

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Writ Petition No.28911 of 2010
&
Civil Revision Petition No.4955 of 2010

COMMON ORDER:

This writ petition under Article 226 of the Constitution of India is filed requesting to issue a writ, order or direction particularly in the nature of Writ of Certiorari calling for records relating to O.A.No.20 of 1994 dated 21.10.210 on the file of the A.P. Endowments Tribunal and quash the said order in the said Original Application.

1.1 This Civil Revision Petition filed by the petitioner under Article 227 of the Constitution of India is directed against the order dated 24.09.2010 of the learned Endowments Tribunal passed in I.A.No.194 of 2010 in the aforesaid Original Application.

2. As desired by the learned counsel for both the parties, submissions are heard in both the matters and they are being disposed of by this common order.

3. The case of the petitioner, as set out in the affidavit filed in support of the writ petition and as per the submissions made at the hearing, in brief, is as follows:

One Sri Bansidas, Chela of Ayodhya Das, who was the Mahant of the 4th respondent-Math situated at Chudibazar, had filed the Original Application in O.A.No.20 of 1994 before the Deputy Commissioner, Endowments Department under Section 83(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act 30 of 1987) ("the Act" for brevity) against the petitioner stating *inter alia* that she is a tenant of the premises (i.e., subject property) of the 4th respondent-Math on a monthly rent of Rs.1,800/- excluding electricity and water consumption charges and

that the premises was originally let out to the husband of the petitioner and that after the death of the husband of the petitioner, she had become a tenant of that property and that she had sublet the premises and that she had stopped payment of rents and that she is continuing in possession of the property of the Math without valid lease approval orders from the competent authority and that she is an encroacher. In the said Original Application, the said Mahant had sought eviction and also the relief of recovery of arrears of rent in a sum of Rs.6,500/-. The petitioner had resisted the said application by *inter alia* contending that the property was originally let out to her father-in-law in the year 1934 and that after the death of her father-in-law, her husband had succeeded to the tenancy rights and that later the petitioner had succeeded to the tenancy rights and had continued as a tenant on attornment and that the rent was enhanced from time to time on condition that the property could be sub-let to different persons and that the petitioner had agreed to pay the municipal tax for the premises and that she has been paying the rents regularly and that she had sub-let the premises to some other person and that while she is receiving Rs.3,000/- per month from the sub-tenant she is paying Rs.1,800/- to the Math towards monthly rent besides paying electricity and water consumption charges and that the sub-tenant, who was inducted into possession in the year 1991, was inducted with the permission and knowledge of the Endowments Department. While the petitioner was thus resisting the Original Application filed by the Mahant-Bansidas representing the 4th respondent-Math, the said Bansidas had died. On the death of the said Bansidas, who was the Mahant of the 4th respondent-Math, one Sri Purushottamdas came on record as Mahant of the 4th respondent-Math. He had also died on 26.07.2008. Subsequently, no successor-Mahant came on record in the Original Application to represent the 4th respondent-Math. However, the Original Application was not dismissed as abated. Nonetheless, in

view of the constitution of the Endowments Tribunal, the Original Application was transferred from the file of the Deputy Commissioner of Endowments to the said Tribunal. Before the Tribunal, the petitioner had filed a Memo on 06.08.2008 informing the Tribunal about the death of Mahant Purushottamdas. The petitioner had also filed an Interlocutory Application in I.A.No.194 of 2010 under Order 22 Rule 3 read with 151 of the Code of Civil Procedure to close the Original Application as abated. The Tribunal by order dated 24.09.2010 dismissed the said Interlocutory Application. Aggrieved of the said order, the petitioner filed the aforementioned Civil Revision Petition before this Court. This Court granted stay of all further proceedings in the said Civil Revision Petition for a period of six weeks. A Memo was filed in the Registry of the Endowments Tribunal vide U.S.R.No.353 of 2010 dated 30.10.2010 informing the Tribunal about the said orders granted in the Civil Revision Petition by this Court. While so, to her utter surprise, the petitioner had received on 15.11.2010, a copy of the award/judgment of the Tribunal dated 21.10.2010 in the Original Application. A perusal of the said award/judgment disclosed that the learned Tribunal treated the matter as a *suo motu* case and that the Assistant Commissioner of Endowments was shown as the petitioner in the Original Application. The said award further disclosed that the judgment was pronounced in open Court on 21.10.2010 and that the decree appended to the judgment was signed by the Presiding Officer/Chairman of the Tribunal on 08.10.2010. In the aforementioned facts and circumstances, the award passed in the Original Application filed by the Mahant of the Math recording the cause title as a *suo motu* proceeding after the death of the Mahant Purushottamdas is unsustainable. The petitioner was never put on notice in regard to *suo motu* proceedings taken up by the Tribunal. The order was passed in the absence of the petitioner. The Tribunal has no jurisdiction to entertain *suo motu* proceeding or convert the proceeding initiated by a party into *suo motu* proceeding. The observation in the award that the

