

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.17886 and 17889 of 2008

COMMON ORDER:

These two writ petitions are filed under Article 226 of the Constitution of India challenging the Order No.10 dated 23.06.2008 passed in O.A.Nos.924 and 925/2003 and batch by respondent No.1-Dy.Commissioner, Endowments, Hyderabad.

The facts, which are necessary for disposal of these writ petitions, are as follows:

The petitioner in both the writ petitions was inducted as tenant in the open land of respondent No.3-temple of an extent of 4141 feet and 3131 feet at premises No.3-2-284, Somasundaram Street, Secunderabad, Hyderabad in the year 1987 on a monthly rent of Rs.600/- and Rs.360/- per month respectively for running lath work business by erecting temporary sheds therein and even after expiry of the said period, the lease was extended orally from time to time by enhancing rents from Rs.600/- to Rs.3,000/- per month and from Rs.360/- to Rs.2,000/- per month for the said two premises and he was paying rents regularly without any dues and respondent No.3-temple authorities are receiving rents regularly and the petitioner is in peaceful possession and enjoyment as a tenant to the said premises in doing business. The petitioner has received notices 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.Nos.924 and 925 of 2003 for eviction from the subject land on the ground that the premises is required for development of the temple. The petitioner has appeared before respondent No.1 in both the cases through an advocate on 06.09.2003 and the matter was adjourned from time to time. The respondents filed petitions in I.A.Nos.68 of 2005 and 69 of 2005 in both the O.As. respectively, seeking to deposit the balance amounts of enhanced due rents. Though the petitioner filed counters in both the I.As., the same were

pending and were reserved for orders on 18.10.2006, but no orders are passed till the amendment of the Act 33 of 2007 and without conducting any trial and without giving any opportunity of hearing the petitioner, the O.As. were tried along with O.A.No.923 of 2003 and batch. Aggrieved by the same, the present writ petitions are filed.

Respondent No.3-temple filed counter admitting the induction of land by the petitioner as tenant and also issuance of notices in the O.As., but only disputed that the petitioner was paying rents regularly. It is stated that the petitioner is an encroacher, as there is no subsisting lease and therefore, he cannot continue in the premises as a tenant, from the termination notice was given to the petitioner i.e., on 18.12.2002 under Section 83(1) of the Act 30 of 1987, he was not prompt in paying the arrears of rents and fell in arrears, therefore, sought to dismiss these writ petitions.

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 in both the writ petitions.

Learned counsel for the petitioner mainly submits that no trial was conducted in both the O.As. and even I.As. filed by the respondents are also pending, and all of a sudden, the same were reserved for orders along with O.A.No.923 of 2003 and the batch and the procedure envisaged under Section 83 of the Act 30 of 1987 was not followed by respondent No.1 in disposing of the said O.As.

On the other hand, learned Standing Counsel and learned counsel for respondent No.4-trustee submits that since the petitioner has not filed counter in the main O.As., the same were disposed of along with O.A.No.923 of 2003, and as such, no interference is called for in the impugned order by exercising power under Article 226 of the Constitution of India.

The petitioner being a tenant he is squatting on the property even after expiry of lease period without paying rents and there is no justification for the petitioner to squat on the property belongs to respondent No.3-temple. In this case, no separate trial was conducted and the same is not denied. The copy of docket sheet produced by the learned counsel for the petitioner also shows that no evidence was recorded or no trial was conducted in these O.As. and it also shows that no memo was filed by the respondents for conducting joint trial of the said O.As., and in the absence of the same, respondent No.1 should not have reserved these matters along with O.A.No.923 of 2003 by relying on the pleadings and the evidence in that case. In view of the same, this Court is of the view that respondent No.1 has not followed the procedure under the Act 30 of 1987 and the same is in violation of principles of natural justice. Therefore, this Court is inclined to remit the matter to the Tribunal constituted under Section 162 of the Act 30 of 1987.

Accordingly, both the Writ Petitions are allowed setting aside the impugned order dated 23.06.2008 and both the matters are remitted to the Tribunal constituted under Section 162 of the Act 30 of 1987. Since the matters are 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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