

***HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

+WRIT PETITION No.36028 of 2016

Between:

#Pantla Simhachalam, and Others

...PETITIONER(S)

AND

\$Sri Venugopala Swamy Vari Devasthanam and Others

...RESPONDENT(S)

JUDGMENT PRONOUNCED ON **13.03.2025**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to Law
Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment? - Yes -

DR.JUSTICE K. MANMADHA RAO

* THE HON'BLE DR.JUSTICE K. MANMADHA RAO

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! Counsel for the Petitioner : Sri M. Vidya Sagar

! Counsel for Respondents: GP for Endowments

<Gist :

>Head Note:

? Cases referred:

APHC010234282016



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3310]

THURSDAY ,THE THIRTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 36028/2016

Between:

Pantla Simhachalam, and Others

...PETITIONER(S)

AND

Sri Venugopala Swamy Vari Devastanam and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.M VIDYASAGAR

Counsel for the Respondent(S):

1.GP FOR ENDOWMENTS (AP)

2.GP FOR PANCHAYAT RAJ RURAL DEV (AP)

3.ELEVATED AS JUDGE

The Court made the following:**ORDER:**

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“....to issue writ order or direction more particularly a writ in the nature of Writ of MANDAMUS declaring the action of the 1st respondent i.e., the Manager of Sri Venugopala Swamy Vari Devastanam, Salur Town and Mandal, Vizianagaram District, in directing the petitioners to handover vacant possession of the land admeasuring an extent of Acs 1.55 cents in Sy.No.162/3 at Salur Town and Mandal, Vizianagaram District, without following the due process of law and thus threatening to take over possession forcibly as bad, illegal, arbitrary opposed to law and pass such other order”

2. The facts of the case are that the petitioners herein are in uninterrupted possession of the land admeasuring an extent of Acs.1-55 cents in Sy.No.163/3 of Salur Village and Mandal, Vizianagaram District belonging to the 1st respondent devastanam. The 1st petitioner is in possession of the said land uninterruptedly for the last 50 years in continuation of his ancestors and their family were eke out their livelihood by cultivating these lands on payment of yearly makthas. The schedule mentioned land is a land that is rain-fed and only dry crops are grown like pulses, sunflower etc., It is stated that the 2nd petitioner, who is now cultivating the said land jointly had come into possession only in the year 2013, and thus, both of them are cultivating the said land jointly by paying the maktha to the temple for cultivating the said land. It is stated that the petitioners herein had paid a total amount of Rs.13,000/- on 07-02-2016 which is also acknowledged by the Manager of the 1st respondent temple. The petitioners who were in uninterrupted possession were earlier issued a notice in the year 2001 and at that point of time, the 1st petitioner was in possession and consequently the 1st petitioner also gave a reply to the Executive Officer, after which, further action was dropped. Consequently one more attempt was made by the 1st respondent in the year 2003 directing the 1st petitioner herein to vacate the schedule mentioned property by making various allegations, thus, directing the 1st petitioner to handover the vacant possession of the land, failing which, legal action will be taken. Thereafter, the 1st petitioner, again replied back to the said notice, and once more, further action was dropped by the Manager of the subject temple.

Having dropped further action once more, the 1st petitioner was issued a notice bearing Re.No.Nil/2013, dated 16-12-2013, wherein, he was asked to handover the vacant possession of the land, failing which, appropriate action will be taken.

It is further stated that, after the issuance of the said notice neither any proceedings of eviction were filed before the Endowments Tribunal nor there was any such attempt to disturb the possession of the petitioner for the reason that the petitioners herein continued payment of rents without any let and hindrance and the custodians of the institution continued receiving the rent. It is also stated that the 1st respondent also received maktha for the year 2016 also. But to the utter surprise instead of proceeding against the petitioners for the possession of the land belonging to the temple, the 1st respondent is threatening to take possession of the land illegally without issuing any notice to the petitioners nor there was any such procedure that was undertaken to take possession of the land by filing the due process of law. It is further stated that, orally the 1st respondent now asked the petitioners to handover the vacant possession of the lands and is threatening the petitioners that he used force to take possession of the land, thus, by orally saying that, auction has been held and the 4th respondent was the highest bidder and vacant possession was ordered to be given to him. Neither the petitioners have any knowledge about the auction nor they are in knowledge about any such auction undertaken by the 1st respondent to lease out the lands. The whole exercise looks to be an affair that is undertaken by the 1st respondent that an

understanding with the 4th respondent to dispossess the petitioners unlawfully without resorting to any procedure contemplated under law. Hence, the present writ petition.