proceeding originally initiated is *suo motu* proceeding is not correct. After the change of nature of proceedings, no notice was issued to the petitioner. The petitioner is not disputing the ownership of the Math.

Hence, this writ petition is filed to set aside the orders dated 20.10.2010 of the Tribunal in O.A.No.20 of 1994.

4. Manuswamy, the Mahant of the 4th respondent-Math, filed a counter affidavit *inter alia* contending as follows:

Manuswamy, the deponent, is recognized as a Mahant of the 4th respondent-Math *vide* proceedings dated 30.09.2010 as per the provisions of the Act whereunder the Dharmika Parishyad is the competent authority to recognize the Mahant. Accordingly, he is exercising rights and performing the religious duties in addition to the administrative functions as a Mahant of the 4th respondent-Math. The petitioner is admittedly an encroacher as per the provisions of the Act. Any act of subletting undertaken by the lessee is a violation of the terms and conditions of the lease. The plea taken by the petitioner that she was permitted to sublet is incorrect. The Deputy Commissioner of Endowments had initiated eviction proceedings under Section 83 of the Act by filing the Original Application on the grounds of unauthorised sub-lease, default in payment of rents, expiry of original term of lease and the petitioner's continuation in the property as an encroacher. Once a tenant dies, leasehold rights come to an end and the leased property vests back with the landlord, that is, the 4th respondent-Math. Therefore, there is no question of tenancy rights devolving upon the petitioner or attornment of tenancy. Without any evidence whatsoever, the petitioner falsely pleads that the property was originally let out to her father-in-law and that later her husband had continued as a tenant and that on the death of her husband she is continuing as a tenant with a right to sub-lease. The petitioner is collecting the rents in a sum of Rs.30,000/- from various tenants. The institution is in a pathetic financial condition; and, the Mahant is unable

to perform the basic rituals in the Balaji Temple situated in the Math. The petitioner is conveniently squatting on the property and is enjoying by collecting huge rents from others. The Mahant Purushottamdas died in the year 2008; and, thereafter the 4th respondent was declared as the Mahant of the subject institution. The petitioner mischievously pleads that there is no Mahant to the subject institution. The Assistant Commissioner of Endowments was made the petitioner/applicant in the Original Application and the proceeding was treated as *suo motu* proceeding. In case, the petitioner is aggrieved of the orders of the Tribunal, treating the Assistant Commissioner as the petitioner and the proceeding as a *suo motu* proceeding, she ought to have challenged the said proceedings before an appropriate Forum. She cannot raise the contention at a belated stage in this writ petition that too after the award was passed. The Original Mahant gave evidence in the Original Application and the trial had concluded before the Deputy Commissioner of Endowments. Hence, the technical contention raised is unsustainable. At that time an Advocate was representing the writ petitioner in the Original Application before the learned Endowment Tribunal. And, when the Interlocutory Application was dismissed, the petitioner had filed the Civil Revision Petition before this Court. Therefore, it cannot be said that she is not aware of the *suo motu* proceedings and about the Assistant Commissioner being made as a petitioner in the Original Application. The petitioner has been successfully dragging on the litigation for more than 17 years and collecting huge rents from others at the cost of the 4th respondent-Math. The petitioner is not paying any amount since long time but is squatting on 2000 square yards of Math property without any manner of right. Hence, the writ petition may be dismissed.

5. The learned counsel for the parties made their submissions in line with the respective pleadings, the details of which are stated *supra*.

