
(2002) 06 AP CK 0152
In the Andhra Pradesh High Court
Case No : WA No. 611 of 1998

Manasa Trust

APPELLANT

Vs

Nadimpilli Satyanarayana Raju and Another

RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 10(2), 2(c)

Citation : (2002) 4 ALD 707 : (2002) 4 ALT 329

Hon'ble Judges : S.R. Nayak, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : K.G.K. Prasad, for the Appellant; D. Ramalinga Swamy, Counsel for Respondent No.1 and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This writ appeal is filed by the Sri Manasa Trust, Vijayanagaram being aggrieved by the order of the learned single Judge dated 28-1-1997 made in W.P. No. 8506 of 1995.

2. The above writ petition was filed by the 1st respondent herein praying for a mandamus restraining the appellant herein and the Commissioner of Endowments from dispossessing him from the schedule lands except by due course of law as provided in the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "Tenancy Act") and for a consequential direction to the appellant herein not to hold any auction of the lease hold rights of the petition schedule lands.

3. The learned single Judge placing reliance on the judgments of this Court in A. Hanuma Reddy and Ors. v. Pushpagiri Mutt 1970 APHCN 30 , Sanadhi Narayana v. State of A.P. 1990 (1) ALT 237 , Rimmelapudi Ramachandra Rao Chowdury v. Sri Venugopalaswamywari Temple (W.P. No. 15925/88 dated 24-9-1996) and Nalli Sanyasi Naidu and Anr. v. Maharaja Alka Narayana Society (WP No. 8640/89 dated 20-12-1996), wherein it was held that the provisions of Andhra Pradesh

Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short the "Act") have no overriding effect, allowed the writ petition as prayed for. Hence this writ appeal by the aggrieved 2nd respondent Trust.

4. Sri K.G.K, Prasad, learned Counsel for the appellant placing reliance on the judgment of the Supreme Court in *State of Andhra Pradesh and others v. Nallamilli Rami Reddi and Ors.* 2001 (6) ALD 95 (SC), would contend that the provisions of the Tenancy Act have no application to the tenancies which fall under the provisions of the Act. The learned Counsel would point-out that the view taken by the Benches of this Court in the aforementioned decisions is no longer good law in the light of the above judgment of the Supreme Court. The learned Counsel further contend that the writ petitioner cannot be regarded as a cultivating tenant within the meaning of that term u/s 2(c) of the Tenancy Act.

5. Sri D. Ramalinga Swamy, learned Counsel for the 1st respondent-tenant contended that the contentions advanced on behalf of the appellant are ex-facie untenable and on the other hand, even the Apex Court in the very decision on which the learned Counsel for the appellant placed reliance, has made it very clear that the provisions of Sections 8 to 16 of the Tenancy Act do apply to lease created in respect of lands which fall under the purview of the Act. In that view of the matter, since admittedly the appellant did not take any steps to terminate the tenancy by the mode prescribed u/s 13 of the Tenancy Act, by an indirect way, the appellant cannot be permitted to dispossess the writ petitioner from the petition schedule lands by auctioning the leasehold rights. Therefore, the proposed action on the part of the Appellant-Trust to auction the leasehold rights without terminating the tenancy created in favour of the writ petitioner is ex-facie illegal and contrary to the provisions of Sections 10 (2) and 13(1) of the Tenancy Act. The learned Counsel also contended that the lease of the land in favour of the writ petitioner only for a period of three years was also illegal on the part of the Appellant-Trust, because the Appellant-Trust having decided to lease the land to the writ petitioner ought to have granted the lease for a period of six years as mandated by Sub-section (2) of Section 10 of the Act.

6. In the premise of these rival contentions a short question that arises for decision is as to whether the proposed action of the Appellant-Trust to auction the leasehold rights of the subject land is in accordance with law.

7. It cannot be gainsaid that the provisions of Sections 8 to 16 of the Tenancy Act do apply to the tenancies of the lands, which come under the purview of the Act. This position is made explicitly clear by the Supreme Court in *Nallamilli Rami Reddi's* case (supra). In para (8) of the judgment, the Supreme Court held as under:

"We may notice the effect of the two Tenancy Acts in force in the State of Andhra Pradesh. u/s 18(2) of the Andhra Act provisions of Sections 3 to 7 are made inapplicable to leases of lands belonging to or given or endowed for the purpose of any charitable or religious institution or endowment falling within Section

74(1) of the A.P. Act 17 of 1966. Section 18(2) of the Andhra Act further provides that rent payable by the tenants in respect of such property will be the rent in force at the commencement of the Andhra Tenancy (Amendment) Act, 1974 and where reasonable rent has fixed been u/s 74(1)(e) of the A.P. Act 17 of 1966, such reasonable rent. Sections 3 to 7 of Andhra Act provide for maximum rent payable by tenants, prescribe the form of agreement of Tenancy, provide for determination of rent, and also for deposit of rent during the pendency of proceedings for fixation of fair rent. All other provisions including Sections 8 to 16 of the Andhra Act do apply to leases in question."

