

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.14190 OF 2010

ORDER

-

This writ petition is filed for a *writ of certiorari* calling for the records relating to O.A.No.10 of 2006 on the file of the Deputy Commissioner, Endowments Department, Guntur and for a consequential direction to set aside the order dated 09.03.2010 in O.A.No.10 of 2006.

The case of the petitioner is that he is the tenant of Shop No.3 belonging to 3rd respondent Samajam from the past 30 years and has been paying the lease amount regularly. In the year, 2001, the Endowments has taken the possession of the Samajam and the Executive Officer has taken the Management of the Institution as a single trustee. Since then, the 1st respondent continued the petitioner as tenant on enhanced rents. In the year 2002, the 3rd respondent enhanced the rent upto 500/- from 01.01.2002 to 31.12.2004. Later, when the 3rd respondent issued notice dated 19.01.2005 directing the petitioner to enhance the lease amount from Rs.500/- to Rs.700/- the petitioner enhanced the rent from Rs.500/- to Rs.665/- @ 33% and has been paying the same from the month of September, 2005. But the lease approval of the petitioner is pending consideration before the authorities. While so, the 3rd respondent made a representation to the 2nd respondent stating that the petitioner is an encroacher. Basing on the said representation, the 2nd respondent in turn reported to the 1st respondent under Section 83(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act. Thereafter, the 1st respondent issued notice to which petitioner filed a detailed counter stating that he is not an encroacher. Later the 1st respondent passed order in O.A.No.10/2006, dated 09.03.2010 holding that the petitioner is an encroacher, as the lease approval is not yet granted by the competent authority of Endowments Department in favour of the petitioner and directed the petitioner to vacate the premises within a

period of one month. Aggrieved by the same, the present writ petition is filed.

Heard the learned counsel for the petitioner.

Learned Standing counsel for the 3rd respondent-Samajam submits that the petitioner himself admitted before the Deputy Commissioner that lease is not approved by the competent authority in his favour and that the petitioner is paying only an amount of Rs.855/- per month towards damages. She also submits that the 1st respondent has considered the case of the petitioner and held that the petitioner is an encroacher and ordered for eviction and this Court cannot re-appreciate the evidence in the writ petition by exercising jurisdiction under Article 226 of Constitution of India.

In this case, petitioner himself states that he is in permissive possession, as such he cannot be declared as an encroacher, but during the cross examination before the 1st respondent the petitioner clearly admitted that his lease is not approved by the competent authority and the application made for extension of lease period is also rejected on the earlier occasion. The 1st respondent also considered the documents filed by the petitioner regarding payment of rents and other aspects.

The explanation under Sub-Section 1 of Section 83 of Act, 30/87 reads as under

“for the purpose of this chapter, the expression encroacher shall mean any person who unauthorizedly 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 place after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.”

As per Section 83(1) of the Act, the petitioner falls under the expression encroacher because there are no approved lease orders in his favour from the competent authority and that the 1st respondent also

rejected his proposal for granting lease on enhancement of rent and that he is paying only Rs.885/- per month towards damages for use and occupation.

In view of the same, I do not find any error in the order passed by the 1st respondent. Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER

REDDY,J

Date: 24.06.2015

dv