
(2003) 11 AP CK 0043
In the Andhra Pradesh High Court
Case No : Writ Petition No. 22889 of 2003

Jangili Nagaiah

APPELLANT

Vs

Assistant Commissioner of Endowments and Another

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 82(1), 82(2)

Citation : (2004) 1 ALD 587 : (2004) 2 ALT 324

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

Bench : Single Bench

Advocate : N. Sreerama Murthy, for the Appellant; Government Pleader for Respondent No. 1 and Indrani, SC for Devasthanam, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The writ petition is filed seeking a writ of mandamus declaring the notice dated 15-9-2003 issued by the first respondent as illegal, arbitrary and violative of principles of natural justice. Be it noted that the impugned notice was issued in Form No. 1 under Rule 5(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Land Rules, 2003 ("the Rules"). The petitioner was directed to handover possession of the land in D.No. 45 admeasuring Acs.7.36 cents duly cancelling the lease u/s 82(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 ("the Act").

2. It is the case of the petitioner that he is lessee of the land in question belonging to Sri Polerammna Silalu Swamy Temple, Gollapudi hereafter called "the institution". He claims that he paid the lease amount of Rs. 3,675/- and the lease is in force till March, 2004. He also alleges that he is a landless poor person not owning any other land and, therefore, he cannot be evicted from the land in question. The first respondent issued the notice in Form No. 1 under Rule 5(1) of the Rules directing the petitioner to handover possession immediately. Therefore,

he filed the present writ petition.

3. Learned Counsel for the petitioner, Sri M. Sreerama Murthy, submits that the petitioner is a landless poor person as per the explanation to Section 82 of the Act and, therefore, he cannot be evicted under Sub-section (1) of Section 82. He further contends that as per Sub-section (2) of Section 82, the petitioner is entitled to right to purchase land or continue as tenant.

4. The submission of the learned Counsel for the petitioner is misconceived. The amended provisions i.e., Sub-sections (1) and (2) of Section 82 of the Act read as under.

82. 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 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 percentum 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 person fails to purchase the land in accordance with this sub-section or is unwilling to purchase the land, the lease shall be deemed to have been terminated.

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 1.011715 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 two hundred and fifty rupees per mensem or three thousand rupees per annum. For the purpose of computing the extent of land 0.404686 (one acre) of wet land shall be equal to 0.809372 hectares (two acres) of dry land.

5. A plain reading of the above provision discloses that persons claiming the benefit under Sub-section (2) of Section 82 of the Act must fall within the category of landless poor persons as prescribed in the explanation to the section. As per the explanation, a person to be a landless poor person must not have more than two and half acres of wet land either as owner or cultivating tenant and must not have five acres of dry land either as owner or cultivating tenant. Any person who possesses as cultivating tenant land exceeding five acres dry land cannot be treated as landless poor person. The petitioner admittedly is a lessee of dry land -admeasuring Acs.7.36 cents and, therefore, he is not a landless poor person.

6. Learned Counsel for the petitioner raised a contention that the petitioner being a poor person is entitled to the benefit under Sub-section (2) of Section 82 of the Act by allowing him to retain the leased land to an extent of Acs.5.00 and the land over and above Acs.5,00 is alone required to be surrendered. This argument suffers from fallacy. In State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others, , the Supreme Court upheld the validity of Section 82 of the Act. Dealing with this aspect of the matter, it was observed as under.

..... It is settled law that it is open to the Legislature to state as to who should be exempt from the application of the law and, in the present case, there is a definition of "landless poor person" whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed two-and-half acres of wetland or five acres of dry land having been identified as "landless poor person" and he is enabled to purchase the land at 75% of the prevailing market value by paying in four equal instalments as may be provided under the Rules. Therefore, that aspect of saving the small landholders cannot be objected to nor can the meaning of "landless poor person" be enlarged.....

7. Learned Counsel for the petitioner placed reliance on an un-reported decision of this Court in W.P.No. 11812 of 2003, dated 20-6-2003. A reading of the said judgment discloses that the Assistant Commissioner should first determine whether a lessee is a landless poor person as defined in the explanation to Section 82 and then only action will be taken for eviction. In the present case, as required under Rule 5 of the Rules, the fourth respondent issued a notice as admittedly the petitioner is in possession of Acs.7.36 cents. In such an event, no determination is required as it is not competent for the Assistant Commissioner to enlarge the definition of landless poor person. In the event the leased land exceeds Acs.5.00 (dry), the tenant falls within the enacting provision of Section 82 and his lease shall be cancelled.

8. The writ petition is devoid of any merits and is accordingly dismissed at the admission stage.