8. Further, the Supreme Court in para 10 of the above judgment held, thus:

"Whether a Tenancy Act should be applicable to a religious institution or should be kept out of it is not a matter for the Court to decide. How far a Tenancy Act is applicable to a religious institution and to what extent it should be limited is a matter for the Legislature to decide."

9. To the same effect is the judgment of a Full Bench of this Court in Mahendrawada Vyavasaya Karmika Sangham Vs. Satti Venkata Reddy and another, . In para 10, the Full Bench of this Court held as under:

"Thus if the plaint schedule property comes within the purview of the Endowments Act, 1966, the next question is whether the provisions of A.P. (Andhra Area) Tenancy Act are excluded. The Tenancy Act does not provide for exclusion or exemption of the lands given to and held by a Charitable Religious Institution or endowment as held by this Court in Narayana's case 1990 (1) ALT 237. On the other hand, Sub-section (2) makes it clear that the exclusion is only partial. Sub-section (2) lays down that Sections 3, 4, 5, 6 and 7 shall not apply to any lease of land belonging to or given or endowed for the purpose of any charitable or religious institution or endowment falling within the scope of Sub-section (1) of Section 74(1) of the Act 17 of 1966. It is further laid down that the other provisions of other section of the Act shall apply to every such lease subject to the modification of the term "rent" as specified in Clauses (1) and (2) thereof."

10. Further in para-14, the Full Bench of this Court held as under:

"Viewed from another angle, there is no provision in the Endowments Act which precludes the application of Tenancy Act to the lands held by the Religious or Charitable Institutions/Endowments."

11. The expression cultivating tenant is defined under Clause-(c) of Section 2 of the Tenancy Act. It reads as under:

"Cultivating tenant" means a person who cultivates by his own labour or by that of any other members of his family or by hired labour under his supervision and control, any land belonging to another under a tenancy agreement, express or implied, but does not include a mere intermediary,"

12. Except vaguely stating that the writ petitioner cannot be regarded as a cultivating tenant nothing is laid in the pleading of the Appellant-Trust to show that the writ petitioner does not fulfil any of the qualifications prescribed in the definition. Here is a case where admittedly the lease was granted in favour of the writ petitioner. It is nobody's case that the writ petitioner did not cultivate the land demised in his favour by his own labour or by that of any member of his family or by hired labour under his supervision and control. The leased land belongs to the Appellant-Trust. Therefore, all the ingredients which are necessary to regard a person as a cultivating tenant did co-exists at the relevant point of time. Therefore, the writ petitioner is a cultivating tenant within the meaning of Section 2(c) of the Tenancy Act. If the writ petitioner is a cultivating tenant, the provisions of Sections 10 and 13 do apply. Sub-section (2) of Section 10 of the Tenancy Act mandates that every lease entered into between a landlord and his cultivating tenant after the institution of the Andhra Pradesh (Andhra Area) Tenancy Amendment Act, 1974 should be for a minimum period of six years and that such lease should be in writing. On the face of these mandatory provisions and in breach thereof, the Appellant-Trust granted lease to the writ petitioner only for a period of three years. However, that would not make any difference because, a cultivating tenant is entitled for a lease for a minimum period of six years by force of the provisions of Sub-section (2) of Section 10 and that benefit granted by the statute to the writ petitioner cannot be taken away by the lessor by restricting lease period to lesser number of years than six (6) years. Learned Counsel for the Appellant-Trust did not bring any other provisions of any Statute under which the lessor could make a departure from the mandate contained in Sub-section (2) of Section 10 of the Tenancy Act and grant lease to a cultivating tenant for a lessor period than six years. Further, the provisions of Section 13 of the Tenancy Act, in its very nature, are mandatory. These provisions mandate that notwithstanding in Sections 10, 11 and 12, no landlord is entitled to terminate the tenancy and evict his cultivating tenant, except by the mode prescribed in the said section, that too, on the grounds specified therein. Admittedly, no action was taken by the Appellant-Trust to evict the writ petitioner from the lands in question even assuming that after the expiry of three years they could have taken steps to evict him. Therefore, on a combined reading of subsection (2) of Section 13 and Sub-section (2) of Section 10 of the Tenancy Act, it should be held that the tenancy created in favour of the writ petitioner continued despite expiry of the period of three years. If the tenancy of the writ petitioner was continued by force of law, it is trite, his possession should be protected by virtue of the provisions of the Tenancy Act. In other words, without dispossessing the writ petitioner from the lands in accordance with law, it is impermissible for the Appellant-Trust to dispossess the writ petitioner highhandedly and de hors the law by taking recourse to the impugned action to auction the leasehold rights of the lands. In that view of the matter, no exception can be taken to the final relief granted by the learned single Judge, though on a different ground. We do not find any merit in the writ appeal and it is liable to be dismissed.

13. In the result, the writ appeal is dismissed with no order as to costs.