

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**WRIT PETITION NOs.23009, 23696, 24134, 24486, 24738
and 26103 of 2015**

W.P.No.23009 of 2015

Between:

Radhika Somani w/o. Shyamsunder Somani,
Age 38 years, Occu: Household, r/o. 4-6-90/2/C/1/4,
Tejasvi Nagar Colony, Sy.No.72-77, Rambagh,
Attapur Village, Rajendra Nagar Mandal,
Ranga Reddy District and others.

.... Petitioners

AND

State of Telangana, rep.by its Principal Secretary,
Endowments Department, Secretariat, Saifabad,
Hyderabad and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED : 28.08.2015

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : No
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked: Yes
to Law Reporters/Journals :
3. Whether Their Lordship wish to see the fair : No
Copy of the Judgment ? :

***THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

**+_WRIT PETITION NOs.23009, 23696, 24134, 24486, 24738
and 26103 of 2015**

% Dated 28.08.2015

WP No.23009 of 2015

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Age 38 years, Occu: Household, r/o. 4-6-90/2/C/1/4,
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Endowments Department, Secretariat, Saifabad,
Hyderabad and others.

.. Respondents

! Counsel for Petitioners : Sri Pratap Narayan Sanghi, counsel
for petitioners in WP Nos.23009,
24134 & 24378 of 2015;

Sri Vedula Srinivas, counsel for
petitioners in WP Nos.24486 and
26103 of 2015

^Counsel for Respondents : Government Pleader for Endowments
and

Sri Ch.Satish Kumar, counsel for

respondent temple in all writ
petitions

<GIST :

>HEAD NOTE :

? Cases referred :

HON'BLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION NOs.23009, 23696, 24134, 24486, 24738
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COMMON ORDER:

Petitioners in all these writ petitions challenge the orders of A.P. Endowments Tribunal, Hyderabad, dated 24.09.2013 made in IAs in pending O.As filed by the official respondents and consequential orders dated 18.06.2015. In some of the writ petitions, petitioners also challenge the maintainability of OAs pending before the Endowments Tribunal.

2. With the consent of the learned counsel Sri Vedula Srinivas and Sri Pratap Narayan Sanghi, for petitioners, learned Government Pleader for Endowments (Telangana) and learned standing counsel for Endowments (Telangana), these writ petitions are disposed of at the admission stage.

3. As the issue in all these writ petitions arise out of pending OAs before the Endowments Tribunal and the orders passed by the Endowments Tribunal dated 24.09.2013 and 18.06.2015, all the writ petitions are disposed of by this common order.

4. Petitioners in all these writ petitions claim to have purchased the

house plots in the layout formed in Sy.Nos.72-77 of Attapur village and claim to be in possession and enjoyment of the said properties. The Assistant Commissioner of Endowments Department, Ranga Reddy District and Sri Sitaramachandra Swamy Temple, Attapur Village, Rajendranagar Mandal, Ranga Reddy District instituted O.A.Nos.569, 570, 571, 572, 573, 574, 577, 578, 581, 583, 586, 591, 592, 594, 614, 615, 617, 618, 619, 620, 623, 624, 625, 626, 628, 630, 634, 636 and 638 of 2011 praying to declare the respondents in each of the O.As, as encroachers on the O.A. schedule properties and to evict them and handover the property to the second applicant temple.

5. The applicants have also filed I.A.Nos.1050, 1051, 1052, 1053, 1054, 1055, 1058, 1059, 1062, 1064, 1067, 1072, 1073, 1075, 1083, 1084, 1085, 1086, 1087, 1088, 1091, 1092, 1093, 1094, 1096, 1098, 1102, 1104 and 1106 of 2011 in the above OAs, respectively, praying to direct the respondents to pay the amount ranging from Rs.1000/- to 2000/- per month in each of the cases towards damages for use and occupation charges for using premises in respective plots in the survey numbers mentioned above. These I.As are disposed of by order dated 24.09.2013. The Endowments Tribunal allowed IAs in part and directed each of the respondents to pay damages towards use and occupation charges w.e.f. 1.8.2011 i.e., the date on which OAs are filed, till the disposal of the main OAs and pay the amount individually fixed in each of the cases ranging from Rs.1000/- to Rs.4000/-; that if the respondents failed to comply the orders of the payment towards damages, the defence of the respondent in the O.A., would be struck down and they would have no defence.

6. Alleging that said orders of the Tribunal are not complied with, memo dated 26.08.2014 was filed before the Tribunal by the appellants in all the cases. The Tribunal passed orders on 18.06.2015 striking off the defence of the petitioners herein in the respective original applications. These orders of the Endowments

Tribunal necessitated institution of these writ petitions.