3. This Court vide order dated 25.10.2016, has granted interim direction that *“the respondents are directed not to dispossess the petitioners from the subject land”*.

4. A counter affidavit has been filed by the 1st respondent. While denying the allegations made in the petition, inter alia, stated that, it is false on the petitioner to contend that the both the petitioners are cultivating the land jointly and the second petitioner has come to possession of the land in the year 2013. In fact the 2nd petitioner has entered into the land from 01.04.2015. Further the petitioners herein has forged the receipts and created the old receipt numbering No.74 which is dated 04.12.2014 for an amount of Rs.3000/- which was issued in favour of one P.Simhachalam (1st petitioner) as receipt dated: 07.02.2016. In fact the temple reserves its right to take appropriate action for forgery and cheating against the 1st petitioner. The temple has only issued receipt No.88, dated: 06.02.2016 to the 2nd petitioner for an amount of Rs.10,000/-towards part of maktha out of total maktha of Rs.42,000/-. Hence the averment that Rs.13,000/- paid towards maktha is false and concocted one and made for the sake of the writ petition. As such, on the ground of misrepresentation of facts and filing false documents the writ petition is liable to be dismissed.

It is further stated in the counter that the 1st petitioner was issued notice and reply notices were issued, but the 1st petitioner was never declared as landless poor person and he was evicted public auction held on 30.12.2014 and the 2nd petitioner was put into possession from 01.04.2015 and the 1st petitioner was no where concerned and never cultivated the land with the 2nd petitioner, hence this averment is denied and the petitioner do not have any right to seek any continuation in the land belonging to the temple. It is further stated that the temple has issued notice to the 1st petitioner on 16.12.2013 to vacate the land and handover the same which was not done by the 1st petitioner as his lease period also expired. The temple went ahead and issued auction notification and conducted auction on 30.12.2014 and the 2nd petitioner became the highest bidder for one year from 01.04.2015 to 31.03.2016. The maktha received from the 2nd petitioner was in three installments i.e.,

Receipt No.76, dated: 30.12.2014	Rs.2000/-
Receipt No.77, dated: 30.12.2014	Rs.15,000/-
Receipt No.83, dated: 06.02.2016	Rs. 10,000/-
Total	Rs.27,000/-
Arrears	Rs.15,000/-
Main Total	Rs.42,000/-

It is further stated that it is false on the part of the petitioners to contend that 1st respondent is threatening to take possession illegally and orally asked the petitioners to handover the vacant possession and orally saying auction has been held and possession of the vacant land is handed over to the

highest bidder is false concocted one and made for the sake of the writ petitioner. Infact the temple has issued auction notification dated: 16.08.2016 and distributed the pamphlets, published by way of beat of tom-tom in Salur Town and same is attested by the Saluru 16th, 21st, 26th, 27th, 29th ward counselors. Hence it is false on the petitioners to contend that there is no knowledge of the auction to the petitioners. The question of evicting the petitioners resorting to the procedure will not arise as the lease of the 2nd petitioner has come to an end and once the lease is expired as per the auction conditions no tenant will have right to continue in the land as per Sec. 82 of Act 30/87. Hence there is no illegality in conducting the auction on 29.08.2016 and confirming the same on 15.10.2016.

5. Heard Sri M. Vidya Sagar, learned counsel appearing for the petitioners and learned Government Pleader for Endowments appearing for the respondents.

