

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. No. 18210 OF 2009 and W.P.No.10391 of 2010

COMMON ORDER :

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

2. These writ petitions are filed seeking writ of mandamus declaring the action of the 1st respondent in allowing O.A.No.6 of 2006, Order No.11, on 28.03.2009 and O.A.No.2 of 2006 in Order No.38, dated 09.03.2010 respectively, as illegal and arbitrary and consequently to set aside the same.

3. It is the case of the petitioners that they are tenants of the 2nd respondent and in lawful possession of the shop Nos.8 and 10 respectively, at Guntur town for the past 10 years and paying rents regularly, without any default and that the 2nd respondent is enhancing rents in every three years. That being so, the petitioners and other tenants made several written and oral representations to the 2nd respondent to get the lease approval order in their favour, but the 2nd respondent did not take any measures for approval of lease. That the 2nd respondent filed W.P.No.20472 of 2001 on 22.11.2001 in which this Court has made observations and directed the 2nd respondent to take action to get the lease approval order in respect of the shops held by the 2nd respondent. So far the 2nd respondent did not take steps to get the lease approval. However, the 2nd respondent filed O.A.Nos.6 of 2006 and 2 of 2006 before the first respondent on the ground that the petitioners are encroachers. Basing on the report of the Assistant Commissioner, Endowments under Section 83 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 30/87 (for short 'the Act of 30/87'), though the petitioner filed counter, the first

respondent, without considering the same, allowed the OAs filed by the 2nd respondent and directed the petitioners to vacate the premises and remove the encroachments within a period of one month. Aggrieved by the same, the present writ petitions are filed.

3. Counter affidavits are filed by the first and second respondents in both the writ petitions, stating that the 2nd respondent choultry is a public charitable institution published under Section 6(b) of the Act of 30/87 and under the purview and administrative control of the Deputy Commissioner, Endowments Department, Guntur and is being represented by the Manager. Upon a complaint made by the 2nd respondent, the Assistant Commissioner, Endowments Department, Guntur submitted report under Section 83 (1) of the Act of 30/87 to the effect that the petitioners have encroached upon shop Nos.8 and 10 at Amaravathi Road, Guntur Town belonging to the 2nd respondent and upon considering the material available on record, OAs filed by the second respondent were allowed, since the petitioners are to be treated as encroachers, as there is no approval of lease in their favour and there is no lease subsisting as on the date and justified the impugned orders.

4. Heard Sri K.Srinivas, learned counsel for the petitioners, learned Government Pleader for first respondent as well as Smt. K.Lalitha, learned Standing Counsel for the 2nd respondent.

5. Sri K.Srinivas, learned counsel for the petitioners submits that though this Court disposed of W.P.No.20472 of 2011 directing the 2nd respondent to get the lease approval in respect of the shops held by it, without approving the same, the 2nd respondent filed O.As before the 1st respondent and impugned orders have been passed by the 1st respondent.

6. In the instant case, even in the writ affidavits, it is not stated whether the lease of the petitioners in respect of the shops held by them is subsisting as on today or not. It is the case of the petitioners that

there is no approval of leases in their favour. The first respondent relying on the same, has passed impugned orders for eviction of the petitioners under Section 83 of the Act of 2001. Section 83(1) of the Act of 2001 reads as follows:

“Section 83. Encroachments by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers:- (1) Where the Assistant Commissioner having jurisdiction, either *suo motu* or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this Chapter referred to as ‘encroacher’) any land, building, tank, well, spring or watercourse or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provisions of this Act, the Assistant Commissioner shall report the fact together with relevant particulars to the [Endowments Tribunal] having jurisdiction over the division in which the institution or endowment is situated.”

Explanation: 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.

The Deputy Commissioner, Endowments Department, Guntur-first respondent has also relied on the cross-examinations of the petitioners wherein the petitioners admitted that they got no lease approved by the competent authority of Endowments Department and accepted that previously the Commissioner, Endowments Department, A.P, Hyderabad rejected their proposal for granting of lease on enhanced rent. Therefore, it is clearly admitted by the petitioners that they are not having any approval orders of the competent authority and they failed to prove that they are not encroachers. In view of the clear admission of the petitioners in the cross-examination, the first respondent passed impugned orders. When the fact that lease in favour of petitioners is not in existence, I do not find any error in the impugned order passed by the first respondent.

7. Even according to the writ affidavits of the petitioners, the date of

subsistence of lease is also not given and not filed any piece of paper to show that their lease is in existence. According Explanation to Section 83(1) of the Act of 2001, any person whose lease expired is an encroacher. The first respondent has rightly held that the petitioners are encroachers. This Court cannot sit in appeal against the impugned order passed by the first respondent by exercising power of judicial review under Article 226 of the Constitution of India.

In **Kalinga Mining Corporation v. Union of India and others**^[1], wherein it is held as follows:

“62. 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 the facts and circumstances of the case, I do not find any error in the orders passed by the first respondent, when admittedly the lease of petitioners is not in existence.

Accordingly, these writ petitions are dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in these writ petitions, shall stand dismissed.

24.06.2015.
KVS

A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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