* **THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

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+ WRIT PETITION No.16813 of 2009

% Dated 31.07.2015

K.Satyanarayana

... PETITIONER

VERSUS

$ The Deputy Commissioner, Endowments Department

Hyderabad and others. **...RESPONDENTS**

! Counsel for the Petitioner: Sri Prabhakar Bommagani

^ Counsel for the Respondents: learned Government Pleader

for Endowments-R1 and R2.

Sri M.Vidyasagar for R3.

>HEAD NOTE:

? Cases referred

(2008) 12 Supreme Court Cases 675

2 (2013) 5 Supreme Court Cases 252

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

For the State of Telangana and the State of Andhra Pradesh

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos.16813, 16835, 15063, 15068, 16823, 15200, 15073, 15058, 16815, 15064, 17115, 16682, 16812, 16652, 16648, 15070, 16816, 15059, 16809, 17118, 17117, 16676, 15056, 16647, 15065, 16656, 17116, 15061, 15062, 15066, 16696, 15057, 16698, 15072, 16732, 15191, 16655, 15060, 17196, 16828 and 17210 of 2009

Writ Petition No. 16813 OF 2009

Between:

K.Satyanarayana. …Petitioner

And

The Deputy Commissioner, Endowments Department

Hyderabad and others. … Respondents

Date of Judgment pronounced: 31.07.2015

Submitted for Approval:

The Hon'ble Sri Justice A.Rajasheker Reddy

1. Whether Reporters of Local newspapers

May be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be

Marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wish to see the fair

Copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos.16813, 16835, 15063, 15068, 16823, 15200, 15073, 15058, 16815, 15064, 17115, 16682, 16812, 16652, 16648, 15070, 16816, 15059, 16809, 17118, 17117, 16676, 15056, 16647, 15065, 16656, 17116, 15061, 15062, 15066, 16696, 15057, 16698, 15072, 16732, 15191, 16655, 15060, 17196, 16828 and 17210 of 2009

COMMON ORDER:

As the issue involved in all these writ petitions is one and the same, they are being disposed of by way of this Common Order.

2. It is the case of all the petitioners that they are owners and possessors of respective houses situated at New Bakaram Village, Musheerabad Mandal, Secunderabad. Their ancestors along with 55 families migrated to Hyderabad in search of livelihood and constructed respective individual houses in an extent of 20-30 yards about a century back in the Government Land during the erstwhile Nizam Government. At that time, 3rd respondent-Mutt was not in existence. Most of the persons who migrated belong to Kurma community and as such, they have established temple known as 'Kurma Temple' and gradually it has been called as Kurma Mutt. Subsequently, some Sanyasis used to come to Bansilalpet Burial ground area and used to collect donations/biksha from the ancestors of the petitioners stating that they are disciples of Somayappa Mutt, Ranigunj. The subject land in which the petitioners' houses are situated is no way concerned with the Somayappa Mutt as claimed by the 3rd respondent-Mutt. Further, since time immemorial, neither

the Mahanths nor anybody else did object or claim the ownership of the subject land, where the petitioners' houses are situated. That petitioners have perfected their title by way of adverse possession and that the 3rd respondent-Mutt has no manner of right, title or interest to claim whatsoever in respect of the subject land in which the petitioners' houses are situated. That the subject land does not come within the purview of Section 83 of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 (for brevity 'the Act of 1987'). That being so, the 2nd respondent upon an erroneous view and contrary to the provisions of Section 83 of the Act of 1987, vide proceedings Rc.No.C/1304/2001, dated 12.06.2001 forwarded eviction proposals submitted by the 3rd respondent and in that regard, notices were issued to the petitioners and that the 1st respondent registered the same as O.A.Nos.14 to 57 of 2002. The petitioners, who are respondents in the above OAs filed counters and basing on the same, without considering the pleas of the petitioners herein, the 1st respondent passed impugned Common Order 17.06.2009 declaring the petitioners as encroachers over the OA schedule premises as the same belongs to the 3rd respondent Mutt and directed the petitioners to vacate the OA schedule premises under their possession and to handover the vacant physical possession of the same to the Mahant of the 3rd respondent Mutt, within 15 days from the date of receipt of the order, failing which, action as contemplated under Section 84 of the Act of 1987 shall be initiated against them. Aggrieved by the same, the present writ petitions are filed.

