

(2008) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15921 of 2005 and WP No's. 24897, 19440 and 25242 of 2004

Telladala Ramakrishna

APPELLANT

Vs

Narayana Rangaiahgari Choultry and Others

RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 10, 16
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 82, 82(2), 82(3), 83
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Rules, 2003 — Rule 18, 3, 5
Constitution of India, 1950 — Article 14, 21, 300A

Citation : (2008) 6 ALD 713

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : A.K. Jayaprakash Rao and V. Venugopala Rao, Government Pleader, P. Radhakrishna and B. Venkata Rama Rao, for the Appellant;

Judgement

P.S. Narayana, J.—Telladala Ramakrishna, the writ petitioner, filed W.P. No. 15921 of 2005 praying for a writ of mandamus declaring action of the respondents in issuing re-auction notice, dated 12.7.2005, fixing the date of auction of the leasehold rights on 22.7.2005 in respect of agricultural lands totally admeasuring Ac.33-95 cents covered by Sy. Nos. 113/1, 114,15671, 152/2, 166/11,158, 168 of Madduru Village, Chapadu Mandal, kadapa District, as illegal, arbitrary, unjust and violative of principles of natural justice and violative of Articles 14, 21 and 300-A of the Constitution of India and consequently set aside the same by directing the respondents to issue proceedings of lease for a period of three years from the date of putting the petitioner in possession, by evicting the tenants in occupation of the first respondent by due process of law, pursuant to the auction of leasehold rights on 18.10.2004 for an amount of Rs. 14,67,000/- collected from the petitioner and pass such other suitable orders.

2. R.3 in this writ petition was impleaded as a party by order dated 5.2.2008 in WP MP No. 23203 of 2006.

3. The above said writ petitioner filed W.P. No. 24897 of 2004 praying for the under noted relief amended as hereunder:

The writ petition is filed for a writ of mandamus declaring the Auction Notification dated 25.12.2004 issued by the first respondent holding re-auction of leasehold rights of lands admeasuring Ac.32-95 cents covered by Sy. Nos. 113/1,113/2,158, 158/1, 165/A2, 166/1, 157, 172/1B, 150/2 and 168 of Madduru Village on 3.1.2005, as illegal, contrary to law, whimsical, arbitrary and in violation of Articles 14, 21 and 300-A of Constitution of India and consequently set aside the same and pass such other suitable orders.

4. The alleged tenants, who are encroachers, filed W.P. No. 19440 of 2004 praying for a writ of mandamus declaring action of the respondents in evicting the petitioners from the agricultural lands admeasuring Ac.33-95 cents covered by Sy. Nos. 113/1, 114, 156/1, 152/2, 166/1, 158, 168 of Madduru Village, Chapadu Mandal, Kadapa District by not following due process of law and attempting to take possession under the guise of orders passed u/s 82(3) of A.P. Charitable and Hindu Religious Institutions and Endowment Act, 1987 and subsequent auction of leasehold rights on 18.10.2004, as illegal, arbitrary, unjust, without jurisdiction and violative of Articles 14, 21 and 300-A of Constitution of India and consequently set aside the orders dated 6.10.2004 of respondent No. 2 and auction notice dated 18.10.2004 issued by respondent No. 1 and pass such other suitable orders.

5. Likewise, W.P. No. 25242 of 2004 also had been filed praying for a writ of mandamus declaring action of the first respondent in issuing re-auction notice dated 25.12.2004 holding the auction of leasehold rights in respect of agricultural lands totally admeasuring Ac.33-95 cents covered by Sy. Nos. 113/1, 113/2, 158, 158/1, 165/A2, 166/1, 157, 172/1B, 150/2 and 168 of Madduru Village, Chapadu Mandal, Kadapa District on 3.1.2005 without taking possession of the said lands from the petitioners by following due process of law, as illegal, arbitrary, unjust, violative of principles of natural justice and violative of Articles 14, 21 and 300-A of Constitution of India and consequently set aside the auction notice dated 25.12.2004 for re-auction of leasehold rights of subject lands stated above on 3.1.2005 or any other subsequent date/s by the first respondent and pass such other suitable orders.

6. In view of communality of the subject-matter and the factual matrix, all these writ petitions are being disposed of by a common order.

7. Heard Sri B. Venkat Rama Rao, learned Counsel representing the alleged tenants or encroachers, Sri A.K. Jaya Prakash Rao, learned Counsel representing the writ petitioner in W.P. No. 15921 of 2005 and connected writ petition, Sri V.T.M. Prasad, learned Counsel representing the institution and the learned Assistant Government Pleader for Endowments.

