

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.17885 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.921/2003 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 his father was inducted as tenant in respect of the open land of respondent No.3-temple in an extent of 210 square yards at premises No.3-2-284, Somasundaram Street, Secunderabad in the year 1952 and paying rent at the rate of Rs.60/- per month and running a firewood 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 his father on 10.07.1999, the petitioner and his family members are doing the same business by paying rents regularly and presently they are paying the rent of Rs.2,000/- per month without any dues. 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(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'Act 30 of 1987') in O.A.No.921 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 his counsel and appeared before respondent No.1 by filing a memo dated 08.10.2003 stating that his father expired on 10.07.1999 showing himself and others as the legal representatives, and the matter was adjourned from time to time. Respondent No.3-temple filed I.A.No.40 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.66 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.66 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 A.Rajaiah was earlier inducted as tenant and after his death, the petitioner is paying rents from time to time, and at present, the petitioner is paying monthly rent at the rate of Rs.2,075/- after due enhancement from time to time towards use and occupation of the premises. It is stated that as on the date of issue of termination notice dated 18.12.2002, the petitioner fell in arrear rent to a tune of Rs.1,704/- and when respondent No.3-temple took over charge of the institution on 01.06.2008, the petitioner fell in arrear of rent to a tune of Rs.9,200/- till 31.05.2008. It is further stated that since the petitioner came on record as legal representative of his late father, it was felt necessary to initiate eviction proposals against the petitioner who is in occupation of temple property

without approval of tenancy in his name from the competent authority, and therefore, the petitioner can aptly be termed as an 'encroacher' as per explanation of Section 83(1) 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 his occupation over the temple property is without approval of tenancy by the competent authority. It is further stated that the petitioner also fell in arrear of rent to a tune of Rs.9,200/- till 31.05.2008, and since the petitioner himself is not a valid tenant, he cannot step into the shoes of his late father and claim his right to continue over the temple property on one pretext or the other. The Act 30 of 1987 has been enacted and one of the principal object and reason behind the same states the intention to secure termination of leases held by persons other than landless poor persons. Sub-section (1) of Section 82 of the Act 30 of 1987 is therefore declared that any lease of agricultural lands/shops belonging to or given endowed for the purpose of an institution or endowments subsisting as on the date of the commencement of the Act 30 of 1987 held by a person, who is not a landless poor person stands cancelled, notwithstanding anything in any other law for the time being in force and the Act 30 of 1987 has been brought into force w.e.f. 20.05.1987, and as a result, all such leases of agricultural lands/shops belonging to or endowed in favour of the Act 30 of 1987 stood cancelled w.e.f. the said premises without there being a valid lease in terms of G.O.Ms.No.866 dated 08.08.2003. It is also stated that this Court in W.P.No.9681 of 2008, held that respondent No.1 is competent authority to decide the matter till the constitution of Tribunal.

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 of the petitioner and their I.A.No.40

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.66 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.66 of 2005 was not filed properly without following due procedure and respondent No.1 disposed of the O.A.No.921 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 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.40 of 2004, which was filed to bring the legal representatives of father of the petitioner who was the original tenant, was also dismissed and the said order become final. Till disposal of O.A.No.921 of 2003, no orders are passed in I.A.No.66 of 2005 and even the order does not indicate that O.A.No.921 of 2003 was clubbed along with O.A.No.923 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 the above facts and circumstances, it is found that respondent No.1 has not followed proper procedure in deciding the O.A., as such, this Court has no other go except to set aside the order under challenge passed by 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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