

(2003) 04 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6605 of 1994

G. Subrahmanyam Naidu

APPELLANT

Vs

The Commissioner of Endowments and Another

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 15
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 100(2), 80(1), 81(2), 82(2)

Citation : (2003) 4 ALD 578 : (2003) 5 ALT 157

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : K. Bathi Reddy, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The instant writ petition is filed questioning a notice dated 6-9-1993 issued by the Commissioner of Endowments, the first respondent herein, u/s 80(1)(b) of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act 30 of 1987, hereafter called "the Endowment Act"). The writ petition came to be filed in the background of facts narrated hereunder.

2. Sri Sadasiveswara Swamy Temple Trust, Puttur in Chittoor District owns agricultural wet lands admeasuring Acs.3.79 cents (an extent of Acs.3.20 cents in Sy. No. 247/4; Ac.0.48 cents in Sy. No. 247/6 and Ac.0.11 cents in Sy. No. 248/2) situated at Govindapalem in Puttur. One Krishnama Naidu, allegedly permanent trustee who used to administer the trust property leased out the lands to the petitioner along with a irrigation well and electric motor. Such lease was allegedly given on 30-6-1993 initially for a period of one year for the purpose of cultivation on an annual rent of Rs. 2,500/- Alleging that after the death of Krishnama Naidu, his legal heir attempted to interfere with the possession and enjoyment of the land, the petitioner filed an application under

the A.P. (Andhra Area) Tenancy Act, 1956 (hereafter called "the Tenancy Act") being A.T.C. No. 1 of 1990 for renewal of lease for a minimum period of six years and for permanent injunction. Initially, he also obtained ad interim injunction in I.A. No. 480 of 1990 dated 7-5-1990 from the Tenancy Court.

3. The trustee of the temple having failed in the attempt to evict the petitioner, it is alleged, colluded with the Endowment Department. The first respondent issued a public notice dated 6-9-1993 u/s 80(1)(b) of the Endowment Act. The same was published in Andhra Jyothi Daily newspapers on 12-10-1993 and also A.P. Gazette on 11-11-1993. The first respondent invited objections and suggestions in respect of the proposal of the temple to sell the land by public auction. Questioning the same, the writ petition is filed contending that when the cultivating tenant is in occupation, it cannot be sold by public auction and that as per Section 15 of the Tenancy Act, the land should be offered for sale by giving a notice to the tenant.

4. Respondents 1 and 2 have filed a counter affidavit. It is stated that an extent of Acs 3.79 cents comprised in Sy.No. 247/4, 247/6, 248/2 and 268/2 in Puttur is attached to Sri Sadasiveswara Swamy Temple. The third respondent by letter dated 26-6-1993 recommended to the Commissioner for sale of the land by public auction as it would be in the best interest of the institution and to augment the financial position of the endowment. In view of the proposal, the second respondent initiated proceedings by issuing a notice dated 6-9-1993 u/s 80(1)(b) of the Endowment Act. The petitioner is only a tenant. He has no right to question the notification inviting applications for selling the temple land by public auction. It is also stated that Krishnama Naidu is not the hereditary trustee as his claim is not recognised by the Deputy Commissioner u/s 77 of the Endowment Act. When Krishnama Naidu himself was not the lessee, his legal heirs are not entitled to succeed to his property. Sri Krishnama Naidu has no power to lease out the land to the petitioner without knowledge and approval as required u/s 100(2)(m) of the Endowment Act, 1951 or under the 1966 Act or under the 1987 Act. The provisions of the Andhra Tenancy Act have no application and even if there is an agreement between the petitioner and Krishnama Naidu, the same is not binding on the respondents. It is also stated that an Executive Officer was appointed to the specific endowment as Krishnama Naidu mismanaged and misappropriated the funds of the temple. The petitioner encroached upon the valuable land costing about Rs. 1 crore and he has an eye to grab the land, therefore, he filed the writ petition with mala fide intention. The temple is not deriving any income from the valuable land and, therefore, to fulfil the wishes of the donor it is proposed to sell the land by tender-cum-public auction as per the provisions of the Act. An extent of 0.21 cents in Sy. No. 247/6 is in unauthorised occupation of Sri Sundaram Mudaliar. One C. Ranga Bhashyam also filed a suit being O.S. No. 277 of 1986 on the file of the Court of the Principal District Munsif, Puttur against the said Sundaram Mudaliar for permanent injunction. The petitioner is also an encroacher and he is not a tenant and, therefore, he is not entitled to exercise option u/s 15 of the Tenancy Act.