8. WVMP No. 3445 of 2007 is filed by Sri Narayana Rangaiahgari Choultry-institution to vacate the interim order in WP MP No. 20221 of 2005 in WP No. 15921 of 2005 dated 21.7.2005. Counter-affidavits had been filed in WP No. 15921 of 2005, WP No. 24897 of 2004 and WP No. 25242 of 2004.

9. Sri B. Venkat Rama Rao, learned Counsel appearing for the alleged tenants/encroachers would maintain that unless the procedure as contemplated by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter in short referred to as "the Act" for the purpose of convenience) is followed, there cannot be any auction which can be conducted and these tenants in fact are entitled to the benefits and without deciding the said issue, though the same is pending before the Regional Joint Commissioner, Endowments, further proceeding with the matter under the guise of conducting auction to the lands in question cannot be sustained. The learned Counsel pointed out to the factual controversy and would maintain that in the facts and circumstances of the case the alleged panchanama of delivery of possession, these aspects cannot be believed at all.

10. Sri A.K. Jayaprakash Rao, would maintain that inasmuch as no possession had been delivered, for appropriate reliefs the writ petitions were filed. The learned Counsel also would submit that in the light of the facts and circumstances it would be just and equitable to order refund of the amount, since never the successful bidder again was inducted into possession. The same is amply established even by the report of the learned Junior Civil Judge. The learned Assistant Government Pleader for Endowments would maintain that these alleged tenants/encroachers are not entitled to any of the benefits under the Act since one of the ingredients are satisfied. The learned Counsel also relied upon certain decisions in this regard.

11. Heard the Counsel and perused the material available on record.

12. The petitioner Telladala Ramakrishna in WP No. 15921 of 2005 averred that originally the first respondent issued auction notification on 15.10.2004 fixing the date as 18.10.2004 for auction of leasehold rights of the lands totally admeasuring Ac.33-95 cents covered by Sy. Nos. 113/1, 114, 156/1, 152/2, 166/11, 158 and 168 of Madduru Village, Chapadu Mandal, Kadapa District, which were in possession of the tenants Mariboina Venkata Subbaiah and 23 others and in the said auction conducted by the first respondent on 18.10.2004, the petitioner was declared as the highest bidder and the said auction was knocked down in his favour for a sum of Rs. 14,67,000/-. On the said date the participants were informed that the lease was for a period of three years and the petitioner was asked to deposit Rs. 1,000/- for participation in the auction and no specific terms and conditions for deposit of bid amount was notified. Pursuant to declaring the petitioner as the highest bidder, he was asked to deposit a sum of Rs. 8,80,000/- on the same day and accordingly the petitioner had deposited the same in cash with the first respondent under acknowledgment and subsequently on 23.10.2004 and on 25.10.2004 the petitioner had deposited Rs. 1,56,000/-

and Rs. 1,00,000/- in cash respectively as demanded by the first respondent under the bona fide impression that the lease was for a period of three years. In all, by the said date, the first respondent collected Rs. 11,36,000/- out of Rs. 14,67,000/- towards lease bid amount stating that the remaining balance would be received on handing over actual and physical possession of the lands in question, by evicting the tenants of the first respondent in occupation, in view of the standing crop then existing. It is also averred that the petitioner has been requesting the first respondent to put him in possession of the lands in question by evicting the tenants in occupation by due process of law.

13. The tenants in occupation had filed WP No. 19440 of 2004 questioning the very auction of leasehold rights and the petitioner himself got impleaded as third respondent in the said writ petition. The petitioner complained in the said writ petition as to not handing over physical possession of the lands in question to him pursuant to declaring him as the highest bidder and collecting substantial part of lease amount. While so, the first respondent issued re-auction notice for the second time, fixing the auction of leasehold rights on 3.1.2005 alleging that the petitioner had not paid the entire bid amount of Rs. 14,67,000/-. In the circumstances the petitioner filed WP No. 24897 of 2004 assailing the action of the first respondent in not issuing proceedings of leasehold rights and not putting him in possession by evicting the tenants in occupation and sought for refund of Rs. 11,36,000/- deposited by him. This Court granted interim direction to the respondents not to auction the leasehold rights on condition that the petitioner shall deposit the balance of lease amount of Rs. 3,30,000/-. Pursuant to the interim direction, the petitioner gave representation on 2.1.2005 to the respondents requesting them to hand over possession to him and also to comply the statutory requirements for execution of the lease according to the rules and thereafter on 15.1.2005 in compliance of the directions of this Court, he deposited Rs. 3,30,000/- with the first respondent under acknowledgment. On 4.4.2005 and 10.4.2005 also the petitioner made representations to the respondents.