6. On hearing, learned counsel for the petitioners while reiterating the contents made in the petition, submits that, even though the 1st respondent temple received maktha for the year 20016, instead of proceeding against the petitioners for the possession of the land belonging to the temple the 1st respondent is threatening to take possession of the land illegally without issuing any notice to the petitioners nor there was any such procedure that was undertake to take possession of the land by following due process of law. He further submits that, Section 83 of the Endowments Act clearly holds that once when a tenant in possession completes its period of lease in the event of

his continuation in the schedule mentioned lands belonging to the institution the appropriate procedure is to file an application before the Endowments Tribunal to evict the tenants by conducting a full fledged trial thus come into a conclusion that he is an encroacher, but any attempt to dispossess the petitioners herein without resorting to the said procedure is ex-facie illegal.

7. Learned counsel for the petitioners further submits that the Government having issued G.O.Ms.No.379 which also speaks about cultivating tenants and landless poor persons had brought into force, this G.O., which also under Rule.11 indicates the way in which the public auction has to be conducted. In the present case, there is no such auction notice. In addition to the same, the Government has also come forward with G.O.Ms.No.426, dated 09-11-2015 wherein as per the amendment effected under Rule 15, read with (1) which speaks that the Executive Authority was issued a notice in Form-A appended to these rules to the occupier and in such case with a demand to vacate and handover the possession of the property. is also indicated that in the event of the person i.e., the occupier failing to handover possession of the property he shall be evicted by invoking the provisions of Sec.84 and 86. Even this rule also runs contrary to the statutory provisions of the Endowments Act as prescribed in Sec.83 and the rule so made by this G.O.

8. Learned counsel for the petitioners further submits that, even taking into consideration this aspect, the 1st respondent cannot resort to any other procedure contemplated under law excepting invoking Sec.83 of the Act. He

further submits that if the action of the 1st respondent is allowed to continue and the possession of the land is taken, the petitioners would suffer irreparable loss and injury and would be deprived of their livelihood. Therefore, learned counsel for the petitioners requests this Court to pass appropriate orders.

9. Per contra, learned Government Pleader has also while reiterating the contents made in the counter affidavit and submits that the question of evicting the petitioners by filing Sec. 83 petition does not arise once the lease is expired as per the lease approval orders no tenant will have right to remain in possession. Having agreed to the same affixed his signature wherein she has agreed that the lease period is only for a period of one year which is from 01.04.2015 to 31.03.2016. As such, the petitioner will not have any right after 31.03.2016. Hence the question of evicting by summary proceedings does not arise. Learned Government Pleader further submits that the temple has followed the due process as per rules framed under GOMS.No.379 and followed the Rule-11 and issued auction notification. The GOMS.No.426, dated 09.11.2015 is pertaining to the non agricultural lease and the same is not applicable to the case of the petitioners herein. Hence the question of issuing the notice under Rule-15 does not arise. Learned Government Pleader further submits that the 2nd petitioner herein is only a tenant whose lease has expired and temple has conducted auction and handed over the possession to the highest bidder as such, the question of encroacher and filing the Sec. 83 procedure does not arise. Learned Government Pleader

mainly contended that the 4th respondent who is highest bidder is cultivating the land much prior to the issuance of interim orders of this Hon'ble Court as such, the writ petition has become infructuous, as such, the writ petition is liable to be dismissed.

10. Considering the submissions of both the learned counsels and on perusing the material on record, this Court is of the view that, this Court has already granted interim order on 25.10.2016. Further, after expiry of lease period of the petitioners, the respondents have conducted auction and the 4th respondent has become highest bidder. As stated by learned Government Pleader that the 4th respondent, who is highest bidder is now cultivating the land much prior to the issuance of interim order of this Court. So in view of the above, this Court found no merit in the instant writ petition and devoid of merits. Therefore, finding no merit in the instant writ petition, the same is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. As a sequel, all the pending miscellaneous applications shall stand closed.

DR. K. MANMADHA RAO, J.

Date : 13 -03-2025

Gvl

HON'BLE DR. JUSTICE K. MANMADHA RAO

WRIT PETITON No.36028 of 2016

Date : 13.03.2025

Gvl