The temple was impleaded as third respondent by virtue of the orders passed by this Court in W.P.M.P.No.19652 of 1994, dated 15-9-1994. In the affidavit accompanying the miscellaneous application for impleadment as well as additional counter filed on 27-2-2003 on behalf of the third respondent, it is stated that the land is valued at Rs. 3 crores. The petitioner without having any right over the land claiming to be the tenant filed the writ petition. He also filed a suit for declaration being O.S. No. 43 of 2002 on the file of the Court of the Junior Civil Judge, Puttur. Initially in 1990, he filed an application being ATC. No. 1 of 1990 before the Tenancy Tribunal and obtained interim order and continued to be in occupation by reason of the interim order. Even assuming that he was inducted as a tenant initially, the lease period was not extended. After expiry of lease period, without obtaining permission u/s 75 of the Endowment Act, he continued as an encroacher. Proceedings were initiated u/s 83 of the Endowment Act, but he could not be evicted by reason of the direction issued by this Court as well as the civil Court.

5. It is also stated by the third respondent that the petitioner is not in possession of the land and he leased out the land to third parties without any right. He also constructed a shed on the land. Large number of complaints were made against the petitioner. The temple is not deriving any income from the land and, therefore, decided to sell the same by tender-cum-public auction so that the income derived can be kept in fixed deposit and interest accrued thereon can be spent for development of the temple. The proposal sent by the temple was accepted by the authorities and at that stage the petitioner filed the writ petition and obtained interim order.

6. Apart from the facts and circumstances leading to filing of the writ petition, during the pendency of the writ petition before this court for the last about a decade there has been a change in the stand of the petitioner. A brief reference to these events and circumstances is necessary. As noticed already, the petitioner filed A.T.C. No. 1 of 1990 on the file of the Tenancy Tribunal seeking protection under the Tenancy Act. He filed I.A. No. 480 of 1990 for ad interim injunction which was dismissed. Aggrieved by the same, he preferred an appeal before the District Court being A.T.A. No. 2 of 1990. The same was also dismissed. Ultimately, A.T.C. No. 1 of 1990 was dismissed on 12-2-1997 directing that the petitioner be evicted in accordance with law. Respondents 1 and 2 initiated action for eviction of the petitioner u/s 83 of the Endowment Act by filing O.A. No. 3 of 2000 before the Deputy Commissioner for Endowments. By an order dated 29-6-2002, the O.A. was allowed declaring the petitioner as an encroacher and further directing him to remove the encroachments and deliver vacant possession of the land to the temple. It was also directed that if he fails to vacate the land, the Assistant Commissioner shall take action for removal of encroachments, if necessary by taking police assistance. The petitioner thereafter filed a suit for declaration of title being O.S. No. 43 of 2002 on the file of the Court of the Senior Civil Judge, Puttur. In I.A. No. 334 of 2002, the said Court granted stay of operation of the order of the Deputy Commissioner in O.A.

No. 3 of 2000 till the disposal of the suit.

7. Yet another circumstance is that the petitioner had filed objections to the impugned auction notice claiming benefits under the Tenancy Act. He also gave a representation dated 3-9-2002 expressing his willingness to purchase the said land on payment of market value as per the guidelines laid down by the Supreme Court.

8. Submissions advanced at length covered a very wide field regarding the rights of the tenants of the temple land to claim and the right of the tenant to be offered the land for sale in the event the land is put to sale by the temple. Submissions have also been made with reference to the Endowment Act and Ordinance 2002. By the said Ordinance, the proviso to sub-section (2) of Section 82 of the Endowment Act has been amended giving an option to a tenant who is not able to buy the land on the offer being made, to continue as a tenant by increasing the rent. It is strongly contended that the petitioner is not an encroacher and being a tenant he is entitled for the benefit u/s 82 of the Act.