14. It is also stated that the first respondent, without adverting to the representations given from time to time and even without commencement of the lease under the original auction dated 18.10.2004 in his favour, issued a notice asking the petitioner to pay further amount of Rs. 14,67,000/- as lease amount for 2005-06 which was more than the actual value of the lands. The petitioner had filed his objections to the said notice dated 19.4.2005. Further, it is stated that to his surprise, the first respondent with ante-date 12.7.2005 had issued pamphlets fixing the date of action of the leasehold rights of the lands in question on 22.7.2005 and the same is impugned in the present writ petition.

15. The relevant provisions of the Act aforesaid Act 30 of 1987 and also the relevant Rules of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Rules, 2003 (hereinafter in short referred to as "the Rules" for the purpose of convenience) also had been referred to.

16. Respondent No. 3, who came on record, no doubt made certain averments in the affidavit in implead application and also reply affidavit as well.

17. In the counter-affidavit filed by respondent-1 it is stated that the present writ petition is filed questioning the auction of Ac.33.95 cents on 22.7.2005 pursuant to notice dated 12.7.2005 situated in S. Nos. 113/ 1, 114, 156/1, 166/11, 158 and 168 of Madduru Village, Chapada Mandal, Kadapa District and this Court granted interim order on 21.7.2005 that auction may go on, but not to finalize it. Accordingly, the auction for three years was held and one P. Venkata Subbaiah became the highest bidder for Rs. 1,36,000/- fees each of the three years of 2005-06 to 2007-08 for Ac. 16-97 1/2 cents and Pandita Subba Rayudu for another extent of Acs. 16.97 1/2 cents for Rs. 1,35,000/- per annum respectively for a period of three years.

18. It is further stated that on 23.8.2005 this Court extended the interim orders dated 21.7.2005 until further orders. Aggrieved by it, the Choultry filed WA No. 1739 of 2005 in which a direction was given on 3.10.2005 to the learned Principal District Judge, Kadapa to appoint a Junior Civil Judge as Commissioner who shall report to this Court as to who was in actual possession of the said extent of Ac.33.95 cents in S. Nos. 113/1, 114, 156/1, 157/2, 166/ 11, 158 and 168 of Madduru Village Maduru Sil, Chappal Mandal. The Commissioner-cum-Principal Junior Civil Judge, Kadapa submitted a report on 26.11.2005 giving details of the persons in encroachment, their names, the extents, under them and the respective survey numbers in which the extents are situated. The name of the petitioner had not figured in the said Commissioner's report.

19. Further it is stated that on 5.12.2005 a Division Bench of this Court dismissed the WA No. 1739 of 2005 thereby the orders of the learned Single Judge in WP MP No. 20221 of 2005 in WP No. 15921 of 2005 dated 23.8.2005 extending the interim orders passed earlier on 21.7.2005 until further orders remain in force.

20. Based on the opinion of the Standing Counsel for the Endowments, the amounts of Rs. 1,36,000/- and Rs. 1,35,000/- received from the highest bidders P. Venkata Subbaiah and P. Subbarayudu in the auction held on 22.7.2005 were returned to them under approval and authorization of the proceedings of the Commissioner, Endowments in D.Dis.M1/3410/2007, dated 1.3.2007 after cancelling the public auction dated 27.5.2005. It is true that the writ petitioner was the highest bidder in the auction for Ac.33.95 cents held on 18.10.2004 for three years from 2004-2005 to 2006-2007 and he did not deposit an amount of Rs. 11,36,000/- of the maktha for one year of Rs. 14,67,000/- towards the bid amount and later an amount of Rs. 3,30,000/- towards the full amount of Rs. 14,67,000/- for one year. It is also stated that the encroachers named in the report of the Commissioner-cum-Principal Junior Civil Judge, Kadapa, dated 26.11.2005 were benami and henchmen of the writ petitioner and this was the reason for him to have bid an amount of Rs. 14,67,000/- for one year, so as to return the land in his possession by hook or crook and thus enjoying the crop all

these years. It is also stated that the writ petitioner has no locus standi to maintain the present writ petition.

