

**(2014) 11 AP CK 0067**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 11940 of 2009**

Yalla Babu Rao

APPELLANT

Vs

The Commissioner of Endowments

RESPONDENT

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**Date of Decision :** 17-11-2014

**Acts Referred:**

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987  
— Section 153, 82, 83(4), 84, 85  
Constitution of India, 1950 — Article 14, 21, 226

**Citation :** (2015) 2 ALD 721 : (2015) 4 ALT 777

**Hon'ble Judges :** Akula Venkata Sesha Sai, J

**Bench :** Single Bench

**Advocate :** M. Brahma Reddy, Advocate for the Appellant; V.T.M. Prasad,  
Advocate for the Respondent

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## Judgement

A.V. Sesha Sai, J.—This writ petition, filed under Article 226 of the Constitution of India, assails the order dated 17.12.2008 passed by the Regional Joint Commissioner of Endowments, the 2nd respondent herein, in Appeal No. 268 of 2007 as being arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India.

2. Claiming to be a cultivating tenant in respect of the dry land admeasuring Ac. 4.14 cents situated in Sy. No. 565 of Dowleswaram Village, Rajahmundry Rural Mandal, East Godavari District, belonging to the 4th respondent-temple, the 1st petitioner filed an application before the Assistant Commissioner of Endowments, Rajahmundry, East Godavari District, the 3rd respondent herein, seeking to recognise him as a landless poor person under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short the Rules) and the 3rd respondent vide order in M.A. No. 1308 of 2007 in Rc. No. A4/7825/2003, dated 8.03.2007 rejected the request of the 1st petitioner for his recognition as landless poor person under Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short the Act). As against the said order, the 1st petitioner filed

Appeal No. 268 of 2007 before the 2nd respondent-Regional Joint Commissioner of Endowments under Rule 4 of the Rules. The Regional Joint Commissioner by way of an order dated 17.12.2008 dismissed the said appeal.

3. In the above background, impugning the said orders of rejection as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and consequently asking for a direction to the respondents to consider his case for purchase of the subject land on payment of 75% of the market rate as fixed by the 1st respondent-Commissioner of Endowments, the present writ petition came to be filed.

4. This Court on 19.06.2009 issued Rule Nisi and in W.P.M.P. No. 15381 of 2009 granted status quo until further orders. Pending the writ petition, the sole petitioner passed away and his wife came on record as petitioner No. 2 as the legal representative of deceased sole petitioner, vide order dated 25.09.2014 in W.P.M.P. No. 35408 of 2014. Seeking eviction of the interim order, W.V.M.P. No. 2036 of 2009 supported by counter affidavit has been filed by the 4th respondent-temple, denying the averments in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

5. Heard Sri B.V. Subbaiah, learned Senior Counsel representing Sri M. Brahma Reddy, learned counsel for the petitioners, learned Government Pleader for Endowments for respondents 1 to 3, Sri V.T.M. Prasad, learned Standing Counsel for the 4th respondent-temple, apart from perusing the material available on record.

6. Submissions/contentions of Sri B.V. Subbaiah, learned Senior Counsel:

a) The orders under challenge are erroneous, contrary to law and highly illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

b) The impugned orders are opposed to the very spirit and object of the provisions of the Act and the Rules framed thereunder.

c) The respondent-authorities failed to see that the 1st petitioner falls under the definition of landless poor person as defined under Explanation to Section 82 of the Act.

d) The authorities grossly erred in construing the lease in the instant case as cancelled and the said conclusion is not tenable in view of the language of Section 82 of the Act.

e) The respondents totally erred in relying on the household card for the purpose of assessing the income of the 1st petitioner as Rs. 18,000/- and instead they ought to have conducted independent enquiry for deciding the status of the 1st petitioner.

f) The respondents failed to take into account the proceedings Rc. No. M1/29507/88, dated 00-01-1993 issued by the Commissioner, of Endowments.

g) The respondents did not take into account the order of this Court in W.P. No. 21805 of 1994 dated 19.02.1999.

h) The finding that the subject land is in urban area is without any basis and in reality it is not correct and the finding that the 1st petitioner is an encroacher is not tenable and contrary to law.

