

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.13827 of 2011

Date: 18-09-2015

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Between:

Nandi Mandal Education Society, represented by its
Secretary, Y. Venkat Reddy

.. Petitioner

AND

The Assistant Commissioner, Endowments,
Kurnool and 2 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.13827 of 2011

ORDER:

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This writ petition is filed challenging the judgment dated 29-11-2010 of the A.P. Endowments Tribunal at Hyderabad in O.A.No.1050 of 2010 (Old No.53 of 2009) of Deputy Commissioner, Kurnool and to quash the same as the same is being illegal and without authority.

2. The case of the petitioners is that the 2nd respondent-temple claiming to be absolute owner of the land admeasuring Ac.3.00 cents in Survey No.389 of Mahanandi with specified boundaries filed O.A.No.53 of 2009 before the 3rd respondent-Endowments Tribunal, Hyderabad under Section 83 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987). In the said O.A., the 1st petitioner herein is stated to be an encroacher of the subject land and the schedule land is not an agricultural land and the same is

used for the purpose of construction of the 2nd petitioner-institution being run by the 1st petitioner Educational Society after obtaining necessary permission. The 1st petitioner is permitted to construct buildings and sheds in the said land for the purpose of running the 2nd petitioner-Educational Institution by the 1st petitioner Educational Agency and with the permission of the temple and approval of the Commissioner, the 1st petitioner made constructions in the said land for the purpose of running the 2nd petitioner institution. While so, after some years, there was a fire accident resulting in destruction of the sheds and the property of the petitioners and the 2nd respondent temple has come forward to accord necessary sanction for the purpose of rebuilding the sheds and buildings for running the 2nd petitioner institution and with prior approval of the Commissioner the 2nd respondent-temple has sanctioned Rs.10,000/- as an aid to the petitioners for the purpose of construction of buildings and sheds for running the school. The educational institution started in the year 1973 is being run successfully to cater to the needs of the local public and the employees of the temple. The 1st petitioner has been paying the rent for having been permitted to continue to be in possession of the land in question for the purpose of running the 2nd petitioner-educational institution in the said land. The petition by the 2nd respondent-temple before the 3rd respondent-Tribunal is not maintainable as it is contrary to Section 83 (1) of the Act and only the Assistant Commissioner can initiate the proceedings to invoke the provisions of Section 83 (1) of the Act and initiation of proceedings is opposed to Section 83 of the Act and the procedure adopted by the Tribunal is wholly contrary to the procedure

prescribed under Section 83 of the Act. Aggrieved by the same, the present writ petition is filed.

4. The 2nd respondent-temple filed its counter admitting that the petitioners are lessees of the subject land for a period of three years from 1991, which was extended from time to time till 28-02-2003 and stated that the possession of the subject property was taken on 04-08-2011 under a Panchanama and the petitioner is in arrears of Rs.55,634/- and the 2nd respondent-temple is the absolute owner of the land admeasuring Ac.3.00 cents situated in Survey No.389 of Nandyal, Kurnool District. When the representation dated 22-03-2003 made the petitioners for extension of lease for further period of three years after 28-02-2003 was not considered, the 2nd respondent sent a notice vide No.B1/585/93, dated 07-05-2003 to the petitioners to vacate the premises as the lease period expired by 28-02-2003 and to pay arrears of Rs.10,346/- as on 28-02-2003 and as the petitioners has neither paid the arrears nor vacated the premises, the 2nd respondent-temple has sent another notice vide No.B1/585/93, dated 30-01-2014 to vacate the land and to pay arrears of Rs.27,346/- as on 31-01-2004 to which the petitioners submitted reply on 10-02-2004 requesting time to pay the arrears by

15-03-2004 and to extend the lease, pursuant to which, the 2nd respondent-temple sent another notice No.B1/585/93, dated 24-02-2004 demanding the petitioners to pay arrears by 15-03-2004 otherwise the temple will take steps as per Act 30 of 1987 to evict them from the land belonging to the temple. The petitioners made a representation on 01-05-2005 requesting the 2nd respondent temple to extend the lease for three years from 01-03-2003 to 28-02-2006 as the lease period of the petitioner has expired on 28-02-2003 and

the petitioners contended that they are ready to pay the rent by enhancing 35% on the existing rent of Rs.1,500/- per month and they are fell in arrears of rent amounting to Rs.60,075/- and the petitioners stated that they will pay the said amount within a weeks days, but the petitioners have not paid the above mentioned arrears and made another representation dated 11-07-2005 to pay the arrears within fifteen days. The 2nd respondent-temple has sent notice vide Notice No.B1/585/93, dated 16-07-2007 to the petitioners demanding to pay the arrears to an extent of Rs.53,400/- otherwise the temple will take legal action as per law, pursuant to which, the petitioners sent a reply on 24-07-2007 requesting the temple to grant two instalments to pay the said arrears. In spite of issuing various notices by the 2nd respondent-temple demanding to pay arrears of the amount, the petitioners have not paid the arrears of amount up to 24-11-2007. As the petitioners have not paid the arrears, the 2nd respondent-temple issued another notice No.B1/585/93, dated 05-01-2008 asking them to pay the arrears of Rs.52,661/- up to December, 2007 and to vacate the land after the end of the academic year April, 2008 as the temple proposed to start the development activities on the land. As the petitioners have not paid the arrears for illegal usage and occupation, the temple issued another notice dated 13-08-2008 to pay the arrears up to August, 2008. It is further stated that the Assistant Commissioner, Endowments Department, Kurnool District has reported the matter to the Deputy Commissioner, Endowments Department, Kurnool and filed O.A.No.52 of 2009 before the Deputy Commissioner, Endowments Department, Kurnool and after constitution of the Endowments Tribunal, O.A.No.53 of 2009 was transferred to the Endowments Tribunal as per the directions issued by the Commissioner, Endowments Department vide proceedings D.O.