21. In WP No. 24897 of 2004 the alleged tenants/encroachers also had shown as parties. It is stated that the first respondent had issued auction notification on 15.10.2004 fixing the date 18.10.2004 for auction of the leasehold rights of lands totally admeasuring Acs.33-95 cents covered by Survey Nos. 113/1, 114, 156/1, 152/2, 166/1, 158, 168 of Madduru Village, Chapadu Mandal, Kadapa District, which were in possession of respondents 3 to 26. At the time of issuing auction notice or on the date of auction, no specific terms and conditions were published or communicated to the participants in the auction regarding deposit of lease amount, except asking to deposit Rs. 1,000/- for participation in the auction. It is also stated that in the auction conducted by respondent No. 1 on 18.10.2004 the petitioner was declared as highest bidder and the said auction was knocked down in his favour for a total sum of Rs. 14,67,000/- and he had deposited a sum of Rs. 8,80,000/- on the date of auction with first respondent under an acknowledgment dated 18.10.2004. Subsequently, on 23.10.2004 he had deposited a sum of Rs. 1,56,000/- and thereafter on 25.10.2004 a sum of Rs. 1,00,000/- in cash with the first respondent as demanded by respondent No. 1. Thus, in all the petitioner had paid a sum of Rs. 11,36,000/- towards lease bid amount as highest bidder subject to handing over actual and physical possession of the subject lands and enable him to cultivate and raise crops in 3 Fasli years. Further, it is averred that on the date of auction there was standing paddy crops raised by respondent Nos. 3 to 26 in the auctioned lands and the first respondent authorities had assured to deliver physical possession of the lands to him within few days by evicting respondents 3 to 26 by due process of law, but they are postponing the same.

22. While matters stood thus, it appears that respondents 3 to 26 had questioned the action of the official respondents in auctioning leasehold rights and also taking possession without recourse to law by way of writ petition in WP No. 19440 of 2004. The petitioner being third party auction purchaser of leasehold rights of the lands in question, filed implead petition in WP MP No. 28523 of 2004 in WP No. 19440 of 2004 and the same was allowed. It is also stated that the first respondent had issued the auction notification dated 15.10.2004 and conducted the same on 18.10.2004 i.e., by the end of khariff season and the said action of the officials in issuing such notification for 3 years and without their taking physical possession of the lands in question from respondents 3 to 26, is arbitrary, illegal and violative of Articles 14, 21 and 300-A of the Constitution of India.

23. Further it is stated that respondents 1 and 2 had not taken steps for evicting respondents 3 to 26 by due process of law and are contemplating to forfeit the amount deposited by the petitioner. It is obligatory on the part of respondents 1 and 2 either to approve or disapprove the lease and put him in actual and physical possession by executing a registered lease deed in his favour in time so

as to have benefit of enjoying the leasehold rights for 3 years lease period. The amounts deposited by the petitioner are lying with respondent No. 1 and they are liable to refund for their inaction and violation of rules. In such circumstances this writ petition was filed.

24. In the counter filed by respondent No. 1 it is stated that by virtue of Section 82 of the Act, as upheld by the Supreme Court, lease rules were framed in G.O. Ms. No. 379, Revenue Endowments-I, dated 11.3.2003. Accordingly, respondent No. 1 temple had conducted public auction on 18.10.2004 to lease out an extent of Ac.33.95 cents situated in Sy. Nos. 113/1 etc., of Chinna Varadayapalli Village, Chapadu Mandal, Kadapa District. The writ petitioner became the highest bidder for annual lease amount of Rs. 14,67,000/-. As per condition No. 4 of lease conditions, the writ petitioner was obligated to pay the entire lease amount immediately. Since the writ petitioner could not ready with total bid amount, he gave undertaking on that day itself to pay the balance amount of Rs. 5,87,000/- on 19.10.2004 itself while paying Rs. 8,80,000/- apart from deposit of Rs. 1,000/-. Again on 23.10.2004 the petitioner deposited Rs. 1,56,000/- and later deposited Rs. 1,00,000/- on 25.10.2004. Since the writ petitioner did not pay balance amount as per condition No. 4 of conditions of public auction and lease and as per his undertaking dated 18.10.2004, respondent No. 1 temple "proposed to conduct public auction scheduled to be held on 3.1.2005 vide notification dated 25.12.2004.

25. It is also stated that when the writ petition came up for admission on 30.12.2004 this Court directed respondent No. 1 not to proceed with public auction by virtue of notification dated 25.12.2004 on a condition that the writ petitioner shall deposit the balance lease amount within two weeks from the date of order. Accordingly, respondent No. 1 received balance lease amount of Rs. 3,30,000/- which was deposited on 15.1.2005 and allowed the writ petitioner to cultivate the lands under dispute for the crop year 2004-2005. For the remaining crop years, the writ petitioner has to pay annual lease amount.

26. It is also stated that as per condition No. 4 of conditions of public auction, the highest bidder shall pay lease amount before end of March before commencing crop year in advance. Accordingly, the writ petitioner was called upon through notices dated 19.4.2005 and 7.6.2005 to pay lease amount for the crop year 2005-2006 at the rate of Rs. 14,67,000/- for total extent of Ac.33.95 cents. If there is any violation of lease conditions and lease rules, respondent No. 1 is entitled to take steps to evict the writ petitioner and to lease out the lands in public auction as per the lease rules issued in G.O. Ms. No. 379, Revenue Endowments-I, dated 11.3.2003.

