Yaragam Satyanarayana was an approved lessee from 1983-84 to 1988-89 and he died a few years back, and since then, the 6th petitioner is in illegal occupation of the land in an extent of Ac.2.21 cents in survey No.54 of Malleswaram Village. The application of the 6th petitioner for declaration as landless poor person was rejected on 27.03.2006. The 7th petitioner's father late Sri Pantham Sriramulu died on 15.08.2002, he was an encroacher and his daughter is continuing as an encroacher of the land in an extent of Ac.2.50 cents (Ac.1.50 cents in

Survey No.54 and Ac.0.50 cents in Survey No.21/1 of Malleswaram Village. The petitioners 8 and 9 are the sons of 11th petitioner and the 11th petitioner was an approved lessee from 1983-84 to 1987-89. Late Sri Akula Sathi Raju was an approved lessee from 1983-84 to 1988-89 and he died ten years back, and his wife – 13th petitioner has been in illegal occupation of land in an extent of Ac.2.80 cents (A.0.78 cents in Survey No.262/3 and Ac.2.02 cents in Survey No.264/1, 260/4 and 260/5 of Malleswaram Village) and her application to declare her as landless poor person was rejected on 20.05.2004 and she passed away on 05.08.2007.

It is further stated that the public auction was held on 23.07.2007. The following are the successful bidders:

S.No.	Name	Extent (Ac.Cts.)	Maktha (Bg.Kgs.)
1.	A.Kali Krishna	3.50	112.00
2.	P.Subba Rao	1.54	34.00
3.	A.Venkateswara Rao	2.21	52.00
4.	A.Kali Krishna	2.00	55.00
5.	P.Subba Rao	3.25	134.00
6.	P.Subba Rao	2.99	192.00
7.	A.Rattayya	2.02	Rs.28,000/-
8.	N.Srinivas	0.78	Rs.12,600/-

The auction has been held for 2007-08 to 2009-10 while the total extent of land is under illegal occupation fetching a total maktha of 559 bags and Rs.40,650/- per annum. The extent of land of Ac.18.29 cents (i.e. 8 bits) put to auction on 23.07.2007, which is fetching 559 bags or Rs.3,20,100/-. While the petitioners, during their illegal occupation, paid Rs.1,05,065/- to the temple, now the temple will fetch Rs.2,14,035/- per annum for the 8 bits admeasuring Ac.18.29 cents. The other single bit admeasuring Ac.2.40 cents could not to be put to auction as no one has come forward to bid for it in the auction held on 23.07.2007.

6. Heard both sides.

7. The averments of the counter filed by the respondents 1 and 2 and the third respondent supports the claim of the petitioners. The petitioners claimed certain benefits under Section 82 of the Act as they are landless poor persons as defined in the Explanation appended to Section 82(2) 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'), one of the Rules of which the petitioners are relying. The Assistant Commissioner of Endowments has to enquire and decide whether the petitioners are cultivating tenants and claim to be the landless poor persons and that whether they are holding the temple lands as lessees without exceeding the

land holding limits prescribed under Section 82(2) of the Act and the Explanation thereunder. They questioned the validity of the impugned notices issued proposing to grant the licences to the cultivating the land in question by way of public auction for a period of three years as being illegal and contrary to the provisions of Section 82(2) of Rules 2, 3 and 4 of the Rules, 2003.

8. Sub-sections (1) and (2) of Section 82 of the Act reads as follows:

“Lease of Agricultural Lands:-

(1) Any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment 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 stands cancelled.

(2) In respect of leases of agricultural lands other than those lands situated in Municipalities and Municipal Corporations held by landless poor person for not less than six years continuously, such person shall have the right to purchase such lands for a consideration of seventy five per centum of the prevailing market value of similarly situated lands at the time of purchase and such consideration shall be paid in four equal instalments in the manner prescribed. Such sale may be effected otherwise than by tender-cum-public auction:

Provided that if such small and marginal farmers who are not able to purchase the land will continue as tenants provided, if they agree to pay at least two third of the market rent for similarly placed lands as lease amount.”

Rule 3 of the Rules, 2003 reads as follows:

“3. Determination of Landless poor person:-

(1) Immediately after coming into force of these rules, if any cultivating tenant claims to be a landless poor person, the Assistant Commissioner having territorial Jurisdiction shall enquire into and decide whether the cultivating tenant is a landless poor person as defined in Section 82 after giving a reasonable opportunity to the cultivating tenant and to the Executive Authority of the concerned institution or Endowment.

(2) If the cultivating tenant does not claim to be a landless poor person or if the Assistant Commissioner concerned determines that the cultivating tenant is not a landless poor person, the tenancy will be deemed to have been cancelled with effect from 28.5.1987 and the cultivating tenant shall be regarded as a tenant holding over thereafter.

(3) Notwithstanding anything contained under sub-rule (2), where a small farmer, being a lessee is holding land in excess of Ac.0.25 cents wet land or Ac.0.50 cents of dry land over and above the ceiling limits of Ac.2.50 cents wet land or 5.00 acres dry land respectively, they may be allowed to continue in lease subject to payment of 2/3rd of prevailing market rent and excess land if any more than the above limits shall be taken over by the institutions and such piece of land shall be put in Public Auction for lease.

Provided the status of every Land Less Poor tenant shall be reexamined once every three years and appropriate orders shall be passed by the Assistant Commissioner having territorial jurisdiction as the economic status of any person is not a constant. It is equally applicable to cases where persons already declared as Land Less Poor tenants shall also be reviewed once every three years henceforth.”

9. As per Section 82(2) of the Act, lease of agricultural land belongs to religious institutions stood cancelled on the date of

commencement of the Act with certain safeguards to the persons belonged to the disadvantaged sections. The petitioners have to approach the Assistant Commissioner of Endowments, Eluru, to determine their status as landless poor persons as per Rule 3 of the Rules, 2003 and Section 82(2) of the Act. Thereafter, after exhausting the available remedy under the Act and under the Rules, 2003, the respondent authorities could resort to the provision of Section 82 of the Act if the petitioners found to be the encroachers of the temple lands. Thereafter, the leasehold rights of the land could be put to public auction as per Rules, 2003. Till then, the petitioners should not be evicted without due process of law.

10. Accordingly, the Writ petition is allowed, setting aside the public auction notification dated 13.07.2007 issued by the second respondent. No order as to costs.

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

JUSTICE M.GANGA RAO

29-03-2018
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