

(2004) 01 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 19169 and 19920 of 2003

N. Mallakanti and Others

APPELLANT

Vs

Chennakesava Swamy Temple and Another

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 82(1), 82(2), 84, 85
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments
Immovable Properties and Other Lands (Other than Agricultural Lands) Leases and
Licenses Rules, 2003 — Rule 3, 5(1)

Citation : (2004) 2 ALD 148 : (2004) 2 APLJ 83

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

Bench : Single Bench

Advocate : P. Ganga Rami Reddy, for the Appellant; V. Vengopala Rao and
Government Pleader for Endowments, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This common order shall dispose of both the writ petitions. There are five writ petitioners in W.P. No. 19169 of 2003 and there is one writ petitioner in W.P.No. 19920 of 2003, The petitioners claim to be cultivating tenants in respect of agricultural dry land admeasuring more than Ac.9.00s. The land belongs to Sri Chennakesava Swamy Temple, Gargeyapuram Village in Kurnool District. The petitioner in the other writ petition claims to be a cultivating tenant in respect of agricultural dry land belonging to Sri Veerabhadra Swamy Temple of Gudikal village of Kurnool District. The land admeasuring Ac.10.00s. All the petitioners seek a writ of mandamus declaring the action of the temple authorities and the Assistant Commissioner, Endowments, Kurnool in seeking to evict the petitioners from the lands allegedly in their possession without considering their claims for the purchase of the land under Sub-section (2) of Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereafter called the Act for brevity) as illegal and

contrary to provisions of the Act.

2. The petitioners in the first writ petition claim that they have been cultivating tenants for the last 30 years. The petitioner in the other writ petition claims to have been the successful bidder in the auction conducted for giving leasehold rights for agricultural lands. It appears temple-authorities issued auction notice again to lease out the land. The petitioners claim to be landless poor persons and therefore contend that it is obligatory on the part of the respondents to determine the status of the petitioners under Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (hereafter called the Rules). They also contend that they are willing to pay 75% of the market value for the respondents in accordance with Section 82(2) of the Act. When the auction is about to be conducted they filed the representations from this Court. At the time of admission in both the matters, while directing the learned Standing Counsel for the Temple to get instructions in the matter, this Court ordered to maintain status quo as to possession of the land. The learned Standing Counsel has now filed the counter-affidavit in both the matters which were heard together and are being disposed of by this common order.

3. In the counter-affidavit of the Temple in W.P. No. 19169 of 2003, it is stated that the petitioners filed Tenancy cases, which were dismissed. Aggrieved by the same they filed Civil Revision Petition being CRP Nos. 4162, 4165, 4167, 4168 and 4230 of 2003 and obtained interim orders. The petitioners suppressed this fact in the writ petitions. The tenancy period expired in March, 2000. Therefore auction was conducted on 23-8-2003. The petitioners made a representation to the Executive Officer of the Temple to postpone the auction to 4.00 p.m. instead of 10.00 a.m. on that day. They also informed that they may be given a last chance for obtaining orders from this Court. Considering the request the Executive Officer conducted auction at 4.00 p.m. The auction was confirmed in favour of the highest bidder at Rs. 1,75,600/-per annum, who paid Rs. 1,42,100/-. Possession of the land was also handed over on 2-9-2003. The allegation that the petitioners are cultivating tenants is denied. The allegation that they are tenants for the last 30 years is also denied stating that Petitioners-2 to 4 who are inducted as tenants during 1997-98 for a period of three years. The lease expired in March, 2000. In the case of Petitioners-1 and 5 also, lease period expired and auction was conducted thereafter. The petitioners were cultivating tenants in respect of land admeasuring more than Ac.9.00s and therefore Section 82(2) of the Act and the Rules have no application.

4. In the counter-affidavit of the Executive Officer in W.P. No. 19920 of 2003 it is stated that Sri Bukkinti Vinod Kumar claiming to be hereditary Chairman of the Temple leased out the land for one year from 23-6-2001 to 22-6-2002 for sum of Rs. 14,500/-. The lease was never approved by the competent authority and therefore the petitioner cannot be treated as a lessee of the Temple. Even otherwise said lease expired on 22-6-2002. The tenancy case being A.T.C. No. 1

of 2002 filed by the petitioner was dismissed and he was never given assurance that he would be given the lease for a period of three years. The petitioner has no right to continue as a tenant and Section 83 of the Act has no obligation. In view of the interim orders passed by this Court, the respondents could not conduct auction to lease out the land.

5. The petitioners in both the writ petitions have not filed reply affidavit denying the counter averments. The un-rebutted counter averments, therefore, have to be taken as proved. Be that as it is, the learned Counsel for the petitioners Sri P. Gangarami Reddy contends that the writ petitioners should be deemed to be landless poor persons and given the benefit u/s 82(2) of the Act. Alternatively he would contend that even if the petitioners are not landless poor persons, they cannot be evicted arbitrarily without following the procedure contemplated u/s 83 of the Act. The learned Counsel for the first respondent (in both the writ petitions) Sri V. Venugopala Rao, per contra would submit that by reason of Section 82(1) of the Act, the lease of agricultural lands by a temple or a charitable institution stands cancelled. On such cancellation, it is open to the temple-authorities to take possession of the property in accordance with Rule 5 of the Rules by giving 30 days time to the person in occupation of the land to handover the possession of the land. If a person fails to hand over the possession of the agricultural land to the temple or charitable institution, the Law contemplates proceedings under Sections 84, 85 and 86 of the Act treating such person as an encroacher. According to the learned Counsel the temple need not invoke Section 83 of the Act, in such a case. He also submits that in the first writ petition petitioners are not in possession and that after conducting auction in accordance with the Rules, the land was handed over to the highest bidder.