27. The alleged tenants/encroachers filed WP No. 25242 of 2004 and WP No. 19440 of 2004 and the reliefs already had specified supra. It is averred in WP No. 25242 of 2004 that the petitioners have been in possession and enjoyment of their respective holdings in all, totally admeasuring Ac.33-95 cents, covered by the above said survey numbers of Madduru Village as "cultivating tenants" of

the first respondent from the time of their forefathers. They had dug bore wells for their common benefit and obtained electric service connections to the said bore wells and they have been cultivating the said lands by paying lease amounts to the first respondent.

28. The petitioners, in view of the first respondent interested to deny their status, had approached the Tenancy Tribunal individually for declaration of their leasehold rights. The batch of applications before the Tenancy Tribunal-cum-Principal Junior Civil Judge, Proddatur, were dismissed erroneously by order dated 17.4.2003, holding that though admittedly they had been in possession of the lands in question as admitted by the respondents in their counter, they had declared as encroachers in view of non-application of provisions of Tenancy Act to the lands governed by the Act and that the respondent No. 1 was entitled to evict the petitioners from the subject lands under the provisions of the said Act. The petitioners being aggrieved by the orders of the Tenancy Tribunal, dated 17.4.2003, carried the matter in appeal and the batch of appeals were also dismissed by a common order dated 27.4.2003 confirming the said order of the Primary Tribunal. But however, in the said proceedings, it was made clear that the petitioners were entitled to be in possession till they are dispossessed by due process of law over the subject lands. The petitioners carried the matter in CRP No. 5322 of 2004 and Batch before this Court and the same are pending.

29. While so, respondent No. 1, without evicting the petitioners by due process of law from the subject lands, had issued auction notification dated 10.6.2004 to auction their leasehold rights in respect of the said lands in question. In the circumstances, the petitioners filed WP No. 10051 of 2004 questioning the said auction of their leasehold rights and this Court by order, dated 5.7.2004 while staying the auction, had given finding of possession in their favour and directed the second respondent to adjudicate upon whether the petitioners are landless poor and whether they are entitled for the benefit of Section 82 of the Act and kept option to the petitioners to make such applications before the competent authority, while setting aside the auction notice dated 10.6.2004 by order dated 5.7.2004. Pursuant to the orders of this Court dated 5.7.2004 in W.P. No. 10051 of 2004, the petitioners filed their applications before the second respondent seeking to recognize them as "landless poor" to avail the benefit of Section 82(2) of the said Act. Before the said applications were disposed of, the first respondent issued notice of eviction to all of them specifying that the subsisting lease in their favour stands cancelled with immediate effect and called upon them to hand over possession within 30 days from the date of receipt of the notice, vide notice dated 21.7.2004. The petitioners filed WP No. 14100 of 2004 questioning the said notice and this Court, by order dated 23.8.2004, had set aside the said notice of eviction dated 21.7.2004 and disposed of the said writ petition with a direction to the second respondent to consider their claim to take benefit of Section 82(2) of the Act and to pass appropriate orders. The second respondent had erroneously rejected their claim petition by order dated 6.10.2004 without following due procedure as contemplated u/s 82 of the said

Act and proceeded to decide the matter in a post-haste manner without giving reasonable opportunity and without advertng to the contentions raised by them and thereafter, with ante-date, issued an auction notice dated 15.10.2004 fixing the auction of leasehold rights on 18.10.2004, though there was a standing crop over the lands raised by them and thereby attempted to create third party interest. Aggrieved by the said orders of the second respondent carried the matter in appeal before the Regional Joint Commissioner, Endowments, Tirupathi, and the said appeal along with stay petition are pending for consideration before the Appellate Authority.

30. In view of the auction notification dated 15.10.2004 the petitioners were constrained to file another Writ Petition No. 19440 of 2004 questioning the high handed action of the respondents in evicting the petitioners from the subject lands in question by not following the due process of law. Pending disposal of the said writ petition, one T. Ramakrishna, the alleged auction purchaser of the leasehold rights of subject lands, filed WP MP No. 28523 of 2004 to implead him as respondent No. 3 in the said writ petition and the same was allowed on 16.12.2004 wherein the said auction purchaser himself admitted that no physical possession was handed over to him of the subject lands and that the physical possession of the lands in question is still with the petitioners. Further, it is stated that the first respondent in a mala fide manner issued the impugned auction notice dated 25.12.2004 stating that re-auction of the leasehold rights is proposed to be conducted on 3.1.2005. Several grounds had been raised questioning the same.