6. I have perused the material record and I have given earnest consideration to the submissions.

7. Dealing first with the Civil Revision Petition, it is to be noted that the said Civil Revision Petition is directed against the interlocutory order dated 24.09.2010 passed by the Endowments Tribunal in I.A.No.194 of 2010 in O.A.No.20 of 1994. In the Civil Revision Petition, stay of the proceedings in the Original Application was granted by this Court on 29.10.2010 for a period of six weeks. The petitioner states that she had got filed a memo vide U.S.R.No.353 of 2010 dated 30.10.2010 in the Registry of the Tribunal. Admittedly, even before the stay orders were passed by this Court, the Original Application was disposed of by the Endowments Tribunal by award dated 21.10.2010. Therefore, the Civil Revision Petition has become infructuous and is liable to be dismissed. Viewed thus this Court finds that the CRP is liable for dismissal. As a sequel to the dismissal of the revision petition as infructuous, the petition filed by the Math for its impleadment stands closed since adjudication of the said petition is not necessary.

8. This takes us to adjudication of the writ petition, wherein the award dated 21.10.2010 in O.A.No.20 of 1994 of the learned Endowments Tribunal is under challenge on various grounds.

8.1 The first and principal set of submissions on behalf of the writ petitioner are as under: "The then Mahant Purusuthamdas, who was prosecuting the Original Application on behalf of the Math, had died during the pendency of the said application before the Deputy commissioner of Endowments; however, his successor Mahant, if any, was not brought on record to represent the Math. In spite of the said fact, the Tribunal did not consider the request of the petitioner to dismiss the Original Application as abated. After the Endowments

Tribunal was established, the Original Application pending on the file of the Deputy Commissioner was made over to the file of the learned Endowments Tribunal. On that, the Tribunal had treated the Original Application as a *suo motu* eviction proceeding by showing the Assistant Commissioner of Endowments as the petitioner. While acting accordingly, the Tribunal did not put the petitioner on notice about the same. The fact that the nature of the proceeding was changed to a *suo motu* proceeding was not brought to the notice of the petitioner and no notice was served upon her in that regard. In the *suo motu* proceeding, by showing the Assistant Commissioner of Endowments as the petitioner, the Tribunal passed the impugned award, though the 4th respondent-Math was not represented by any Mahant subsequent to the death of the then Mahant Purushottamdas. Therefore, the award passed by the Tribunal ordering eviction of the petitioner from the subject property is a nullity and is liable to be set aside.”

8.2 The first contention is that the petitioner is not served with any notice and was not put on notice about the change of proceeding into a *suo motu* proceeding by the Tribunal. It is not in dispute and it is also borne out by the record that the petitioner was represented by a Counsel in the Original Application when the same was pending before the Deputy Commissioner and later before the Tribunal. In the Order impugned the learned Judge of the Tribunal had observed as under: “It is necessary to mention that, the DC, Endowments, Hyderabad, before whom the matter was under enquiry arrayed on the docket right from dt.06-08-1994 as if suo-motu proceeding for continuation showing Mahant Purushottamdas (since died on 26-07-088) as R1 and Smt. Archala Kanchanlal Patesl as R2 and the impleaded party-Suresh Chandra Patel as R3 by order dt.02-09-1997.” [Reproduced verbatim]. From the above observation in the Award of the Tribunal it appears that consequent of the death of the

then Mahant, the Original Application for eviction was considered by the Deputy Commissioner as a *suo motu* proceeding. Indeed on the death of the Mahant, the petitioner, by filing a memo, had made a request to the Tribunal to dismiss the Original Application as abated. The petitioner had also got filed an interlocutory application in I.A.No.194 of 2010 before the Tribunal under Order 22 Rule 3 read with 151 of the Code of Civil Procedure to close the Original Application as abated. Along with the said interlocutory application, the petitioner had also filed two more applications with requests to reopen the evidence and recall witnesses. The Tribunal had dismissed the said applications by a common order dated 24.09.2010. The CRP, which is coming along with this writ petition, is directed against the said common order of the Tribunal so far as it related to the dismissal of the application in I.A.No.194 of 2010. In the Civil Revision Petition, a copy of the common order passed by the Tribunal in the Interlocutory Applications is filed. The material record in the Civil Revision petition, particularly the Cause Titles in the interlocutory application and the order of the Tribunal, would disclose that the Assistant Commissioner of Endowments is arraigned as the Petitioner in the Original Application before the Tribunal. Therefore, it is noticeable that the petitioner is very much aware that in the Original Application before the Tribunal, the Assistant Commissioner is the petitioner and that the said proceeding is a *suo motu* application.