3. Heard Sri Bommagani Prabhakar, learned counsel for the petitioners, learned Government Pleader for Endowments and Sri M.Vidyasagar, learned counsel for the 3rd respondent-Mutt.

4 . Learned counsel for the petitioners submits that P.W.1 who deposed on behalf of the respondents herein, did not identify the land belonging to the 3rd respondent Mutt and he gave different survey

numbers, as such, the said aspect was not considered by the 1st respondent while passing the impugned Common order. He also submits that the petitioners were never the tenants of the 3rd respondent-Mutt. There is no lease deed produced by the respondents to show that the petitioners are tenants of the 3rd respondent- Mutt. He would contend that the petitioners were granted pattas and they are having long standing possession over the subject land by constructing houses and that they are also paying taxes to the concerned Municipal Corporation. He also submits that the petitioners acquired the title by adverse possession and that the respondents instead of filing the suit, has resorted to initiate proceedings under Section 83 of the Act of 1987, as the petitioners have disputed the title of the 3rd respondent Mutt. He also contends that no documents are filed by the respondents to show that the subject land belongs to the 3rd respondent-Mutt.

5. On the other hand, learned Government Pleader for Endowments submits that the 1st respondent has passed orders after considering the evidence adduced by the respondents as well as petitioners. She also contends that though the Government acquired the lands and granted pattas to the petitioners, the same were withdrawn, when the 3rd respondent filed Contempt Case No.1138 of 1996 for violating the orders passed in Writ Petition No.3679 of 1996, as such, the petitioners have no manner of right to squat on the subject property. She also submits that as per Section 87 (4) of the Act of 1987, the presumption is in favour of the 3rd respondent-Mutt as the petitioners failed to prove that the subject property, which is claimed by the 3rd respondent-Mutt, to be a private property. She also submits that as per Section 75 of the Act of 1987, any lease and any gift, sale, exchange or mortgage of an inam land granted for the support or maintenance of charitable or religious institution or endowment or for the performance of a religious or public charity or service, shall be null and void unless any such transaction not being a gift, is effected with the prior sanction of the Government.

6. On the other hand, Sri M.Vidyasagar, learned counsel for the 3rd respondent-Mutt submits that the petitioners have not filed any document to show that they are owners and possessors of the subject land in which they have constructed houses. Admittedly, even according to them, the land belongs to the Government. Even the so called pattas, which were granted in favour of the petitioners, have been cancelled when the 3rd respondent filed C.C.No.1138 of 1996 and that the land acquisition proposals initiated by the Government for acquiring the subject land were also dropped, when 3rd respondent filed W.P.No.3679 of 1996. In the absence of any title to the property, the 1st respondent has rightly declared the petitioners as encroachers and ordered eviction. He also submits that the plea of adverse possession has no application to the facts of the case as per Section 143 of the Act of 1987 as the subject land belongs to the 3rd respondent Mutt. He also submits that the petitioners themselves admitted before the 1st respondent that they used to pay amounts to the 3rd respondent Mutt towards rent. If the 3rd respondent Mutt is not the owner of the subject land, the question of payment of rent to the 3rd respondent does not arise. He also submits that the petitioners without any valid lease, are squatting on the property of the 3rd respondent-Mutt, as such, they are encroachers as per explanation to Section 83 of the Act of 1987. He also submits that the 1st respondent after considering the evidence on both sides rightly passed the impugned orders and that no interference is called for by exercising the power of judicial review under Article 226 of the Constitution of India. He also submits that as per Section 84 (2), since the petitioners are disputing the title of the 3rd respondent, the petitioners have to file an appeal before the High Court to establish that the 3rd respondent Mutt has no title to the land in question. However, the petitioners have filed present writ petitions, as such, the same cannot be entertained in view of the availability of alternative remedy to the petitioners.

7. Section 84 of the Act of 1987 reads as follows:

"**84. Mode of eviction on failure of removal of the encroachments as directed by the Endowments Tribunal:**

(1)……..