31. In the counter-affidavit filed by the first respondent it is stated that the writ petitioners are challenging re-auction notification dated 25.12.2004, thereby supporting the public auction held on 18.10.2004. The petitioners have no locus standi since already there was a writ petition filed by the aggrieved party i.e., highest bidder in auction held on 18.10.2004 challenging the present notification and there is an interim direction to receive balance lease amount and to continue the said highest bidder, which was complied as directed by this Court. It is also stated that since the writ petitioner did not pay balance amount as per condition No. 4 of conditions of public auction and lease as per his undertaking dated 18.10.2004, the respondent temple proposed to conduct public auction scheduled to be held on 3.1.2005 vide notification dated 25.12.2004. At that stage the said highest bidder filed WP No. 24897 of 2004 challenging the auction notification dated 25.12.2004 and seeking direction to allow the said writ petitioner to cultivate the lands. It is also stated that this Court directed the respondents not to proceed with public auction by virtue of notification dated 25.12.2004 on a condition that the writ petitioner shall deposit the balance lease amount within two weeks from the date of order of this Court. Accordingly, respondent No. 1 received balance lease amount of Rs. 3,30,000/- which was deposited on 15.1.2005 and allowed the said writ petitioner to cultivate the lands under dispute for the crop year 2004-2005.

32. Further it is stated that with regard to the claim of these writ petitioners this Court observed further in the said order as follows:

Since the lease of the previous tenant stood terminated by operation of Section 82 of the Act, the petitioner shall be entitled to continue in possession on the basis of the panchanama conducted on 18.10.2004.

In view of the said order and compliance thereon, the present writ petition gets infructuous and they are not entitled for any relief in the present writ petition. In fact, in the earlier Writ Petition No. 19440 of 2004 filed by the present writ petitioners which is also pending, the writ petitioners were already dispossessed by conducting panchanama on 18.10.2004 and this Court refused to grant stay of dispossession vide order dated 27.10.2004. Since the highest bidder was put in possession and was allowed to continue for the crop year 2004-2005 which expires by 31.3.2005, as directed by this Court, no relief can be granted in the present writ petition and the same is liable for dismissal.

33. WP No. 19440 of 2004 is filed by the alleged tenants-encroachers with almost similar averments. It is stated that all the petitioners have been in possession and enjoyment of their respective holdings in all totally admeasuring Ac.33-95 cents covered by Sy. Nos. 113/1, 113/2, 158, 158/1, 165/A2, 166/1, 114, 157, 172/1B, 150/2, 168 of Madduru Village, Chapadu Mandal, Kadapa District as tenants of first respondent from the time of their forefathers by paying the lease amounts in kind/cash. They had dug a bore well for their own benefit and got electric service connection to the said bore well and had been irrigating the said lands from the said source of irrigation besides raising rain fed crops.

34. The petitioners approached the Tenancy Tribunal individually by filing applications under Sections 10 and 16 of A.P. (T.A) Tenancy Act of 1956, seeking declaration of their leasehold rights over their respective holdings and sought for injunction against the respondents herein vide A.T.C. Nos. 5 to 32 of 2001 and the said applications were dismissed holding that the petitioners though admittedly in possession of petition schedule lands on the date of filing of applications as admitted by respondent Nos. 1 and 2 in their counter, they were only encroachers in view of non-application of provisions of Tenancy Act to the lands governed by the Act and the respondents were entitled to evict under the provisions of the said Act. Aggrieved by the said order, the petitioners carried the matter by way of appeals A.T.A. Nos. 3 to 30 of 2003 and the said appeals were dismissed confirming the order of the Tenancy Tribunal on the same point that the provisions of the A.P. (T.A.) Tenancy Act, 1956 had no application to the property belonged to the Endowment Department and the petitioners cannot claim statutory tenancy as of right. Further, the petitioners had filed batch of revisions before this Court and the same are pending.

35. It is also stated that in all the above referred proceedings the possession of the petitioners over the subject land was not disputed and in fact the Tenancy Tribunal gave a finding that the respondents herein may evict the petitioners as

per the provisions and procedures framed by the Act. While so, the respondents had issued a notification, dated 10.6.2004, to auction the leasehold rights without evicting the petitioners from the subject lands and without following due process of law. This Court in WP No. 10051 of 2004 while staying auction, had given finding of possession in favour of the petitioners herein and directed the third respondent authority to adjudicate upon whether the petitioners are landless poor and whether they are entitled for the benefits under the provisions of the Act and kept the option open to the petitioners to make such applications either after issuance of notice or even before it.