9. The scope of the writ petition is in a narrow compass. It is well settled that when a show cause notice or notice inviting objections is challenged, the Court ordinarily does not interfere in such matters. Section 80 of the Endowment Act deals with alienation of immovable property of a temple or a religious institution. Whenever the property is proposed for sale, prior sanction of the Commissioner of Endowments is required u/s 80(1)(a) of the Endowment Act. Before according sanction, the Commissioner is required u/s 80(1)(b) to publish a notice in A.P. Gazette inviting objections and suggestions with respect to the proposed sale. After considering the objections and suggestions, if any, from the trustees or other persons having interest, the Commissioner may sanction the sale by public auction if the transaction is prudent and beneficial to the institution, if the immovable property proposed for sale is uneconomical for the institution to maintain and the consideration for the sale is adequate and proper. The Government framed rules called A.P. Charitable and Hindu Religious Institutions & Endowments Alienation of Immovable Property Rules, 1987 ("Alienation Rules"). Rule 14 thereof requires the confirmation by the Commissioner after the land is sold by tender-cum-public auction. In an un-reported judgment marked as Chinta Ramaiah v. Govt. of A.P., W.P. Nos. 27286 of 1995 and 7014 of 1997 while considering Section 80 of the Endowment Act as well as the Alienation Rules, I have held that even while confirming the sale, it is competent for the Commissioner to reject the same if he comes to a conclusion that the sale does not fulfil the objectives contained in Section 80(1)(b).

10. In Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, the Supreme Court considered Section 80 of the Endowment Act and the relevant Rules and held that property of such institutions or endowments must be jealously protected. It must be protected, for a large segment of the community has beneficial interest in it. The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also

show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make less than the closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Therefore, whenever if it is proposed to sell the property belonging to a religious institution it shall have to be sold by tender-cum-public auction. One exception to this rule is contained in the first proviso to Section 80(1)(b) of the Endowment Act. As per this, it is competent for the Government to permit the sale of immovable property otherwise than by public auction in the interest of the institution by recording reasons therefor.

11. Yet another exception to the general rule is provided in Section 82. Under Section 82(1) of the Endowment Act, a lease of agricultural land held by a person who is not a landless poor person stands cancelled. Who is a landless poor person? The explanation to sub-section (2) of Section 82 defines landless poor person as to mean a person who holds less than Acs.2.50 cents of wet land or less than Acs.5.00 of dry land and whose monthly income other than from such land does not exceed Rs. 250/- per month or Rs. 3,000/- per annum. In case of landless poor person, the Endowment Act provides that a landless poor person who is a lessee of the temple land for not less than six years shall have right to purchase the land for consideration of 75% of the prevailing market value of the similarly situated land at the time of purchase. He is also given the benefit to pay the market value in four equal instalments and in such an event the sale of land can be effected otherwise than by tender-cum-public auction.

12. In exercise of their power conferred u/s 82(1) of the Endowment Act read with sub-section (1) of Section 153, the Government vide G.O.Ms. No .379, Revenue (Endowments-I) Department, dated 11-3-2003 promulgated A.P. Charitable and Hindu Religious Institutions & Endowments Lease of Agricultural Lands Rules, 2003 ("Lease Rules"). Rule 5 is relevant and reads as under.

5. Issue of Notice:-

1) A notice in Form No. 1 annexed to these rules shall be issued to the cultivating tenant (other than a landless poor person) duly informing him that the lease held by him stood cancelled by virtue of the provisions in sub-section (1) of Section 82 of the Act, and that the leasehold rights in respect of the said lands are proposed to be leased out as per rules and calling upon him to forthwith hand over possession of the lands failing which he shall be evicted invoking the provisions under Sections 84, 85 and 86 of the Act, treating him as an encroacher in the order passed u/s 83(4) of the Act.

2) In the case of the land held by the landless poor person as tenant as per sub-

section (2) of Section 82, a notice shall be issued in Form No. II annexed to these rules. He shall be given an option either to purchase the leased land or such portion thereof as he desires in accordance with the conditions set out in rule 6 or to continue as tenant paying at least 2/3rd of the market rent for the similarly placed lands as lease amount. If he fails to exercise his option within (30) days of the receipt of the Notice in Form II, his lease shall automatically stand cancelled on the expiry of (30) days in which event he shall hand over possession and pay all rents due up to that date failing which he shall be evicted invoking the provisions under Sections 84, 85 and 86 of the Act treating him as an encroacher in the order passed u/s 83(4) of the Act.