7. Having considered exhaustively the rival contentions, on perusal of the documents brought on record, the Tribunal passed orders on 24.09.2013 and further orders on 18.06.2015, which are impugned in these writ petitions.

8. Learned counsel Sri Vedula Srinivas contended that while considering the claim of the applicants for grant of interlocutory orders to fix the damages payable to the temple every month, the Tribunal erred in going into the validity of the ORCs. Such finding is erroneous without jurisdiction and competence. When it is the case of the petitioners that the ORC issued in the year 1980 is in force, the appellants cannot file OA before the Endowments Tribunal praying to declare the petitioners as unauthorized occupants. In view of the validity of ORC issued to the predecessors in interest, petitioners cannot be classified as persons in unauthorized/illegal occupation.

9. Learned counsel further contended that the amendment to Section 4(1) of the Act has no application in view of the fact that the said amendment has come into force in the year 1985, whereas ORC was issued in the year 1980.

10. Learned counsel further contended that Tribunal erred in applying provisions of A.P.(T.A.) Tenancy and Agricultural Lands Act, 1950, where as the said Act has no application to the subject properties.

11. Learned counsel further contended that the Tribunal does not have the power or jurisdiction to pass the interlocutory order as was passed on 24.09.2013 fixing the damages to the respective property owners. Even assuming that Tribunal has incidental powers to pass interlocutory orders on the dispute arising out of Section 87, the Tribunal is not vested with power to enforce the orders passed and

Tribunal is not vested power to forfeit the defence of the respondents in pending OAs and counsel further contended that when the petitioners case is that they are not in occupation of the land belonging to the temple and that the title is validly passed on to them by the predecessor in interest, question of petitioners paying the damages as determined by the Tribunal is erroneous.

12. Learned counsel Sri Pratap Narayan Sanghi contended that since ORC was issued to the predecessor in interest and when title is validly passed on to the petitioners and as long as ORC is subsisting, provisions of Endowments Act are not attracted and the Endowments Tribunal has no jurisdiction to entertain the grievances regarding possession and enjoyment of the subject properties purchased by them on payment of valuable sale consideration. He further contended that there is no privity of contract between the petitioners and the respondent temple and, therefore, question of enforcement of any right against them does not arise.

13. According to the learned counsel, A.P. (TA) Abolition of Inams Act, 1955 is a special enactment. Insofar as inam lands are concerned, the provisions of the said Act shall prevail and the Endowments Act has no application. Predecessor in interest was protected tenants and subsequently ORC was granted. Thus, they cannot be classified as persons in illegal or unauthorized occupation. As no appeal was filed under the Act, 1955 and the ORC has become final, petitioners are entitled to utilize the properties purchased by them validly from the predecessor in interest.

14. Learned counsel contended that in the detailed counter-affidavit filed specific plea was taken regarding maintainability of the OAs and sought for determination of the maintainability as preliminary issue. Since the Tribunal is governed by the provisions of the Act and Rules made there under and Rules do not prescribe power in the Tribunal for

enforcement of its orders, the Tribunal ought not to have passed the orders dated 24.09.2013 directing payment of damages and consequential orders on 18.06.2015 forfeiting right of defence.

15. Learned counsel contended that statute prescribes the powers of Endowments Tribunal and when the Act and Rules do not envisage power in the Endowments Tribunal for execution of its orders, it cannot pass the order of forfeiting of the defence on 18.06.2015. The power to grant interim orders is restricted and the orders passed by the Tribunal is without jurisdiction and competence.

16. Learned counsel contended that there was denial of reasonable opportunity and violation of principles of natural justice. Petitioners were not given opportunity of hearing. No procedure was followed for marking of the documents, no witnesses were examined and no issues were framed. The provisions of the Civil Procedure Code are not attracted to the proceedings before the Endowments Tribunal. The Rules framed in the year 2010 are applicable to the Tribunal and Tribunal has to function within the four corners of the said Rules. Tribunal is not vested with powers of civil court.

17. It is forcibly contended by the learned counsel for the petitioners that in the process of passing interim orders, Tribunal has recorded findings on merits. Interim orders should be passed only on *prima facie* opinion by the Tribunal regarding balance of convenience and to protect interest of endowments institution. But, in the instant case, the Tribunal has gone into the merits and recorded findings, which findings say all the petitioners as encroachers and if that is so, nothing remains to be decided in the main O.A.s. Thus, recording of such findings is erroneous. Learned counsel further contended that the pleadings were complete; O.A.s are ripe for hearing and without hearing main O.A.s, and deciding the issue, Tribunal erred in passing interim orders. It is further contended that Tribunal erred in forfeiting

the right of the petitioners to defend in the event of non- payment of damages fixed in the very same order. The further orders passed by the Tribunal on 18-06-2015 is without power and jurisdiction.