Whether the petitioners are landless poor persons ?

6. The first point for consideration is whether the petitioners are landless poor persons. Admittedly all the petitioners in W.P. No. 19169 of 2003 and the sole petitioner in W.P.No. 19920 of 2003 were lessees of more than Ac.9.00s of agricultural dry land belonging to respective temples. All the petitioners unsuccessfully made an attempt under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, to get them declared as statutory cultivating tenants of the temple. The definition of "landless poor person" is contained in explanation to Sub-section (2) of Section 82 of the Act which reads:

82(2) 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 1.01,1715 hectares (two and half acres) of wet land or 2.02,3430 hectares (five acres) of dry land and whose monthly income other than from such lands does not exceed thousand rupees per mensem or twelve thousand rupees per annum. However, those of the tenants who own residential property exceeding two hundred square yards "in Urban Area shall not be considered as landless poor for the purpose of purchase of endowments property.

7. As held by the Supreme Court in *State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others*, , the definition of landless poor person given in the Explanation as above can neither be narrowed down nor enlarged. Having regard to the facts disclosed in the affidavit filed by the petitioners, I failed to understand as to how the petitioners contend that they are landless poor persons. This point is answered accordingly holding that the petitioners are not landless poor persons and that they are not entitled to the benefit conferred by the Legislature on landless poor persons by enacting Sub-section (2) of Section 82 of the Act.

(ii) Is there any need to evict the petitioners u/s 83 of the Act?

8. Insofar as W.P. No. 19169 of 2003 is concerned, it is contended by the learned Standing Counsel for Endowments that when the petitioners failed to get interim orders from this Court in civil revision petitions, they themselves relinquished and that after conducting auction on 29-8-2003, the land was handed over possession to the highest bidder on 2-9-2003. This is not denied by filing a reply affidavit. Therefore the question under consideration would not arise in W.P. No. 19169 of 2003. Insofar as W.P. No. 19920 of 2003 is concerned that the sole petitioner is in possession of Ac.10.00 of agricultural dry land belonging to first respondent-temple is not denied. It is however contended that the petitioner was inducted as a tenant illegally by Bukkinti Vinod Babu claiming himself to be the hereditary Chairman which is illegal. The lease was not confirmed by the competent authority and therefore petitioner has no right to claim as a tenant.

9. As the first respondent-temple in W.P. No. 19920 of 2003 does not dispute the petitioner's possession and also admits that the hereditary Chairman leased out the land, for the purpose of this case and for the purpose of Section 82(1) of the Act, the sole petitioner should be treated as a cultivating tenant. After coming into force of the Act, Section 82(1) which was held to be constitutionally valid in *Nallamilli Rami Reddy's* case (supra), declares that any lease of agricultural land belonging to a temple shall stand cancelled. In such an event rules made by the State Government vide G.O. Ms. No. 379, dated 11-3-2003 ought to be applied for evicting a person who claims to be the leaseholder of the Temple land. Rule-5 of the Rules 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 lease hold rights in respect of the said lands are proposed to be leased out as per rules and calling upon him to forthwith handover 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 the 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 desired in accordance with the conditions set out in Rule 6 or to continue as tenant paying atleast 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 handover 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.

10. A reading of the above rule would show that a leaseholder shall have to be issued notice in Form No. 1 informing him that the lease stood cancelled u/s 82(1) of the Act, the leasehold rights in respect of the lands are proposed to be leased out as per the rules and calling upon the tenant to forthwith handover possession of the lands. The tenants shall also be informed that if he fails to handover possession within 30 days (as seen from Form No. 1) he shall be evicted invoking the provisions of Sections 84, 85 and 86 of the Act treating the tenant as an encroacher u/s 83(4) of the Act. By Section 82(1) the Law treats a lease as cancelled and the rules enable the Executive Officer of the Temple to take possession in accordance with Sections 84 to 86. Be it noted under Sections 84 and 85 it is competent for the Assistant Commissioner to evict a person in possession of the temple property with the aid of the police. Therefore where the agricultural lease stands cancelled the temple is required to take possession by serving Notice in Form No. 1 read with Rule 5(1) of the Rules. The Temple or the Assistant Commissioner are not required to approach the jurisdictional Deputy Commissioner of Endowments for an order to remove the encroachment. By reason Rule 5(1) the Law introduced as fiction to the effect that a tenant who is not a landless poor person, and who fails to handover possession within 30 days after receipt of the Notice in Form No. 1, is deemed to be an encroacher and without any further order, he can be evicted or removed with police aid under Sections 84 and 85 of the Act. The submission of the learned Counsel for the petitioner is therefore misconceived and this point is answered accordingly against the petitioner.

11. In the result, for the above reasons, the writ petitions are devoid of merits and they are accordingly dismissed with costs.