

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.24528 of 2010

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the Writ Petitioner seeking the following relief/s:-

“....to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in allowing the Judgment (Award) in O.A.No.4/2006 (of DC, Guntur) dated 2.8.2010 filed by the 2nd and 3rd respondents is illegal, arbitrary and violative of principles of natural justice and consequently set aside the same and pass such other order or orders as are deemed fit and proper”

(Reproduced verbatim)

2. I have heard the submissions of the learned counsel for the Writ Petitioner, the learned Government Pleader for Endowment appearing for the respondent nos. 1 and 2 and the learned Standing Counsel appearing for the 3rd respondent. I have perused the material record.

3. The case of the Writ Petitioner, as set out in the affidavit filed in support of the Writ Petition, in brief, is this:-

He is a tenant since 1997 in the subject shop, which is one of the shops in the shopping complex of the 3rd respondent. He had entered into a valid lease agreement with the management of the 3rd respondent. He is neither an unauthorised occupant nor an encroacher of the subject shop. He is paying rents regularly and is not a defaulter. There was no communication from the 3rd respondent in regard to the rejection of the petitioner's representation, for approval of the lease, by the authority concerned. The petitioner had paid three months rent as advance. The 3rd respondent had earlier filed W.P.no.2047 of 2001 before this court. In the orders passed in the said writ petition, this Court had directed the 3rd respondent to get the lease approvals from the authority concerned in respect of the shops in the complex. Without honouring the said orders,

the 3rd respondent had instituted an original application in OA.No.4 of 2006 against the petitioner for eviction, as per the provision of Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 ('the Act 30 of 1987', for brevity). That application originally filed before the Deputy Commissioner, Endowments was later made over to the 1st respondent-Tribunal. The petitioner is having no other source of income except the income from the Tea Shop in the shopping complex of the 3rd respondent. If he is evicted from the said shop, he would lose his livelihood and he and his family will be put to irreparable loss. In fact, he was affecting minor repairs to the said shop from time to time. By order dated 02.08.2010 passed in the said O.A. no.4 of 2006 filed by the 3rd respondent, this petitioner was directed to vacate and hand over the possession of the subject shop within one month by giving a written intimation to the respondents 2 and 3 and that otherwise, the respondents 2 and 3 therein shall take, if necessary, the assistance of Police and obtain delivery of the possession of the property. It was also further directed that the Station House Officer, Guntur Police Station, shall provide necessary police protection in implementing the Award passed in the said original application. The petitioner gave evidence in the said OA as RW1 and had exhibited his documents. He is continuing as a tenant since 1997 and is paying the enhanced rent @ Rs.254/- per month and had also made representations for continuation of lease. The copies of the said representations were also exhibited. However, ignoring the said representations, the above said eviction application was filed. Without implementing the Orders dated 22.12.2001 of this Court in W.P.No.2047 of 2001 this petitioner was simply declared as an encroacher, as per the provisions of the Act 30 of 1987. Neither a notice of eviction was issued nor was the due process of law followed while seeking the eviction of the petitioner from the subject shop. In fact, this petitioner had also given a consent letter agreeing to pay the enhanced rent @ Rs.300/- per month as the said amount was being paid by the other tenants of the shopping complex.

But, to the utter surprise of this petitioner, the eviction application was filed and eviction orders were obtained. Hence, the Writ Petition is filed assailing the Award in O.A.No.4 of 2006 of the Endowments Tribunal as illegal, arbitrary and violative of the principles of natural justice and for setting aside the same.

4. No counter affidavit has been filed by the respondents. However, this Writ Petition is orally resisted.

5. The learned Counsel for Writ Petitioner made his submissions in line with the case pleaded in the Writ Petition. He would further submit that the writ petitioner is only one of the tenants in the shopping complex of the 3rd respondent and that he was admittedly put in possession of the subject shop as a lessee on payment of rent and that while he was regularly paying the rent and eking out his livelihood by running a tea shop, the monthly rent was enhanced from Rs.100/- to Rs.254/- and that at that time, the petitioner having agreed to pay the said rent had requested for extension of the term of lease for at least 10 years on the said enhanced rent and that the petitioner had also made a representation for extension of the term of lease and that the same was not considered, but the original application was filed for eviction of the petitioner from shop no. 16 of the 3rd respondent's shopping complex and that before the institution of the said eviction proceedings, neither a notice was issued nor was the said representation/consent letter, whereunder the petitioner had consented to pay rent @ Rs.300/- per month was considered and that the petitioner having entered into the possession of the subject shop as a lessee is continuing as a tenant by paying the rents and the enhanced rents and that even the writ orders, whereby the 3rd respondent was directed to get the lease approvals by the authority concerned in respect of the shops in the complex were not implemented. He had finally submitted that the eviction orders dated 02.08.2010 in O.A.No.4 of 2006 of the Commissioner of Endowments are illegal, arbitrary and are liable to be set aside.