13. Under sub-rule (1) of Rule 5 of the Lease Rules, Executive Officer of a temple is required to issue notice to a cultivating tenant other than a landless poor person informing that the lease held by him stood cancelled by virtue of Section 82(1) of the Endowment Act and that he shall hand over possession forthwith failing which he shall be evicted by invoking the provisions under Sections 84, 85 and 86 treating him as an encroacher. Under sub-rule (2) of Rule 5, if he is a landless poor person, as per sub-section (2) of Section 82, a notice shall be given giving an option either to purchase the leased land in accordance with the conditions laid down in Rule 6 of the Lease Rules or to continue as a tenant paying at least two-third of the market rent for the similarly placed lands as lease amount. If a landless poor tenant fails to exercise option pursuant to the notice under Rule 5(2) of the Lease Rules, the lease shall automatically stand cancelled on the expiry of thirty days in which event the land has to be handed over possession on the feign of stating the procedure under Sections 84, 85, 86 of the Endowment Act. Though the Endowment Act came into force with effect from 23-5-1987, why the Government took so much time for framing rules u/s 82? It is necessary to refer to, albeit, in brief to the litigation pending regarding vires of the Endowment Act.

14. The constitutional validity of Section 82 of the Endowment Act was challenged before this Court in a batch of writ petitions. A learned single Judge of this Court held that Section 82(1) is arbitrary and ultra vires Articles 14 and 21 of the Constitution of India to the extent that lessees who are marginal or small farmers are not excluded from its effect. Sub-section (2) of Section 82 was declared to be un-constitutional in its entirety. In a batch of writ appeals being W.A. No. 1267 of 1989 and batch, a Division Bench affirmed the view of the learned single Judge and declared Sections 82(1) and 82(2) of the Endowment Act void and violative of Article 21 of the Constitution.

15. In State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others, the Supreme Court upheld the constitutional validity of Section 82 of the Endowment Act, observing as under.

16. We may sum up the upshot of our discussion:

1. That charitable or religious institutions or endowments fall into a separate

category and form a class by themselves. If that is so, tenants coming under them also form a separate class. Therefore, they can be treated differently from others.

2. In operation of the Act it is possible that it may result in hardship to some of the tenants but that by itself will not be a consideration to condemn the Act.

3. The matter in which the charitable or religious institution or endowment would deal with the properties that are resumed after the provisions of Section 82 of the Act come into force by cancelling the existing leases, is in the region of speculation.

4. Fresh tenancy can be entered into and there is no material before the court as to what was the rent paid by tenants at the time when the Act came into force, in terms of Section 81(2) of the Act or as provided under the Andhra Act or under the Telangana Act. In the absence of such a material, it would be hazardous for the court to reach any conclusion, one way or the other, to state that the tenants would be frozen and, therefore, there is no likelihood of charitable or religious institution or endowment getting higher rents. If there is no material one way or the other, the presumption that the Act is good should prevail.

5. It is a matter of policy with the legislature as to whether all provisions of the Tenancy Acts should be exempt in its application to the charitable or religious institution or endowment in their entirety.

6. The identification of "landless poor persons" and protection given to them is justified as enunciated earlier.

7. It will be very difficult to predict at this stage that the result of Section 82 of the Act would be so hazardous as not to achieve the object for which it was enacted. It would not only result in displacing the old tenants by new tenants, it may also achieve other social objectives in another manner. If appropriate provisions are made under the Rules and if the leases are given to small holders of land, another social objective could be achieved.

8. In what manner charitable or religious institution or endowment would deal with matters of this nature is mere guesswork at this stage. On some hypothetical approach the High Court could not have declared a law to be invalid.

17. The legal position is very clear and cannot be disputed. When the Commissioner is the competent authority to issue the impugned notice as required u/s 80(1)(b) of the Endowment Act, it would be futile for the learned counsel for the petitioner to contend that such notice without first giving him notice u/s 15 of the Tenancy Act or Section 82(2) of the Endowment Act, is invalid.