Admittedly, the petitioner had arraigned the Assistant Commissioner as one of the respondents in the Civil Revision Petition. Hence, it is obvious that the contentions of the petitioner do not find support from the material record. Hence, the contention of the petitioner that the Tribunal had not put the petitioner on notice about showing the Assistant Commissioner as the petitioner in the Original Application and the change of the nature of proceeding to a *suo motu* proceeding cannot be countenanced.

8.3 We next come to the contentions of the petitioner that the proceeding stood abated on the death of the Mahant Purushottamdas and on the consequential failure to bring on record his successor Mahant on record to represent the Math that the Tribunal committed a grave error in not dismissing the Original Application as abated; and that under facts and in law, the order of the Tribunal, which is impugned in the writ petition, is a nullity as it was passed in favour of dead party. The Math is an institution and is a legal entity and that on the death of the Mahant, the question of bringing his legal representatives on record does not arise as in the case of individuals is not in dispute. In this regard, what is to be further noted is that Mahant Purushottamdas died in the year 2008. Manuswamy-his successor Mahant was appointed as the Mahant of the Math by proceedings dated 30.09.2010. By the time the award was passed on 21.10.2010, Mahant Manuswamy was already appointed as the Mahant. Therefore, the fact that the institution was being represented by a duly appointed Mahant as on the date the award was passed is borne out by record. Hence, the contention that the Award was passed in favour of a dead party and is a nullity cannot be countenanced.

8.4 The next contention of the petitioner, which according to the learned counsel for the petitioner is crucial, is that the Tribunal has no jurisdiction to entertain *suo motu* proceeding or convert the proceeding initiated by a party into *suo motu* proceeding. Having regard to the contentions of the parties, it is now necessary to refer to Section 83 of the Act, which reads as under:

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 water-course or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provision 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 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 space after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.

(2) Where, on a perusal of the report received by him under sub-section (1), the Endowments Tribunal finds that there is a prima facie case of encroachment, it shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified in the notice should not be made. A copy of the notice shall also be sent to the trustee of the institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Whereafter considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such enquiry as may be prescribed, the Endowments Tribunal is satisfied that there has been an encroachment, it may, by order, require the encroacher to remove the encroachment and deliver possession of the land or, building or space encroached upon to the trustee before the date specified in such order.

(5) The order of Endowments Tribunal under sub-section (4) shall be in writing and shall contain the grounds on which he has passed the order.

(6) During the pendency of the proceedings, the Endowments Tribunal shall order the encroacher to deposit such amount as may be specified by it in consideration of the use and occupation of the properties in question in the manner prescribed.

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A plain reading of the provision of law would show that the Assistant Commissioner shall report with relevant particulars to the Endowments Tribunal, either *suo motu* or upon the complaint made to him by a trustee, when he has reason to believe that any person had encroached upon any endowed property belonging to the institution. Under the explanation appended to the sub-section (1), 'encroacher'

