

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.24264 OF 2006

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the orders of the second respondent in Appeal No.32 of 2006 dated 18.10.2006, as arbitrary, void and ultra vires of the Constitution of India and to hold that the petitioner is landless poor entitled to the benefits of Section 82 of the A.P. Act 30 of 1987.

2. The case of the petitioner is that her husband by name Samuel died on 07.11.2006. Her husband took the lease of dry land to an extent of Ac.4.75 cents in R.S.No.47/1 of Vadali Village belonging to the fourth respondent temple in the year 1971 and since then, he was cultivating the same as its tenant. After his death, the petitioner has been cultivating the land as his heir and they have no property other than the leasehold rights of the aforesaid land of an extent of Ac.4.75 cents, and it is the only source of livelihood to their entire family. They cannot undertake any work other than the agriculture.

The petitioner further submits that her husband submitted an application to the third respondent to declare him as a landless poor person under Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act') to offer him to

purchase the land under his cultivation at 3/4th market value payable in four equal instalments. He also produced the certificate of the M.R.O., Penugonda and the Village Secretary to show that the land is dry land as entered in fair adangals (Inam Fair Register) and other revenue records like annual adangals, etc., though water is being supplied to such dry land for raising wet crops. The third respondent, while accepting the classification of land as dry land in revenue records, rejected the contention of the petitioner's husband that the land is dry land, on the ground that the government water is supplied to this land for raising wet crops vide proceedings in Rc.No.A1/433/2003, dated 01.06.2006. Then, the petitioner's husband filed an appeal against the orders of the third respondent in Appeal No.32 of 2006 to the second respondent. The second respondent dismissed the appeal by order dated 18.10.2006 holding that the land is wet land and the petitioner is not a landless poor person for the benefits under Section 82 of the Act, confirming the order of the third respondent and the same was received by the petitioner's father on 16.11.2006. In view of the dismissal of the appeal, the respondents are trying to evict the petitioner by force with police aid contrary to the provisions of Section 83 of the Act and the Rules made thereunder. In those circumstances, the writ petition is came to be filed challenging the order of the second respondent dated 18.10.2006, passed in Appeal No.32

of 2006, as arbitrary and contrary to the provisions of the Act and ultra vires the Constitution of India.

3. This Court admitted the Writ Petition on 09.08.2007.

4. The second respondent filed counter stating that the husband of the petitioner became highest bidder in the public auction held on 04.06.1976 and the lease was approved by the Commissioner, Endowments Department, Hyderabad, in D.Dis.No.A1/33674/1976, dated 03.07.1976 for a period of six years from fasali 1386 to 1391 and in that order, it is clearly narrated that the land is a wet land. It is further stated that the Hon'ble Supreme Court upheld the constitutional validity of Section 82 of the Act. The lease of the husband of the petitioner was expired in the year 1981 and there is no recognition of the husband of the petitioner as tenant by the competent authority after 1982, which is mandatory. In fact, the present writ petition was dismissed on 02.04.2007 as no representation and thereafter, the respondent No.4, by following the procedure, put the leasehold rights of the land in public auction on 03.07.2007 and in the said public auction, one Gudise Venkata Ramana became the highest bidder and at present he is continuing in the land and cultivating the same. The petitioner is not in possession of the land and against the orders of the second respondent, the only available remedy for the petitioner is

under Section 93 of the Act and not by filing the present writ petition.

5. The third respondent filed counter stating that consequent to the framing of the rules in G.O.Ms.No.379, dated 11.03.2003, the fourth respondent has issued a notice dated 30.04.2003 to the petitioner's husband, cancelling the lease and directed to handover physical possession of the land to the management, but the petitioner's husband filed an application before the third respondent for declaration as a landless poor person. The third respondent, after enquiry, dismissed the said petition on 20.05.2004. However, the petitioner's husband approached this Court in W.P.No.21627 of 2004 and the said writ petition was disposed of on 24.06.2005, with a direction to make a claim under sub-rule (1) of Rule 3. Then, the petitioner's husband filed an application before the third respondent for declaration and the same was rejected. Being aggrieved, filed an appeal before the second respondent, who in turn remanded the matter for fresh enquiry. The petitioner approached this Court in W.P.No.16287 of 2005, wherein this Court by its order dated 26.07.2005, directed the third respondent to determine the aspect that whether the petitioner is a landless poor or not as remanded by second respondent. Accordingly, the third respondent has passed a speaking order on 01.06.2006. It is further submitted that the subject land is supplied with water for two crops in the year through pipe

No.19 of the canal running from Pittala Vemavaram side. The temple has been paying land revenue and water tax @ Rs.200/- per acre for first crop. The Village Secretary has issued a certificate dated 22.12.2005, wherein it is clearly mentioned that the land is wet and cultivated both for Sarva and Dalwa crops. The respondents are at liberty to take necessary action against the petitioner as per law and procedure prescribed under Act 30 of 1987 and once the petitioner is found not to be a landless poor, she has no right to continue in possession of the temple property.

