

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18290 of 2008

ORDER:

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

"To issue appropriate writ, order or direction, more particularly Writ of Mandamus, declaring the impugned Common Order No.10, in O.A.No.922/2003 and batch, dt.23-06-2008, of the first respondent Dy.Commissioner, Endowments, Hyderabad, herein, as without jurisdiction, illegal, arbitrary, unjust, bad and without following the procedure in law, & the Principles of natural justice, consequently set aside the same as illegal, arbitrary, without jurisdiction."

The case of the petitioner is that her father-in-law was inducted as tenant in respect of open land of respondent No.3-temple in an extent of 330 square feet at premises No.3-2-284, Somasundaram Street, Secunderabad in the year 1952 and paying rent at the rate of Rs.100/- per month and running furniture repairing business by erecting a small temporary shed and the tenancy was extended from time to time orally by enhancing the rents. Even after expiry of her father-in-law on 10.07.1999, the petitioner and her family members are doing the same business by paying rents regularly. Respondent No.3-temple authorities are receiving rents from the petitioner regularly and the petitioner is in peaceful possession and enjoyment of the subject property as tenant in doing the business without any objection. Surprisingly, the petitioner received a notice under Section 83(2) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'Act 30 of 1987') in O.A.No.922 of 2003, which was filed by respondent Nos.2 and 3 before the respondent No.1 seeking eviction of the petitioner from the subject property on the allegation that the premises is required for development of the temple. On receipt of the same, the petitioner approached her counsel and appeared before

respondent No.1 by filing a memo dated 08.10.2003 stating that her father-in-law expired on 10.07.1999 showing herself and others as the legal representatives, and the matter was adjourned from time to time. Respondent No.3-temple filed I.A.No.41 of 2004 on 05.05.2004 and after filing of the counter by the petitioner, the said I.A. was dismissed on 11.08.2004 on the representation made by the respondents that it was not properly framed and filed. The petitioner further stated that the temple authorities did not take any further steps and O.A.Nos.921 and 922 of 2003 were dismissed as the cases were filed against the dead persons and the same abated vide docket orders dated 29.06.2005. After lapse of four months from the date of dismissal of the said O.As., respondent No.3-temple authorities again filed I.A.No.67 of 2005 on 26.10.2005 seeking to bring the legal representatives on record and after filing of counter by the petitioner, respondent No.3-temple took time for filing modified affidavit, but the same was not filed. Thereafter, respondent No.1 heard the arguments of the petitioner's counsel on 22.02.2006 and the orders were reserved in the main O.A. along with O.A.No.923 of 2003 and on 04.05.2006 orders were reserved in I.A.No.67 of 2005 and no orders are served till the date of amendment of the Act 33 of 2007, which came into operation w.e.f. 03.01.2008. To the surprise of the petitioner, on 02.08.2008, the respondents have got served the impugned orders on the petitioner. Aggrieved by the same, the present writ petition is filed.

Respondent No.3-temple filed counter admitting that the petitioner's father-in-law B.Yellaiah was earlier inducted as tenant and after his death, his son late B.Gnaneshwar, who is petitioner's husband, used to pay rent for the premises under his occupation and continued the said business, and on 08.06.1996, the petitioner's husband executed a memorandum of understanding and stated therein that an amount of Rs.300/- towards monthly rent was paid in the month of April, 1996 and he paid the enhanced monthly rent from 01.04.2002 to 31.03.2005 @ 50% enhancement on the existing monthly rent of Rs.452/- which comes to Rs.678/- payable from 01.04.2002 to 31.03.2005 and the enhancement of rent for the period of three years commencing from 01.04.2002 to 31.03.2005 was done as per the orders of the Commissioner of Endowments issued in Rc.No.M52348/99 dated 06.12.2003. It is stated that as

