

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.3120 of 2009

ORDER:

Petitioner claims that he was the successful bidder in the auction conducted on 11.07.2005 for cultivating the land admeasuring Acs.12.19 cents in Survey No.68/1 of Mutyalamma Lanka, Kotipalli Village, East Godavari District, for 1415 to 1417 Fasli i.e., 01.07.2005 to 30.06.2008; that the said land belongs to Maharaja Alak Narayan Society of Arts and Science (MANSAS), registered under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act'); that he had deposited the bid amount of Rs.9,000/- for 1415 Fasli *vide* challan, dated 11.07.2005; that in and around September, 2006, respondent Nos.4 and 5 encroached the land, which he is cultivating since 30 years and that on his enquiry, he came to know that respondent No.2 - Deputy Commissioner, Kakinada, in exercise of the powers under Section 85 of the Act, passed order, dated 22.12.2006 in O.A No.112 of 2006 directing respondent No.3 to evict the encroachers. In spite of such orders, no action has been taken by respondent No.3 for evicting the unauthorized occupants from the land of MANSAS. Hence, he filed the present writ petition seeking a direction to respondent Nos.1 to 3 to implement the aforesaid order and consequently, to permit him to cultivate the subject land for the balance period of two years by extending the lease in his favour.

Notices sent to respondent Nos.4 and 5 were returned un-served.

Respondent Nos.1 and 2 filed a counter-affidavit stating that though MANSAS lodged a report to the Police on 19.10.2006, no steps were taken for evicting the encroachers and that the Deputy Commissioner & Executive Officer-cum-Correspondent, MANSAS, Vizianagaram, had issued directions to the Revenue Inspector, Lankas Mansas Office, Kotipalli, to take steps for evicting the encroachers and police protection was also sought on 07.02.2007 for removal of the encroachers from the said land. However, the same was not done. It is admitted that the petitioner was the successful bidder for the leasehold rights and about 40 people encroached upon Acs.100.00 of land in Muthyalamma Lanka forcibly and respondent No.2 passed orders in O.A.No.112 of 2006 for removal of such encroachments.

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondent Nos.1 and 2.

A perusal of the counter-affidavit filed by respondent Nos.1 and 2 virtually discloses that there is no denial with respect to the petitioner's right and ownership over the subject property and that respondent No.2 passed an order in 2006 and even as on date, the same has not been implemented. It may be noted that it is the duty of respondent Nos.1 to 3 to ensure that the properties of the endowment are protected and also to ensure that the same earns a reasonable return which would aid the endowment for the activities, for which, it is created.

In view of the above, respondent Nos.1 to 3 are directed to ensure eviction of the encroachers within four months from the date of receipt of a copy of this order.

The second limb of the prayer of the petitioner that he may be continued to cultivate the subject land for two more years would be considered only after eviction of the encroachers, which may take considerable time. There is no doubt that the petitioner might have suffered some element of damage on account of his not being cultivating the land for two more years. However, the same cannot be determined in the present writ petition. Considering the fact that the time had elapsed and the petitioner himself had filed the present writ petition after three years of the alleged denial of cultivation, no order can be passed at this stage, with respect to the damages alleged to have been claimed by the petitioner.

Accordingly, the writ petition is allowed in part.

Miscellaneous Petitions, if any pending shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt: 30.07.2018

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