letter No.E2/28419/2008, dated 01-06-2010 and renumbered as O.A.No.1050 of 2010 after hearing both sides and on perusal of the material on record, has allowed O.A.No.1050 of 2010 directing the petitioner to handover the schedule premises within one month. The 2nd respondent-temple has followed the procedure laid down in Section 83 of Act 30 of 1987 as such the order passed by the Tribunal is valid and binding on the petitioners. The 2nd respondent-temple is proposing to develop the site for the benefit of the devotees and to construct Choultry, further the constructions made by the petitioners are old and some of the sheds constructed are in dilapidated condition and the temple has no objection if the petitioner take away the remains of the constructions after demolishing the same after paying the arrears of Rs.55,634/- as on July, 2011. The 2nd respondent-temple further stated that the Government allotted Ac.7.74 cents in Sy.No.368/1A in Thimmapuram village, Mahanandi in favour of Sri Vivekananda Gurukula Vidyalayam, Mahanandi for running school, was recommended by the proceedings of the Collector and District Magistrate, Kurnool to the Secretary to Government Revenue Department, Andhra Pradesh, Hyderabad, sent through Commissioner of Land Revenue Hyderabad, in Rc.No.B4/6554/79, dated 17-11-1979 and the petitioners after having purchased the above land from the Government and running English Medium School in the part of the land left with much land to run other school also. The order of the Tribunal was served on the petitioners on 25-03-2011 and after giving ample time to vacate till 04-08-2011, the Assistant Commissioner, Endowments Department, Kurnool has taken possession of the land as per Section 84 of Act 30 of 1987 on 04-08-2011 at 11.00 A.M. in the presence of Village Revenue Officer, Mahanandi, Executive Officer of the Mahanandi

Temple, Assistant Sub-Inspector, Mahanandi and the other employees of the temple and handed over the possession to the 2nd respondent-temple. The petitioners without prior permission of the Endowments Authorities has sub-leased the site to Anganwadi Kendram and Girijana Welfare Society and collecting the rents, as such causing loss to the institution and sought for dismissal of the writ petition.

5. Heard Sri M.R. K. Chowdary, learned senior counsel appearing for the petitioners and Sri A. Srikanth Reddy, learned standing counsel for the 2nd respondent-temple.

6. Learned senior counsel appearing for the petitioners submits that though the lease period expired in respect of the land, which was granted to the petitioners, still the authorities cannot resort to evict the petitioners as they permitted the petitioners to make constructions and unless the eviction proceedings are initiated for vacating the buildings, the petitioners cannot be evicted as per Section 83 of the Act. He contends that the procedure envisaged under Section 83 of the Act in filing O.A. is not followed and that the Assistant Commissioner has power to invoke the proceedings for the purpose of evicting encroachers from the lands of temple either *suo motu* or upon a complaint made by the trustee that any person has encroached upon any land, building, tank, well, spring or water-course or any space belonging to the institution or endowment and he shall report the fact together with relevant particulars to the Deputy Commissioner having jurisdiction over the division in which the institution or endowment is situated. He further contends that there was no material with the Assistant Commissioner to conclude that the petitioners are encroachers of the land and that once the buildings are constructed and they are continuously being enjoyed by the petitioners for more than a

prescriptive period, the petitioners cannot be considered to be encroachers. He further contends that the Executive Officer of the temple has no right to file O.A. and initiate proceedings under Section 83 (1) of the Act, but the Tribunal, instead of rejecting O.A., has erroneously entertained and allowed the same. He further contends that most of vacant premises of the land has been occupied by the buildings being constructed with the permission of the 2nd respondent-temple by the petitioners in which the 2nd petitioner-institution/school is being run and that even though the buildings are constructed by the petitioners on the land, the same cannot be said to be buildings belonging to the temple. He further contends that the land leased out to the petitioners belongs to 2nd respondent-temple and the structures are belonging to the petitioners and the proceedings initiated by the Executive Officer of the temple cannot be sustained in law. In support of his contentions, he relied on a judgment reported in **Express Newspapers Pvt. Ltd., and others v. Union of India and others**^[1].