(2) Nothing in sub-section (1) shall prevent any person aggrieved by any order of the Endowments Tribunal under sub-section (4) of Section 83 from preferring an appeal before the High Court to establish that the Charitable or religious Institution or Endowment has no title to the land, building or space:

Provided that no appeal shall be preferred after expiry of ninety days from the date of receipt of the order under sub-section (4) of Section 83;

Provided further that no such appeal shall be preferred by person who is let in to the possession of land, building or space, or who is a lessee, licensee or mortgagee of Institution or Endowment.]"

In **State of Uttar Pradesh and another v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and others**, wherein the Hon'ble Supreme Court held as follows:

""2. At the time of hearing of this petition a threshold question, as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed".

No doubt, in the present case on hand, the writ petitions were admitted in the year 2009 and interim stay was also granted in the year 2009 itself. In view of the above judgment rendered by the Hon'ble Supreme Court, even if an alternative remedy is available, writ petitions cannot be dismissed on the ground of availability of alternative remedy after having admitted and kept pending for all these years. Therefore, the contention of the learned counsel for the 3rd respondent-Mutt that the writ petitions are liable to be dismissed on the ground of availability of alternative remedy under sub-section

(2) of Section 84 of the Act of 1987 cannot be accepted. Moreover, the learned counsel for the petitioners have argued the matter on merits, as such, these writ petitions are being disposed of on merits instead of dismissing on the ground of availability of alternative remedy under Section 84 (2) of the Act of 1987.

8. It is the case of the petitioners in all the writ affidavits filed by them that they have constructed houses in the Government land long back when 3rd respondent Mutt was not in existence and that the 3rd respondent is no way concerned with the subject land. It is further the case of the petitioners that since time immemorial, neither the Mahanths nor anybody else did object or claim the ownership of the subject land, as such, the petitioners are enjoying possession and ownership over the subject land and perfected their title by way of adverse possession. It is also their case that they have made constructions even before 40 years and registered their property in the Endowment book. Hence, eviction cannot be ordered by invoking Section 83 of the Act of 1987. Even before the 1st respondent, the case of the petitioners in the counter affidavits filed in OAs that if the petitioners were considered to be the encroachers, then the administrators of the 3rd respondent Mutt would not have collected any amounts from the petitioners. It is also the case of the petitioners that pattas were issued to them in the year 1996 and when the 3rd respondent filed writ petition W.P.No.3679 of 1996, the same were cancelled by the Government. These facts go to show that the petitioners have no title over the lands, when they made constructions.

9. On the other hand, it is admitted by R.W.1 in OA No.81 of 2001, who is one of the petitioners herein, that they were paying certain amounts not as a rent, but as a donation to the Mutt for colouring and other purposes. When original file is called for, one or two receipts were found regarding payment of rents. It is also the case of the petitioners that even without issuing notices, the pattas granted in their favour were cancelled by the Government. Admittedly, pattas

granted in favour of the petitioners were cancelled when writ petition No.3679 of 1996 and CC No.1138 of 1996 were filed by the 3rd respondent Mutt. It is further case of the petitioners that even without notices, the petitioners' pattas were cancelled, but petitioners have not challenged the same and kept quiet, as such, cancellation proceedings of pattas have attained finality. When once the petitioners are not owners, they have to establish that they are having valid lease in their favour granted by the 3rd respondent-Mutt, otherwise, they have to be declared as encroachers under Section 83 of the Act of 1987. All these facts and circumstances go to show that the petitioners are not owners of the subject property, which is claimed by the 3rd respondent-Mutt.

10. The petitioners are claiming adverse possession over the subject property under Section 143 of the Act of 1987.

Section 143 of the Act reads as follows.

> **"143. Property of Charitable or religious institution or endowment not to vest under the law of limitation after commencement of this Act.**
>
> Nothing in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any charitable or religious institution or endowment which have not vested in such person or his predecessor in title before the 30th September, 1951, in the Andhra Area of the State and the 26th January, 1967 in the remaining area of the State."

In view of the above provision, the plea of adverse possession is not tenable as it has no application to the lands belong to the 3rd respondent Mutt. Even otherwise, the petitioners have not adduced any evidence to show that they are in continuous possession.