includes any person in occupation of the property of the institution without the approval of the competent authority sanctioning lease. As per sub-section (2) of the Section, on a perusal of the report submitted by the Assistant Commissioner under sub-section (1), the Endowments Tribunal is competent to cause a notice to be served upon the encroacher with necessary details and receive objections, if any, of the encroacher and conduct enquiry as prescribed and order eviction, if it is satisfied that there has been an encroachment and direct the encroacher to deliver possession of the property encroached upon to the trustee. The provision of law also provides that a copy of the notice may also be sent to the trustee of the institution or endowment concerned. Thus, on a consideration of the provision of law, it is manifest that the Endowments Tribunal can take up an eviction proceeding against an encroacher on the *suo motu* report of the Assistant Commissioner. In the case on hand, a perusal of the award would show that the Assistant Commissioner of Endowments is the petitioner and the proceeding is a *suo motu* proceeding. The proceeding was originally instituted by the Mahant before the Deputy Commissioner before establishment of the Tribunal and the entire trial was concluded before the Deputy Commissioner. However, before the Deputy Commissioner had disposed of the Original Application for eviction, the Endowment Tribunal was established. Therefore, the original application was made over to the Endowments Tribunal. Since Purushottamdas, who has already deposed in the matter, had died, the Tribunal having regard to the facts and circumstances of the case, continued the proceedings with the Assistant Commissioner, who is the competent authority to report to the Tribunal about any encroachment, as the petitioner and had proceeded to dispose of the Original Application as *suo motu* proceeding. After the case was taken on file by the Endowments Tribunal, admittedly, the petitioner had appeared before the said Tribunal and also filed a Memo reporting the death of the Purushottamdas, the then Mahant of the Math, and had

also filed an Interlocutory Application to close the Original Application as abated. The said application was dismissed by the Tribunal, as already noted. Further, the Tribunal, after taking into consideration the evidence recorded by the Deputy Commissioner had passed a reasoned award by holding that the petitioner is an encroacher. To reiterate the legal position, the Original Application for eviction and other reliefs on the file of the Tribunal has been initiated under section 83 of the Act. Sub-section 1 of the said section empowers the Assistant Commissioner to report with relevant particulars to the Endowments Tribunal, either *suo motu* or upon the complaint made to him by a trustee of an Institution, when he has reason to believe that any person had encroached upon any endowed property belonging to the institution. Such report together with all the particulars to the Endowments Tribunal having jurisdiction thus puts in motion the process which would enable the Tribunal, if satisfied, that there has been an encroachment, to order for removal of such an encroachment.

The provision of law never required the institution or endowment, whose land or building or tank which suffered encroachment, also to be added as an applicant in any such proceeding that is initiated by the Assistant Commissioner of Endowments. Therefore, it is perfectly legitimate of the Assistant Commissioner of Endowment to maintain the proceedings under Sub-section 1 of Section 83 against the writ petitioner herein. Hence, the petitioner cannot be heard to say that in the absence of the Mhanth of the Math, the Tribunal has no jurisdiction to entertain a *suo motu* proceeding by showing the Assistant Commissioner as petitioner.

8.5 The petitioner could not show before this Court that she was continuing in possession pursuant to a fresh lease or a renewal of earlier lease granted in favour of her predecessor. She also could not produce any record to show that she has been regularly paying any amounts to the Math. In any view of the matter, no prejudice was

shown to have been caused to the petitioner on account of the procedure adopted by the Tribunal. In the absence of any valid lease in favour of the petitioner and on her failure to show her right to remain in possession of the subject property of the institution, this Court is of the well considered view that she is not entitled to claim any relief by invoking the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. 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 High Court having regard to the facts of a case has discretion to entertain or not to entertain a writ petition. 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 recognized lines and subject to certain self-imposed limitations. The expression 'for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Court must exercise the same with certain restraints and within some parameters. [vide **Director of Settlements, A.P. v. M.R.Apparao** (2002) 4 SCC 638]. Under Article 226 of the Constitution, the High Court, having regard to the facts of a case, has discretion to entertain or not to entertain a writ petition. But, the High Court has imposed upon itself certain restrictions in the exercise of this power. [See: **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.** (AIR1995SC22)]. "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 recognized 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]

8.6 The law is well settled that he who seeks equity must do equity. In the case on hand, except putting forth purely technical contentions contrary to the facts borne out by the record, the petitioner could not produce any evidence to show that she is entitled to remain in possession of the property, which is admittedly endowed to the 4th respondent Math. The petitioner, who is in unauthorized occupation of the subject property of the 4th respondent-Math, who now claims the protection from this Court in this writ petition, does not deserve any such protection and this is not a fit case to show any indulgence to the petitioner.

9. Having regard to the reasons, the Writ Petition and the Civil Revision Petition are, accordingly, dismissed.

There shall be no order as to costs.

As a sequel to the dismissal of the Writ Petition and the Civil Revision Petition, the Miscellaneous Petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

28th January 2016
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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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[\[1\]](#) 2004(5) ALD 180 (D.B)

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