18. When a statutory authority is acting in accordance with law, no mandamus can be issued declaring such action invalid. As observed by the Supreme Court in

State of A.P. v. Nallamilli Rami Reddy (supra), it is a matter for the authorities to consider whether or not a person in occupation of the land is entitled to the benefit u/s 82 (2) of the Endowment Act. Indeed, the petitioner, in the affidavit accompanying the writ petition, in A.T.C. No. 1 of 1990, in O.A. No. 3 of 2000 before the Deputy Commissioner, and in O.S. No. 43 of 2002 before the Court of the Senior Civil Judge, Puttur, and even in his latest application dated 3-9-2002, admits that he is not in possession of Acs.3.79 cents. The impugned notification was issued prescribing the land as wet land, in which event the petitioner would not fall within the definition of landless poor person as per explanation to sub-section (2) of Section 82 of the Endowment Act. The contention of the respondents that it is a wet land is not specifically denied in any of the pleadings. However, across the Bar, an effort is made to show that it is a dry land and not wet land and in the alternative, it was submitted that most of the land has been encroached by others and the petitioner is in possession of the land admeasuring less than Acs.2.50 cents. Going by the pleadings of the petitioner before various courts and various authorities including his latest representation dated 3-9-2002, prima facie, it must be held that the petitioner is in possession of land admeasuring Acs.3.79 cents in Sy. Nos. 247/4, 247/6 and 248/2 of Govindapalem in Puttur town which is a wet land. He is, therefore, not entitled to the benefit u/s 82(1) of the Endowment Act.

19. I have already held that after publication of the impugned notice, the petitioner submitted objections claiming benefit u/s 15 of the Tenancy Act. Even before the same could be considered, the petitioner approached this Court. Further, when the matter is pending before the civil court as well as this Court, he gave a representation dated 3-9-2002 to the first respondent expressing his willingness to purchase the land for market value. Therefore, the petitioner's contention that the impugned notice is contrary to law cannot be accepted. What all now the petitioner contends that he is in possession of the land allegedly under the provisions of the Tenancy Act and the land should be sold to him at market value. He is not claiming any right u/s 82 of the Endowment Act or benefit u/s 15 of the Tenancy Act. As held by the Supreme Court in *Chenchu Rami Reddy v. Govt. of A.P.* (supra), when a person is willing to buy the temple land at market value, why he should feel shy to participate in the public auction. In any view of the matter, it is for the Commissioner to decide as to whether the petitioner is entitled to claim right as a landless poor person u/s 82(2) of the Endowment Act and it is for the Government to consider his request to purchase the land for market value.

20. By reason of the interim order passed by this Court on 8-4-1994, the Commissioner could not pass appropriate orders u/s 80(1)(b) of the Endowment Act according sanction for the sale of the immovable property of the temple by tender-cum-public auction. Therefore, the Commissioner may consider the objections filed by the petitioner, a copy of which is annexed to the additional material papers filed in this Court and also the representation dated 3-9-2002.

21. Before concluding this judgment, this Court must comment on the conduct on the petitioner. He never raised any objection as to the nature of the land as to whether it is wet land or dry land. Having realised that he would not come within the definition of landless poor person as per the explanation to Section 82(2) of the Endowment Act, he came forward with the plea that it is dry land which is belied by various admissions made by him before various authorities as noticed hereinabove. On the one hand, the petitioner claims to be tenant entitled to the benefit u/s 82(2) of the Endowment Act and on the other he offers to purchase the land for market value. It is also alleged that he has sublet the land to others. The conduct of the petitioner who is trying to aprobate and reprobate must also disentitle him to the relief under Article 226 of the Constitution. It is well settled that exercise of extraordinary prerogative power under Article 226 being discretionary, the Court can deny the relief to a person who approaches the Court with unclean hands (See Modern Educational Society Vs. Government of Andhra Pradesh and Others,).

22. For the above reasons, it must be held that the impugned notice dated 6-9-1993 which is issued in accordance with Section 80(1)(b) of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, cannot be invalid on any ground. The same is upheld. It is, however, open to the first respondent to pass appropriate orders immediately within a period of eight weeks from the date of receipt of a copy of this order.

23. In the result, the writ petition, with the above observations, is dismissed with costs.