11. It is also the case of the petitioners that the subject property does not belong to the 3rd respondent Mutt and it is not at all concerned with the activities of the petitioners over the subject land. It is pertinent to note that when the Government acquire the subject property and granted pattas to the petitioners, the 3rd respondent Mutt filed

W.P.No.3679 of 1996, wherein the plea relating to the title of the 3rd respondent-Mutt was recognized and upheld by the Government and the so called pattas granted in favour of the petitioners were cancelled, by virtue of which, C.C.No.1138 of 1996 filed by the 3rd respondent was closed by this Court. Therefore, the petitioners miserably failed to prove that they are owners of subject property. Even otherwise, a presumption can be drawn in favour of the 3rd respondent Mutt as per Section 87 (4) of the Act of 1987.

Section 87 (4) reads as follows.

87. Power of Endowments Tribunal to decide certain disputes and matters:-

(1) The Endowments Tribunal having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned to enquire into and decide any dispute as to the question-

(a) Whether an institution or endowment is a charitable institution or endowment;

(b) Whether an institution or endowment is a religious institution or endowment;

(c) Whether any property is an endowment, if so whether it is a charitable endowment or a religious endowment;

(d) Whether any property is a specific endowment;

(e) Whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;

(f)…

(g)…

(h)…

(2)…

(3)…

(4) The presumption in respect of matters covered by clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is a public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or

specific endowment, as the case may be."

In view of the above provision, presumption lies in favour of the 3rd respondent and it is for the person claiming property to prove otherwise. In this case, the petitioners could not prove the same, as such, presumption is also attracted in favour of the 3rd respondent Mutt.

The 1st respondent clearly held in the impugned Common Order as follows:

"I have perused material papers available on record. The fact remains undisputed that the O.A schedule premises is belonging to the math and after expiry of the lease period, there is no fresh lease or extended lease in favour of the Respondents. The Respondents failed to prove that they are having any orders in their favour except mentioning that they have got pattas from Government in the year 1996, but the same was withdrawn by the Government under Section 48 of the L.A.Act relating to the Sy.No.136 in T.S.No.7, Block-K, Bakaram (V), Musheerabad, Hyderabad as deposed by applicant no.2, in his evidence in C.C.No.1138 of 1996 and the case was closed. The Respondents in their counter except saying that they are residing in the O.A schedule premises and eking out their livelihood, did not put forth any evidence to show that their occupation on the math land is authorized one. The Rule 12 of the Rules framed u/s 82 of the Act vide G.O.Ms.No.866 (Endts-I) Dept., dt.8-8-2003 stipulates that no lease or license shall be valid unless it is approved by the competent authority. Further the Rule 15 of the said Rules also stipulate that any lease or license granted, continued are allowed to be continued otherwise than in accordance with the Rules shall be null and void. In this case there is no valid lease in favour of Respondents. In the absence of any proceedings from the competent authority, this forum is unable to accept the contentions raised by the Respondents and that the Respondents clearly fit within the definition of Sec.83 of the Endowments Act in all aspects and therefore they should be treated as encroachers and as sequel thereof, their eviction be ordered from O.A schedule premises. Therefore, this is a clear case of encroachment, where the Respondents are squatting over the property without any lease and thus causing loss to the temple."

The first respondent rightly considered all the aspects in proper perspective and came to the conclusion that the petitioners are

encroachers and liable to be evicted. When the conclusions of the authority are based on evidence, the same cannot be re-appreciated by this Court in exercise of its powers of judicial review. This Court does not exercise the powers of an appellate Court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the Court would be justified to interfere in the decision. The scope of judicial review is limited to the decision making process and not to the decision itself, even if the same appears to be erroneous. [See **Kalinga Mining Corporation v. Union of India and others in (2013) 5 Supreme Court Cases 252]**

In view of the above discussion and also having regard to the facts and circumstances of the case, I do not find any error in the award passed by the 1st respondent. The writ petitions are devoid of merits. Accordingly, the writ petitions are dismissed.

Interim orders granted earlier in these writ petitions shall stand vacated. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in these writ petitions, shall stand dismissed.

_____ **A.RAJASHEKER REDDY, J**

31.07.2015.

Note: LR copy to be marked.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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16676, 15056, 16647, 15065, 16656, 17116, 15061, 15062, 15066, 16696, 15057, 16698, 15072, 16732, 15191, 16655, 15060, 17196, 16828 and 17210 of 2009

Date: 31.07.2015

kvs