36. Pursuant to the orders dated 5.7.2004 in WP No. 10051 of 2004 the petitioners filed their applications before the 3rd respondent seeking to recognize them as landless poor persons to avail the benefit u/s 82(2) of the Act. The 3rd respondent having taken the applications on file and did not pass any orders in accordance with the provisions of the said Act. The petitioners being landless poor are entitled to continue the possession of the said lands and also are entitled to purchase the same on market value as provided in the Act.

37. Pending adjudication of their applications to recognize them as landless poor persons, the first respondent had issued a notice of eviction to all of them specifying the subsisting lease in their favour stood cancelled with immediate effect and called upon the petitioners to hand over possession within 30 days from the date of receipt of notice. Even after issuance of the said impugned notice the petitioners brought to the notice of first respondent that the application filed by petitioners before 3rd respondent as directed by this Court in WP No. 10051 of 2004 are pending for adjudication. The first respondent without due regard of the said order is interfering with the standing crops raised by petitioners over subject lands so as to create third party interest even before expiry of period stipulated in the impugned notice and muchless without passing any orders mandated by law.

38. While the matters stood thus, respondent No. 3 Assistant Commissioner of Endowments, Kadapa, had rejected the claim of the petitioners without following procedure as contemplated u/s 82 and proceeded to decide the matter without giving reasonable opportunity and without adverting to the contentions raised by them and without giving any time for the petitioners to question the order of respondent No. 2 and without evicting them by not following due process of law, the first respondent had issued auction notification with ante-date fixing the date of auction of leasehold rights on 18.10.2004, though there was a standing crop over the lands raised by the petitioners and thereby attempting to create third party interest. Further it is stated that respondent No. 1, in pursuance of the orders dated 6.10.2004 of second respondent, had issued auction Notice dated 15.10.2004, as such the order dated 6.10.2004 issued by respondent No. 2 and auction Notice dated 15.10.2004 issued by the first respondent are arbitrary, illegal, unjust and violative of Articles 14, 21 and 300-A of Constitution of India. In such circumstances, the writ petitioners approached this Court by filing the

said writ petition.

39. The contents of the panchanama had been heavily relied upon and further the orders made in WP MP No. 25471 of 2004 in WP No. 19440 of 2004 also had been relied upon and the same reads as hereunder:

Learned Standing Counsel appearing for the first respondent states that the possession of the land in question has already been recovered by the first respondent under panchanama on 18.10.2004. A copy of the said panchanama dated 18.10.2004 has been placed before this Court. It is also stated that the possession has been handed over to the successful bidders in the auction conducted on 18.10.2004.

In the circumstances, the relief as prayed for in this petition cannot be granted and the same has been rendered infructuous.

Accordingly, this petition is dismissed.

40. Further the order made in WP No. 24897 of 2004 dated 30th December 2004 also had been relied upon and the same reads as hereunder:

Learned Counsel for the petitioner is also permitted to take out notice and file proof of service.

Prima facie, it is evident that the petitioner emerged as the highest bidder for a sum of Rs. 14,67,000/- and deposited a sum of Rs. 11,36,000/-.

Hence, there shall be interim direction to the respondents not to auction the leasehold rights, on condition that the petitioner deposits balance of the lease amount within two weeks from today. Since the lease of the previous tenant stood terminated by operation of Section 82 of the Act, the petitioner shall be entitled to continue in possession on the basis of the panchanama conducted on 18.10.2004.

41. Elaborate submissions were made on the strength of these orders to the effect that the alleged tenants/encroachers are nothing but benamidars or the henchmen of the successful bidder and only with a view to create complications this was planned. However, in WA No. 1739 of 2005 which was preferred as against the order in WP MP No. 20221 of 2005 in WP No. 15921 of 2005 the Division Bench of this Court made the following Order:

This appeal is directed against the interlocutory orders dated 21.7.2005 and 23.8.2005 passed by the learned Single Judge in WP MP No. 20221 of 2005 in WP No. 15921 of 2005.

A perusal of the record shows that in the main writ petition respondent No. 1 has challenged the proceedings initiated by respondent No. 2 for re-auction of the leasehold rights in respect of property bearing Survey Nos. 113/1, 114, 156/1, 166/11, 158 and 168 situated in Madduru Village, Chapadu Mandal, Kadapa District. While issuing notice, the learned Single Judge passed the following

interim order:

While the auction to be held on 22.7.2005 may go on, the same shall not be finalized for a period of two weeks.

List the WPMP in the motion list on 1.8.2005.

Sri V. Venugopala Rao, learned Counsel for R.1, and the learned Government Pleader for R2 takes notices and seek time to file their respective counter-affidavits.

The aforesaid order was extended till further orders by another learned Single Judge vide his order dated 23.8.2005.