7. On the other hand, Sri A Srikanth Reddy, learned standing counsel for the 2nd respondent-temple submits that in pursuance of the orders of eviction passed in O.A.No.1050 of 2010, the petitioners were evicted from the premises by conducting a Panchanama on 04-08-2011 and that since the lease in favour of the petitioners expired in 2003, they are deemed to be encroachers as per the definition contained in Explanation to Section 83 of the Act. He contends that once the petitioners are considered to be encroachers, they are liable to be evicted under the provisions of Section 83 of the Act and that the Tribunal has followed the procedure in proper perspective in ordering eviction of the

petitioners. He further contends that the petitioners never raised all these pleas before the Tribunal, more so, the lease was granted to the petitioners only in respect of the land, but not to the buildings and the authorities never granted any permission for construction of buildings. He further submits that the petitioners have already been granted some other land on the recommendation of the District Collector. He further submits that without any prior permission from the competent authorities, the petitioners sub-let the premises to Aaganwadi Kendram and Girijana Welfare Society and collecting rents from it causing financial loss to the 2nd respondent-temple.

6. It is not in dispute that the petitioners are tenants of the 2nd respondent-temple and the lease granted in their favour expired long back in 2003. When such lease expired without any extension or otherwise any permission from the lessor, the petitioners come within the purview of expression “encroacher” as per the explanation to Section 83 of the Act, which reads as follows:

“For the purpose of this chapter the expression ‘encroacher’ shall mean any person who unauthorisedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building or space after the expiry of termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.”

7. Even though the learned senior counsel contended that permission was granted by the authorities for construction of buildings, no such proceedings are filed nor is mentioned anything to that effect in the writ affidavit. He also failed to place any reliance on the proceedings while arguing the matter except orally saying that permission was granted. He further stated that the petitioners never filed any counter affidavit before the Tribunal. If that is the case, the Tribunal could have recorded a finding that the

counter was not filed. But, the perusal of the order of the Tribunal goes to show that the respondent had filed its counter. More so, the petitioners have not filed the copy of the counter affidavit showing that they have raised all the pleas before the Tribunal as raised herein. When they have not raised such pleas before the Tribunal, they cannot contend that the impugned order directing their eviction is erroneous or illegal on that ground. In the absence of raising such pleas before the Tribunal, the petitioners cannot raise such pleas before this Court. However, even if their contentions are tested, the impugned order shows that the Assistant Commissioner, Endowments Department, Kurnool was also one of the party before the Tribunal. As such, the contention raised by the petitioners that the 2nd respondent-temple cannot directly initiate the proceedings has no legs to stand. Insofar as the other aspect regarding taking of possession of the land is concerned, it is stated that the 2nd respondent has taken possession of the subject premises on 04-08-2011 under a Panchanama and the Panchanama as well as photographs annexed to the counter affidavit show that they have taken possession of the land and no reply affidavit was filed by the petitioners disputing the same. The petitioners never disputed the fact that they were allotted another land on the recommendation of the Collector and are running the school. The counter affidavit of the 2nd respondent goes to show that the petitioners were issued several notices demanding to pay the arrears and also for eviction, but the petitioners never responded to such notices. Even after eviction order was passed, they were also issued several notices to which notices also they did not choose to respond, and ultimately, they were evicted and a Panchanama was recorded. The Tribunal, after considering various proceedings and the correspondence

exchanged between the parties and on placing reliance on **the Joint Commissioner, Endowments Department A.P., Hyderabad v. Shaik Meera Saheb (AIR 1977 AP 100 (DB))**, held that the tenants of Religious or Charitable Institutions, who continue to be in possession, after the expiry of lease or after the cancellation of lease or without valid lease, are termed as “encroachers” and thus, the respondent is an encroacher within the definition of Section 83 of the Act. It is an admitted fact that the petitioners are tenants of the 2nd respondent-temple and their lease expired long back in 2003. If that is so, the petitioners are deemed to be encroachers of the temple. Insofar as the buildings constructed in the land are concerned, no proceedings are shown to have been produced nor placed any reliance in the writ affidavit. As such, the judgment relied on **the Joint Commissioner, Endowments Department A.P., Hyderabad v. Shaik Meera Saheb (AIR 1977 AP 100 (DB))** is applicable to the facts of the present case and Section 83 of the Act clearly provides that when once lease expired, the lessee is deemed to be an encroacher, more so, the buildings are constructed without any permission of the 2nd respondent-temple. The judgment relied on by the petitioner in **Express Newspapers Pvt. Ltd., and others v. Union of India and others** (stated supra) has no application to the facts of the present case since the facts in the said decision stand on different footing where permission was obtained by lessee for construction of buildings.

In **Kalinga Mining Corporation v. Union of India and others** ^[2], the Apex Court held as follows:

“.....It is by now well settled that judicial review of the administrative action/quasi judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to

manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be re-appreciated by the court in exercise of its powers of judicial review. The 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....”

In view of above facts and circumstances, the order of the Tribunal does not suffer from any legal infirmity or illegality calling for interference of this court in exercise of power of judicial review under Article 226 of the Constitution of India. More so, this court cannot reappreciate the evidence and come to a different conclusion by exercising the power of judicial review, and hence, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 18-09-2015

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[\[1\]](#) AIR 1986 Supreme Court 872 (1)

[\[2\]](#) (2013) 5 Supreme Court cases 252