6. The fourth respondent filed counter stating that aggrieved by the order dated 20.05.2004 passed by the third respondent rejecting the claim of the petitioner's husband as a landless poor, he preferred an Appeal No.77 of 2004 before the second respondent. The said appeal was disposed of remanding the matter for conducting fresh enquiry. Then, the husband of the petitioner approached this Court in W.P.No.16287 of 2005, questioning the action of the fourth respondent in proposing to conduct a public auction of the leasehold right of an extent of Ac.4.75 cents in R.S.No.47/1 of Vadali Village, Penugonda Mandal, West Godavari District. The said writ petition was disposed of on 26.07.2005. In pursuance of the same, the third respondent passed a detailed order holding that the subject land is 'wet' and the petitioner's husband would not come under the category of landless poor person under Section 82 of the Act. Aggrieved

by the same, the petitioner's husband filed an Appeal No.32 of 2006 before the second respondent and the same was dismissed by order dated 18.10.2006. The petitioner is raising two paddy crops every year and even the land revenue tax is paid for wet land and not for dry land and the fourth respondent is not getting enough revenue for its upkeep and maintenance.

7. The learned counsel for the petitioner would contend that the provision of Section 82 of the Act being beneficial provision to protect the interests of landless poor tenants, the authorities dehors the same cannot interpret it in their favour. The description in the revenue records must be the sole criterion to determine the classification of land under the cultivation of a tenant. The certificate issued by the irrigation authorities has no value because even for dry lands when water is supplied, irrigation cess is levied and such cess cannot be termed as tax for wet land and it is the discretion of the tenant to raise either wet crops or dry crops and the number of crops to be raised in the land under his cultivation. The order of the second respondent confirming the order of the third respondent is clearly contrary to the provisions of the Act and is liable to be quashed, considering the fact that the petitioner is a landless poor person and entitled to the benefits under Section 82 of the Act. If the preparations of the respondent No.4 to evict the petitioner from the land under her cultivation ignoring the mandatory

provision under Section 83 of the Act, could not be stopped, the petitioner would be permanently deprived of her only means of livelihood.

The learned counsel further contended that as per the certificates issued by the M.R.O., Penugonda, dated 21.10.2005 and 24.10.2005, it is clearly mentioned that the total land in an extent of Ac.13.56 cents in R.S.No.47/1 belonging to Sri Agasteswara Swamy Temple of Vadali Village, is classified as jirayat dry land and the husband of the petitioner is not having any agricultural land of his own either in Vadali Village or in Pittala Vemavaram Village. Even the M.R.O. in his written statement submitted to the Assistant Commissioner of Endowments Department, Eluru dated 11.02.2006, stated that the petitioner's husband used to cultivate the land of Ac.4.75 cents in R.S.No.47/1 of Vadali Village since 04.06.1976 on payment of maktha of 60 bags of paddy both for khariff and rabi crops under canal water since 1983. It is contended that the third respondent committed grave error in rejecting the certificate issued by M.R.O. and the copy of the R.S.R. for R.S.No.47/1 of Vadali Village. Even the second respondent has committed grave error in confirming the orders of the third respondent by holding that the petitioner does not come under the purview of 'landless poor' as prescribed under Section 82(2) of the Act, and finally prayed to allow the writ petition.

8. The learned Government Pleader for Endowments would contend that the petitioner does not come under the purview of 'landless poor person' and not entitled for benefits as per Section 82(2) of the Act. He further contends that agricultural lands which are under projects and which receive water from any government irrigation source for a period not less than five months in a fasali year shall be treated as 'Wet' and the petitioner would not come under the category of 'landless poor person' as she is holding land in an extent of Ac.4.75 cents more than the prescribed limits. Further, the paddy is raised for two crops under government irrigation source and the temple is paying water tax accordingly. The learned Government Pleader also contends that the subject land was included in the ayacut of canal and water is being supplied through pipe No.19 of Pittalla Vemavaram Canal and irrigation water is being supplied for khariff and rabi sasons. It is also contended that at present the petitioner is not in possession of the subject land and ultimately prayed to dismiss the writ petition.