On 3.10.2005, the Division Bench directed District Judge, Kadapa, to appoint a Junior Civil Judge as Commissioner with a direction that he should submit a report regarding actual possession of the disputed land.

In compliance of the aforementioned direction, District Judge, Kadapa, appointed Principal Junior Civil Judge, Kadapa as Commissioner to make an enquiry into the matter and submit report. Accordingly, Principal Junior Civil Judge, Kadapa submitted report dated 26.11.2005, which was forwarded by District Judge, Kadapa to his Court. The report shows that the land is not in the possession of the writ petitioner.

We have heard learned Counsel for parties and carefully perused the Commissioner's report.

At this stage, it is not proper for us to express any opinion on the merits and demerits of the findings recorded by the Commissioner on the issue of actual possession of the property in dispute. But at the same time, we are constrained to observe that respondent No. 1 has been able to make out an arguable case before the learned Single Judge and the latter did not commit any jurisdictional error by passing interim order restraining the non-petitioners not to finalise the auction to be held on 22.7.2005.

In the premise aforesaid, we do not find any reason to vacate the interim order. Consequently, the appeal is dismissed. However, we give liberty to the appellant to move the learned Single Judge for early hearing and adjudication of the main writ petition.

42. Learned Assistant Government Pleader for Endowments placed strong reliance on the decision in Vaka Venkata Krishna Reddy and Others Vs. Sri Ramalingeswara Swamy Devasthanam and Others, ; Dega Babi Reddy and Others Vs. Government of A.P. and Others, and A.A. Gopalakrishnan Vs. Cochin Devaswom Board and Others, . Sections 82, 83 of the Act aforesaid, Rules 3, 5 and 18 of the Rules specified supra also had been relied upon.

43. There cannot be any quarrel relating to the said propositions. May be that these alleged tenants may not be entitled to any of the benefits under the

provisions of the Act since they do not satisfy the ingredients which are to be satisfied as per law.

44. The principal question to be decided in these batch of matters is that whether the stand taken by the successful bidder to be believed or the stand taken by the institution and the Endowments Department to be believed. The fact that there was inspection by the learned Junior Civil Judge and the possession held by these alleged tenants/encroachers had been recorded by the learned Junior Civil Judge, this aspect is not in serious controversy. The order made by the Division Bench when the interim order of the Single Judge had been challenged in the writ appeal already had been specified above. The interim orders made regarding the panchanama had been heavily relied upon. It is also no doubt brought to the notice of the Court that the stand taken by these alleged tenants/ encroachers claiming certain benefits had been negated by the Regional Joint Commissioner, Endowments.

45. However, in the facts and circumstances of the case, this Court is of the considered opinion that the institution and Endowments Department are at liberty to further proceed with the auction or otherwise after duly taking possession of the lands in question from the alleged tenants/ encroachers in accordance with law. In the light of the peculiar facts and circumstances it appears that these alleged tenants/ encroachers have been in possession of the property. No doubt, it is their stand that these are only benamidars or henchmen of the successful bidder, this Court is not inclined to express any opinion relating to the said aspect, especially, in the light of the report of the learned Junior Civil Judge concerned. The fact whether the alleged tenants/encroachers are benamidars, nominees or henchmen of the successful bidder, this being a question of fact, in the absence of sufficient material, a positive finding on the strength of insufficient material cannot be recorded. Hence, liberty is given to the institution and the Endowments Department to initiate necessary action in accordance with law for realizing the amounts or profits which would have been enjoyed by these alleged tenants/ encroachers during the relevant period. It is needless to say that the writ petitioner in WP No. 15921 of 2005 is entitled to refund of the amount in the peculiar facts and circumstances, since this Court is of the considered opinion that in the light of the prior orders made, it cannot be said that just by virtue of panchanama the stand taken by the institution and Endowments Department that the successful bidder had been inducted into possession, can be believed.

46. Hence, the institution and the Endowments Department are at liberty to take appropriate action of taking possession from the alleged tenants/encroachers in accordance with law and also to initiate other proceedings in accordance with law for realization of such profits since they had enjoyed such profits during all these days. Though prima facie the successful bidder is entitled for refund, it would be just and proper if appropriate representation is made in this regard and the same to be considered by the competent authority in accordance with law. In justice,

equity and good conscience the case of successful bidder may have to be considered for refund of the amount in the light of the views expressed by this Court within a period of eight weeks thereafter. It is needless to say that after duly taking possession in accordance with law, the Endowments Department and the institution are at liberty to proceed with further proceedings in accordance with law.

47. With the above directions, the writ petitions are hereby disposed of. No order as to costs.