6. On the other hand, the learned Standing Counsel for the 3rd respondent would submit as follows:

Admittedly, the petitioner had originally entered into the possession of the subject shop as a lessee. His term of lease had expired long time back and no fresh lease or extension of lease was granted, even according to his own submissions. However, he is squatting on the property without vacating the same. As per the provisions of the Act 30 of 1987, which are applicable to the case, he is an encroacher. However, he is continuing in the same shop despite being an encroacher. Further, he had paid a meagre amount of Rs.254/- per month for some time; and the same was received towards damages for use and occupation. Had the petitioner vacated the property, the 3rd respondent would have auctioned the leasehold rights in accordance with the procedure established by law and, thereby, the 3rd respondent would have been getting not less than Rs.1500/- per month as on the date of the application. As the petitioner is squatting on the property, the 3rd respondent is being put to financial loss. Since the petitioner had failed to vacate the subject shop despite oral and written demands, the eviction application was filed for removing the encroachment. The eviction application was taken on file and an opportunity to resist the same was provided to the petitioner herein. On merits the impugned order was passed. Though there is a provision under the Act for preferring an appeal, no such appeal has been filed and the orders passed in O.A.No. 4 of 2006, which are impugned, have become final. As per the settled law and the provisions of the Act 30 of 1987, no fresh lease can be granted except by putting the lease hold rights of the property to public auction. Hence, the Writ Petition, which is being devoid of merit, is liable for dismissal.

7. From the submissions of the parties, it is manifest that lease in respect of the subject shop of the petitioner was not subsisting as on the date the original application for eviction was originally filed before the then authority concerned, i.e., the Deputy Commissioner, Endowments.

Though the petitioner was said to have made a representation for extension of term of lease and gave a consent letter offering to pay enhanced rent @ Rs.300/- per month, admittedly, there is neither extension of lease nor approval for extension of further term of lease on enhanced rent in favour of the petitioner. On the expiry of the term of lease, the petitioner had not vacated the property and is continuing in possession of the property. Therefore, proceedings for eviction in O.A.No.4 of 2006 were initiated before Deputy Commissioner of Guntur. On establishment of the Endowments Tribunal at Hyderabad, the case viz., O.A. no. 4 of 2006 was made over to the learned Tribunal. The writ petitioner filed a Counter and resisted the said eviction petition. After full-fledged trial and on merits, the learned Tribunal passed orders of eviction dated 02.08.2010. A perusal of the Order impugned shows that it is a well reasoned order. The provision of Section 84 of the Act 30 of 1987 deals with the mode of eviction on failure of removal of encroachment as directed by the Endowment Tribunal. After the eviction order has become final, the petitioner now seeks indulgence of this Court. It is not in dispute that the Commissioner or the Regional Joint Commissioner or the Joint Commissioner of Endowments are not having powers to grant lease hold rights in respect of any endowed property otherwise than by a public auction. This Court in a common Order dated 08.06.2010 passed in W.P.Nos.12674, 12686, 12691 of 2010 (unreported) having referred to the precedents and the provisions of law, which are relevant, had held that the persons, who continue to remain in illegal occupation of shops belonging to a charitable trust, cannot be heard to contend that, though they continue to remain in illegal occupation, the respondents can only have them evicted in accordance with the summary procedure prescribed under Section 83 of the Act 30 of 1987. In the case on hand, eviction proceedings are initiated as per the provision of Section 83 of the Act 30 of 1987, which reads as under:

“Encroachment 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 water-course 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”.

Had the petitioner vacated the property immediately after the term of lease had expired, the 3rd respondent would have auctioned the leasehold rights of the subject shop and would have been realising prevailing rent in the vicinity by now or in the alternative, the 3rd respondent would have been putting the property to a beneficial use by now. In spite of the fact that eviction order was passed and the same has become final, the petitioner, who is continuing in possession of the subject shop without vacating the same, now claims the protection of this Court. In the facts and circumstances of the case, the question is – *‘Whether this Court would be justified in showing indulgence to the petitioner?’*

8. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course (**vide C.R.Reddy Law College Employees’ Association, Eluru, West Godavari District v Bar Council of India, New Delhi**)^[1]. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognised lines and subject to certain self imposed limitations. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case, unless substantial injustice has ensued, or is likely to ensue. They will

not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law, which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. (vide ***Samgram Singh v. Election Tribunal, Kotah***)^[2].

9. In ***Kalinga Mining Corporation v. Union of India and others***^[3], it was 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.

Having regard to the facts and circumstances of the instant case and the legal position obtaining, this Court finds no reasons to exercise the discretion under Article 226 of the Constitution of India in favour of the petitioner.

10. Viewed thus, this Court finds that there is no merit in the Writ Petition.

11. For the aforesaid reasons, the Writ Petition is dismissed. No costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

M.SEETHARAMA MURTI, J

20th January 2016
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[\[1\]](#) 2004 (5) ALD 180 (DB)

[\[2\]](#) AIR 1995 SC 425.

[\[3\]](#) (2013) 5 SCC 252