9. In the facts and circumstances of the case and in the considered view of this Court, the total land to an extent of Ac.13.56 cents in R.S.No.47/1 of Vadali Village belonging to Sri Agasteswara Swamy Temple is double crop wet land. As seen from the certified copy of Adangal for R.S.No.47/1 issued by the M.R.O., Penugonda, it is clear that the subject land is being cultivated with paddy crop both for khariff and

rabi seasons with canal water. As seen from the letter submitted by the Executive Engineer (Irrigation), Godavari Western Division, Nidadavole to the Manager of the subject temple, the total extent of land of Ac.13.56 cents in R.S.No.47/1 of Vadali village belonging to Sri Agasteswaraswamy Temple, Vadali, is situated in the ayacut lands under Pipe No.19 of Pittala Vemavaram canal and irrigation water is being supplied for khariff and rabi seasons.

10. Admittedly, the Mandal Revenue Officer has issued certificate stating that the land under cultivation of the petitioner is double crop wet land. However, by virtue of the orders passed in W.P.No.16287 of 2005, a fresh enquiry was conducted on 11.02.2006. In his order, the third respondent states as per the amendment issued to B.S.O.15(10)(2) in G.O.Ms.No.1019, Revenue (Assignment-I) Department, dated 05.10.1994, wherein it is stated that agricultural lands which are under projects and which receive water from any Government Irrigation source for a period not less than five months in a fasli year shall be treated as wet land. Considering the said Government Order, the third respondent treated the land of the petitioner as 'Wet'. Even the second respondent in his order stated that mere classification found in revenue records, which were not updated, cannot be taken into consideration and held that the land in possession of the petitioner is irrigated double crop wet land basing on the report of the Irrigation Department and payment of taxes for

double crop. Therefore, I am of the considered view that the petitioner is not a landless poor person as she has cultivated double crop wet land to an extent of Ac.4.75 cents, not entitled for benefit under Section 82(2) of the Act.

11. The second respondent, in his impugned order, stated that as per the G.O.Ms.No.379 of 2003, wherein it is mentioned as under:

“Any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowments 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 stand cancelled under Section 82(1).

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 Ac.2.50 cents wet and Ac.5.00 dry land and Rs.12,000/- per year.”

12. The Explanation appended to Section 82 of the Act reads as under:

“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 1.0111715 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 mensum 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.

As per the said explanation, it is amply clear that any person who possess wet land exceeding two and half acres as

a cultivating tenant cannot be treated as landless poor person. Therefore, in the instant case, the petitioner, who is admittedly a lessee of wet land admeasuring Ac.4.75 cents, is not a landless poor person.

13. Admittedly, the appellate authority as well as the primary authority held that under Section 82 of the Act and as per Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules, 2003'), the petitioner is not a landless poor person on facts based on the evidence on record and same could not be found fault with. Therefore, the order of the second respondent is not ultra vires to the provisions of Section 82 of the Act because the land held by the petitioner as lessee exceeds the limit prescribed under Explanation to Section 82 to come under landless poor person and thereby the petitioner cannot seek the benefit under Section 82(2) and (4) of the Act.

14. Further, unless there is a declaration from the competent authority i.e. Assistant Commissioner as per Rule 3 of the Rules, 2003, declaring that the petitioner is a landless poor person. Under Section 82(2) of the Act, petitioner cannot claim any right for selling the land in her favour on market value by merely claiming that she continued in possession of the land by virtue of lease granted in favour of her husband. Further, in view of the averments of the

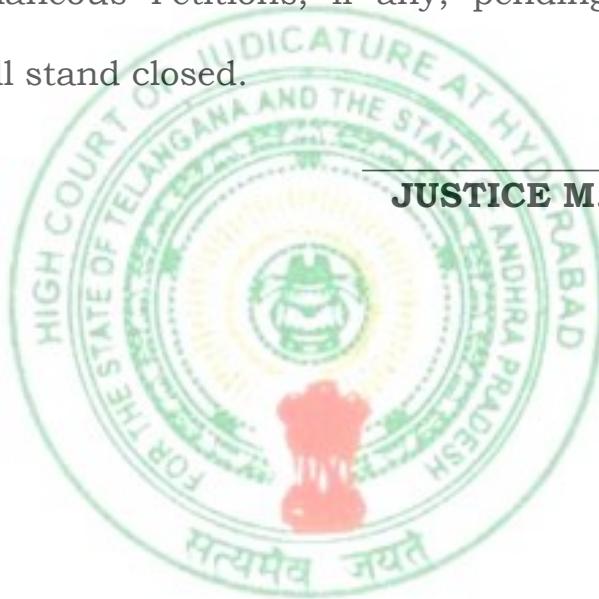
second respondent in the counter that the as the leasehold rights of the subject land was given to one Gudise Venkata Ramana in the public auction conducted on 03.07.2007, he was put into possession of the land and the petitioner is not in possession of the subject land. Hence, I am of the considered view that the writ petition is devoid of merit and is liable to be dismissed.

15. Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

29-03-2018
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