18. Learned counsel further contended that there was clear discrimination in selecting the petitioners for coercive action. In all there is more than 33 acres of land involved. Surprisingly the respondents have filed selectively against the petitioners, leaving others which similar situated untouched, which amounts to arbitrary exercise of power and deliberate action against the petitioners without following due process.

19. Learned Government Pleader for Endowments and learned standing counsel submitted that the Tribunal justified in passing the orders. They contended that petitioners are to blame for not complying with orders dated 24.09.2013. Till the orders are passed on 18.06.2015, they kept quite. Admittedly, order dated 24.09.2013 is not complied. Tribunal being vested with power to adjudicate on issues arising out of the Endowment Act, is competent to enforce its orders. Such power is incidental to powers and jurisdiction vested in the Tribunal. The Endowment Act being a special enactment covering properties of Endowment institution, it shall prevail over all other laws inconsistent with the provisions of Endowment Act. It is further contended that petitioners being encroachers of Endowment property, damages are validly fixed and there is no error in the order of Tribunal warranting interference of this Court.

20. The issues that arise for consideration in this batch of writ petitions are:

1) Whether the Endowments Tribunal is competent to entertain the applications filed by the respondent herein on the complaint of illegal/unauthorized occupation by the petitioners when the predecessor in interest of the petitioners was granted occupancy rights

certificate under the Inams Abolition Act, 1955 ?;

2) Whether Tribunal has power to grant interim orders as was passed on 24.09.2013 ? ;

3) In the process of enforcing the earlier interim orders, can the Tribunal knock out the defence of the petitioners ? and

4) To what relief ?

21. To appreciate rival contentions, it is necessary to examine relevant provisions of the Act. The relevant provisions of the Act are, Sections 83, 87, 151, 160 and 162.

ISSUE NO.1 :

22. Section 162 of the Act provides for constitution of Endowments Tribunal for determination of any dispute, question or the matter relating to a charitable institution, religious endowments, religious institutions, etc. This Section vests wide power in the Tribunal on determination of any dispute once such dispute brought before the Tribunal concerns the charitable/ religious institution/endowment.

23. Section 83 of the Act deals with power to remove encroachments by persons on land or building belonging to charitable or religious institutions or endowment and the eviction of encroachers. In accordance with the said provision, the competent authority can file applications before the Endowments Tribunal praying to grant order of eviction of illegal occupants on land belonging to the temple. Section 87 of the Act vests power in the Endowments Tribunal to decide certain disputes and matters as listed out in the said provision. For the purpose of the issue raised in this writ petition, the relevant provision is Section 87(1)(c). According to this sub-section, Endowments Tribunal is competent to decide any dispute as to whether any property is endowment, if so whether it is a charitable endowment or a religious endowment. In the instant case, the stand of the respondent temple is

that the subject land belongs to the said temple and petitioners are in unauthorized occupation. The temple relies on entries made in the endowment register and other documents in support of its contention that the subject land belongs to the temple. The defence of the petitioners is that they are the bona fide purchasers. Their predecessor in interest was tenant on inam lands and in recognition of such tenancy, ORC was granted and once ORC was granted in accordance with Inams Abolition Act, unless same is challenged in accordance with the provision contained in the Act, the respondent cannot claim the land as belonging to them. In support of their claim, petitioners are relying on various documents including ORC. A careful reading of Section 87(1)(c), it is clear that Endowments Tribunal is competent to go into this issue. According to Section 87(4) of the Act, 1987, once the temple claims the subject land as belonging to it, the presumption is the land belongs to endowment institution and the burden lies on the persons who claim that the property belongs to them and they are the valid owners of the said property to prove the same. Thus, burden lies on the petitioners to prove before the Tribunal that the subject properties have been validly vested in them. In the above analysis, it cannot be said that Tribunal lacks jurisdiction in entertaining the applications filed by the respondents.

24. It is also appropriate to notice in this context that Section 160 of the Act holds that the provisions of the Act have overriding effect. According to the said provision, notwithstanding any order by any authority, the provisions of the Act shall prevail from the date of commencement of the Act insofar as they relate to the matters governed by the corresponding provision and any such order shall have no effect. Therefore, whether the ORC was validly granted to the predecessor in interest and whether subject property is governed by Inams Abolition Act can be gone into by the Tribunal. Merely because petitioners claim that ORC was validly granted to their predecessor in

interest cannot automatically oust the jurisdiction of Endowments Tribunal. Thus, there is no merit in the contention of the learned counsel Sri Pratap Narayan Sanghi that Tribunal lacks jurisdiction to entertain OAs. The first issue is answered accordingly.