on the date of issue of termination notice dated 18.12.2002, the petitioner fell in arrear of rent to a tune of Rs.3,024/- upto the end of November, 2002, and when respondent No.3-temple initiated eviction proposals against the petitioner's husband as he fell in arrear of rent to a tune of Rs.7,780/- till 31.05.2008. It is further stated that during pendency of the said proposals, the petitioner's husband also expired, and thereafter, the petitioner came on record as legal representative, it was felt necessary to initiate eviction proposals against the petitioner who is in occupation of temple property without approval of tenancy in her name from the competent authority, and therefore, the petitioner can aptly be termed as an 'encroacher' as per explanation of Section 83(2) of the Act 30 of 1987, and therefore, for several reasons, the petitioner who is continuing in the temple premises without any competency, cannot point out the lapses of either respondent No.1 or respondent No.3, since her occupation over the temple property is without approval of tenancy by the competent authority. It is further stated that since the petitioner herself is not a valid tenant, she cannot step into the shoes of her late father-in-law and claim her right to continue over the temple property on one pretext or the other. It is further stated that the amended Act 33 of 2007 to the principal Act 30 of 1987 came into force w.e.f. 03.01.2008 and the powers to adjudicate the cases under Section 83 of the Act 30 of 1987 are extinguished with respondent No.1, and that the eviction orders against the petitioner's husband were reserved by respondent No.1 much before the amended Act 33 of 2007, but the eviction orders might have been pronounced by respondent No.1 after 03.01.2008 due to administrative reasons. The orders in O.A.No.922 of 2003 were reserved before the amended Act 33 of 2007 came into force, since the respondent No.1 was vested with powers under Section 83 of the Act 30 of 1987. Therefore, in order to overcome this anomaly, this Court passed orders in W.P.No.9681 of 2008 giving a finding that till the constitution of the Endowments Tribunal, respondent No.1 is entitled to proceed with the matters under Section 83 of the Act 30 of 1987. Even though if the case is adjudicated either before respondent No.1 or before the Endowments Tribunal, the status of the petitioner or her husband as 'encroacher' as contemplated under Section 83(1) of the Act 30 of 1987 cannot be changed for the reasons stated above. Finally, respondent No.3-temple prays to dismiss the writ petition.

Heard Sri D.Sudarshan Reddy, learned counsel for the petitioner, learned Government Pleader for respondent Nos.1 and 2, Sri Ch.Satish Kumar, learned Standing Counsel for respondent No.3-temple, and Sri Ravi Kondaveeti, learned Standing Counsel for respondent No.4.

Learned counsel for the petitioner submits that the O.A. itself was dismissed on 29.06.2005 as the respondent No.3-temple authorities failed to bring the legal representatives of the father-in-law of the petitioner and their I.A.No.41 of 2004 was dismissed on 11.08.2004 on the ground that it is not properly framed and filed, as such, allowing of petition in I.A.No.67 of 2005 without reopening the O.A. does not arise. He further submits that no opportunity of hearing was given to the petitioner, and therefore, they could not defend the O.A. and even I.A.No.67 of 2005 was not filed properly without following due procedure and respondent No.1 disposed of the O.A.No.922 of 2003 by not following the procedure under Section 82 of the Act 30 of 1987.

On the other hand, learned Standing Counsel and learned counsel for respondent No.4-trustee contends that admittedly the father-in-law of the petitioner is encroacher and respondent No.1 has considered the case and ordered eviction, and as such, no interference is called for order by exercising power under Article 226 of the Constitution of India.

In this case, admittedly the O.A. was dismissed on 29.06.2005 and the same is not disputed by the respondents and even in the copy of docket proceedings furnished by the learned counsel for the petitioner, it is shown as the O.A. was dismissed on 29.06.2005 as abated. Admittedly, no petition is filed for reopening the same, and I.A.No.41 of 2004, which was filed to bring the legal representatives of father-in-law of the petitioner who was the original tenant, was also dismissed and the said order become final. Till disposal of O.A.No.922 of 2003, no orders are passed in I.A.No.67 of 2005 and even the order does not indicate that O.A.No.923 of 2003 was clubbed along with O.A.No.921 of 2003 and other O.As. In view of orders dated 11.11.2008 in W.P.No.9681 of 2008, it cannot be said that respondent No.1 has jurisdiction to

decide the matter.

In view of above facts and circumstances, it is found that respondent No.1 has not followed the procedure in deciding the O.A., as such, this Court has no other go except to set aside the order under challenge passed by the respondent No.1 by remitting the matter to the Tribunal for appropriate decision on merits.

Accordingly, the Writ Petition is allowed setting aside the impugned order dated 23.06.2008 and the matter is remitted to the Tribunal constituted under Section 162 of the Act 30 of 1987. Since the matter is very old and several years have lapsed, the Tribunal is directed to dispose of the same on merits, as expeditiously as possible. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

02.09.2015

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