7. Submissions/contentions of the learned Government Pleader and the learned Standing Counsel for the 4th respondent-temple.

a) The Assistant Commissioner passed the order of rejection on 8.06.2007 and the Regional Joint Commissioner passed orders, conforming the same on 17.12.2008, and the present writ petition was filed on 16.06.2009, and the order of status quo was granted on 19.06.2009 in W.P.M.P. No. 15381 of 2009 but the possession was already taken on 12.06.2009, as such by the time this Court passed the interim order, the 1st petitioner was already evicted and the possession was already taken.

b) The impugned orders are in accordance with the provisions of Section 82 of the Act and the Rules framed thereunder, as such, the writ petition is not maintainable and the petitioners are not entitled for any relief from this Court under Article 226 of the Constitution of India.

c) Even as per the household card filed by the 1st petitioner his annual income is Rs. 18,000/-, which is beyond the prescribed limit, as such, the 1st petitioner is not entitled for the benefit under the Act and the Rules.

d) In the absence of any valid lease in favour of the 1st petitioner, which is a condition precedent for getting relief, the present writ petition does not merit any consideration of this Court.

8. In the above background, now the issues that emerge for consideration of this Court are whether the orders under challenge in the writ petition are in conformity with the provisions of the Act and the Rules and whether the petitioners are entitled for any relief from this Court under Article 226 of the Constitution of India.

9. In order to appreciate the rival contentions of the parties to the present writ petition, it is highly essential to consider the relevant provisions of the Endowments Act and the Rules framed thereunder by the State Government, which govern the situation.

10. Section 82 of the Act, which deals with the lease of agricultural lands, reads as under:

Section 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 (other than those lands situated in Municipalities and Municipal Corporations) 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 per centum 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 small and marginal farmers who are not able to purchase the land will continue as tenants provided, if they agree to pay at least two third of the market rent for similarly placed lands as lease amount.

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 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.

Explanation II:- For the purpose of this subsection, small and marginal farmer means a person who being a lessee is holding lands in excess of a cross 0.25 cents of wet land or acres 0.50 cents of dry land over and above the ceiling limits of acres 2.50 wet or acres 5.00 dry land respectively they may be allowed to continue in lease subject to payment of 2/3rd of prevailing market rent and excess land held if any more than the above limits shall be put in public auction.

(3) The authority to sanction the lease or licence in respect of any property or any right or interest thereon belonging to or given or endowed for the purpose of any charitable or religious institution or endowment, the manner in which and the period for which such lease or licence shall be such as may be prescribed.

(4) Every lease or licence of any immovable property, other than the Agricultural land belonging to, or given or endowed for the purpose of any charitable or religious institution or endowment subsisting on the date of the commencement of this Act, shall continue to be in force subject to the rules as may be prescribed under sub-section (3).

[(5) The provisions of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (Act XVIII of 1956) and the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (Act XXI of 1950) shall not apply to any lease of land belonging to or given or endowed for the purpose of any charitable or religious institutions or endowment as defined in this Act.]

11. A reading of the above referred Section 82 makes it very much clear that the Government cancelled the lease of agricultural lands belonging to the religious institutions with certain safeguards to the persons belonging to financially disadvantageous sections.

12. In furtherance of the said object, the State Government in exercise of the powers conferred under Section 82 r/w sub-section (1) of Section 153 of the Endowments Act framed the rules called the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003. The said rules, to the extent of relevance for the present writ petition, are Rules 3 to 6, which read as under:

3. Determination of Landless poor person:- (1) Immediately after coming into force of these rules, if any cultivating tenant claims to be a landless poor person, the Assistant Commissioner having territorial Jurisdiction shall enquire into and decide whether the cultivating tenant is a landless poor person as defined in Section 82 after giving a reasonable opportunity to the cultivating tenant and to the Executive Authority of the concerned institution or Endowment.

(2) If the cultivating tenant does not claim to be a landless poor person or if the Assistant Commissioner concerned determines that the cultivating tenant is not a landless poor person, the tenancy will be deemed to have been cancelled with effect from 28.05.1987 and the cultivating tenant shall be regarded as a tenant holding over thereafter.

4. Appeals:- Any person aggrieved by the decision or order made or passed under rule-3 may prefer an appeal to the Regional Joint Commissioner having jurisdiction within thirty days from the date of receipt of decision or order by him. The decision or order of the Regional Joint Commissioner in this regard shall be final.

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 under Section 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 desires in accordance with the conditions set out in rule 6 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 under Section 83(4) of the Act.

6. Sale of land to Landless poor person:- (1) The sale consideration specified in sub-section (2) of Section 82, shall be paid by the landless poor person in four equal instalments. The first instalment shall be paid within thirty days of the receipt of Notice in Form II. The remaining instalments shall be paid with interest at 6% on or before the expiry of one year, two years and three years respectively from the date prescribed for the first instalment. Any default shall entail cancellation of the sale and obligate the person to handover possession. On the payment of the full purchase price only, he shall be deemed to be the owner of the land.