ISSUE NO.2:

25. Section 87(2) of the Act vests power in the Endowments Tribunal to pass such orders as it deems fit for the administration of the property in issue. Sub-section (3) of Section 87, also vests power in Endowments Tribunal to pass such interim orders as deemed fit for safeguarding the interest of the institution/ endowment and for preventing damage to or loss or misappropriation etc., pending implementation of decision made under sub-section (1). In exercise of this power vested in the Tribunal, the Tribunal passed orders on 24.09.2013 directing the petitioners to pay damages towards use and occupation charges, various amounts individually prescribed in each of the OAs. The said amounts were directed to be paid w.e.f. 1.8.2011, the date on which OAs were instituted. A plain reading of sub-sections (2) and (3) of Section 87 read with Section 83, it is clear that Tribunal is vested power to pass interim orders pending consideration of the O.A. filed before the Tribunal. Thus, *per se*, it cannot be said that Tribunal is not competent to pass such interim orders. This issue is answered accordingly.

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ISSUE NO.3:

26. On true construction of the relevant provisions of Section 83, 87, 160 and 162 and rules governing the Tribunal, it cannot be said that the Tribunal cannot enforce its orders. However, in the process of enforcement of its orders, it cannot over step and assume jurisdiction that is not vested in it. Tribunal being a creature of the statute has to function within four corners of the provisions of the Act and rules made there under. Thus, Tribunal erred in forfeiting the defence of the

petitioners, when no such power is vested in it. No doubt Tribunal is vested power under Section 83(6) of the Act to order the encroacher to deposit such amount as specified by it, but on the allegation of non compliance with the said order, Tribunal could not have passed further orders forfeiting the defence of the respondents.

27. Even otherwise, in the facts of this case, I am of the opinion that Tribunal exceeded its jurisdiction to forfeit the right of the respondents to defend. The OAs were instituted in the year 2011. By the time orders were passed by the Tribunal, the pleadings were complete. The Tribunal as well could have disposed of OAs finally. Therefore, Tribunal ought to have adjudicated the matter on merits instead of passing further orders. Forfeiting the defence to the petitioners deprives them the valuable right to establish their claim on subject properties to the satisfaction of the Tribunal. More so the claim of the temple, if accepted, results in severe civil and evil consequences. This issue is answered accordingly.

28. In the facts of this case, justice require to direct the Tribunal to afford due opportunity to the petitioners to establish their defence, hear the OAs as expeditiously as possible and within fixed time frame and on consideration of defence put up by the petitioners, final orders shall be passed.

29. However, having regard to the fact that original order was passed on 24.09.2013 and petitioners kept quiet till further orders are passed on 18.06.2015 and as the orders dated 24.09.2013 prescribed that in the event of non-compliance of the orders of depositing of damages, they would forfeit the right to defend, while remitting the matter for consideration and disposal of the OAs on merits after affording due opportunity of hearing to petitioners herein, it is ordered that petitioners shall deposit 25% of the amount awarded by the Tribunal as damages to respective petitioners and payment of costs of

Rs.1,000/- in each of the OAs to the respondents herein, who are the applicants in the OAs pending before the Tribunal within a period of three weeks from the date of receipt of this order. Proof of deposit of amounts and payment of costs as directed above shall be filed before the Tribunal within one week of such deposit/payment. The respondents are directed to keep the amount deposited by petitioners in a separate fixed deposit account and be retained in the fixed deposit till the OAs are disposed of by the Tribunal. It is made clear that if the petitioners do not deposit the amount and/or do not pay costs as directed above and no proof of such deposit/payment is filed, the Tribunal is entitled to dispose of the OAs on merits without hearing them. It is also made clear that all issues are left open to be considered by the Tribunal. Tribunal shall decide the issues uninfluenced by any observations made in this judgment. The Tribunal shall consider the contentions of both parties uninfluenced by the findings recorded in orders passed in IAs on 29.04.2013 and 18.06.2015. Tribunal shall dispose of the OAs as expeditiously as possible, preferably within three months from the date of deposit of amounts as directed above or after expiry of time granted to petitioners to deposit the amounts as the case may be.

30. These writ petitions are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions if any pending in these writ petitions shall stand closed.

Date : 28.08.2015
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JUSTICE P.NAVEEN RAO

HON'BLE SRI JUSTICE P.NAVEEN RAO

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