(2) The landless poor person shall not be competent to alienate the land purchased by him within a period of five years from the date of purchase i.e. date of payment of the full consideration with interest.

13. The benefits provided in the above said provisions of law are available only for those individuals, who fall under the parameters stipulated by the legislature. A person is entitled for the status of landless poor person only in the event of satisfying the ingredients of the said provisions of law. An individual is entitled for the status of landless poor person only if such person is in possession of the land, including the land under lease, less than Ac. 2.50 of wet land and Ac. 5.00 cents of dry land. Another condition, which requires to be fulfilled is that such person should not have the income more than Rs. 12,000/- for mensem. The explanation to Section 82 further stipulates that 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. In the instant case, there is absolutely no dispute with regard to the extent and the nature of the subject land and it is less than Ac. 5.00 of dry land. But as per the household card produced by the 1st petitioner, his annual income being Rs. 18,000/-, i.e., more than the limit prescribed by the statute. In fact, on this ground also the respondents refused to consider the request of the 1st petitioner to recognise him as landless poor person, obviously, keeping in view the language employed under Section 82 of the Act. This Court is not inclined to disturb the said finding recorded by the respondent-quasi judicial authority in the absence of any perversity or jurisdictional infirmity.

14. A perusal of the impugned order clearly demonstrates that the respondent-authorities took into consideration the value of the subject lands and their proximity with the Rajahmundry Municipal Corporation limits. In the absence of any statutorily recognised lease in favour of the 1st petitioner and also in the interest of the 4th respondent-institution, the 2nd respondent eventually rejected the request of the 1st petitioner. In view of these admitted realities, which disentitle the petitioners from claiming any benefit from this Court under Article 226 of the Constitution of India, the other aspects sought to be canvassed by the

petitioners do not deserve any consideration.

15. It may be pertinent and appropriate to observe at this juncture that the object of incorporating clauses in the statute and the Rules, which enable the cultivating tenant either to continue as tenant subject to the conditions stipulated, or to purchase the leased land, is to protect the said individuals from being deprived of their livelihood but not to encourage the affluent transactions running into lakhs and lakhs of rupees, and if it is stretched too far, it would certainly give a scope for realtors to make in-roads into such transactions. By any stretch of imagination, this cannot be the intention of the legislature nor it would be in consonance with the object of the donors with which the properties are endowed to the religious institutions. Section 82 of the Act came into force in 1987 and the socio-economic conditions prevailing during 1980s were different from today conditions. Therefore, this aspect of conferring right to purchase the leased lands of the religious institutions, requires reconsideration seriously by the legislature to curb such activities, and such atmosphere is not good in the larger interest of the endowment-institutions, and on the other hand, deleterious for the religious institutions and the system as such, and the very object and intention of the donors of such properties would be frustrated if there is any scope for such happenings.

16. In fact, this Court in Vempalli Venkatarami Reddy v. Assistant Commissioner Endowments Department, Kadapa Town and District and Anr. dealt with an identical issue, touching the rights of the tenant purchasing the lands of the religious institutions. In the said judgment this Court at paragraph Nos. 4 and 5 held as under:

The petitioner presses for two demands, namely, the land be sold to him, or in the alternative, he be continued as tenant without conducting auction of the leasehold rights.

So far as the first aspect is concerned, the petitioner can exercise his right of pre-emptive purchase, if only the religious institution is willing to sell the property. The mere fact that a tenant is declared as a landless poor, does not clothe him with the right to insist that the property be sold to him, even if the religious institution is not willing to do so. Therefore, the petitioner cannot compel the 2nd respondent to sell the land in his possession to him. It is a different matter that in the event of the 2nd respondent deciding to sell the property, this petitioner would have a preferential right to purchase the same, that too, at 75% of the prevailing market value of property of similar nature.

17. In view of the above reasons and the principles laid down in the above referred judgment, and having regard to the intention of the legislature in enacting the Endowments Act, this Court does not find any justification to meddle with the orders passed by the respondent authorities and this Court has absolutely no scintilla of hesitation to hold that there are no merits in the present writ petition.

18. For the aforesaid reasons, the writ petition is dismissed. No order as to costs. As a sequel, the miscellaneous petitions, if any, shall stand closed.