

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5872 of 2012

ORDER:

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The unsuccessful respondent in O.A.no.926 of 2011 on the file of the A.P. State Endowments Tribunal, at Hyderabad had filed this revision under Article 227 of the Constitution of India assailing the orders dated 25.07.2012 of the learned Chairman of the said Tribunal passed in I.A.no.1897 of 2011 filed under Section 83(6) of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) read with Section 151 of the Code of Civil Procedure, 1908 whereby the respondent/revision petitioner herein was directed by the tribunal to pay to the petitioner-temple Rs.10,000/- per month towards damages for use and occupation of the schedule property pending final disposal of the OA.

2. I have heard the submissions of the learned counsel for the revision petitioner/respondent in O.A.no.926 of 2011 and the learned standing counsel appearing for the applicants in the said OA, i.e., the respondents herein. I have perused the material record. The parties in this revision shall hereinafter be referred to as 'the revision petitioner' and 'the respondents', as arrayed in this revision, for convenience and clarity.

3. The facts necessary for consideration, in brief, are as follows:

The respondents herein filed O.A.no.926 of 2011 ('OA', for brevity) against the revision petitioner under Section 83(1) of the Act for a declaration that the revision petitioner is an encroacher and for his eviction from the schedule property, of an extent of 670 square feet equivalent to 75 square yards, which is situated at Maharajgunj of Hyderabad and is more fully described in the schedule annexed to the OA. Admittedly, the revision petitioner was formerly an archaka of the 2nd respondent temple; and, having retired from service, he is continuing in the OA schedule house property. The respondents herein having filed the OA seeking the above reliefs had also filed an interlocutory application for a direction to the revision petitioner to

deposit Rs.10,000/- per month towards damages for use and occupation.

The OA is being resisted by the revision petitioner *inter alia* contending that Pandarinathji and Hanumanji temples are different even as per the entries in the Registers being maintained by the Endowment Department and that the original application filed by the respondents herein seeking eviction of the revision petitioner by describing the property as belonging to Pandarinathji and Hanumanji temple is liable for dismissal as the two temple are different. It is *inter alia* contended by the revision petitioner in his counter filed in the OA that the initiation of proceedings under Section 83 of the Act is misconceived, since the revision petitioner is in possession of the property and has been paying taxes in his name individually. However, by the impugned orders, the learned Chairman of the Tribunal had allowed the interlocutory application filed by the respondents against the revision petitioner and fixed a sum of Rs.10,000/- per month towards damages for use and occupation and directed the revision petitioner to pay the said amount with effect from 01.12.2011 including all arrears. In the said orders it is further directed that the revision petitioner shall pay all the arrears within one month, or else, the arrears would be recovered, as arrears of land revenue, by executing the order.

4. Aggrieved of the said orders, the respondent in the OA i.e., the revision petitioner had filed this revision.

5. The learned counsel for the revision petitioner would contend as follows:

The Tribunal ignored the fact that the revision petitioner is staying in the schedule property, which is his own property and that the title of the temple in respect of the OA schedule property is disputed. The order of the Tribunal is *ex facie* illegal. The Tribunal ought to have noted that the revision petitioner had filed a counter in the original application disputing the title of the property by making a specific reference to O.S.no.1162 of 1996 which was decreed in favour of the revision petitioner's sister. Therefore, fixing the rent in the form of damages under Section 83(6) is *ex facie* illegal. The Tribunal erred in recording final conclusions in an interlocutory application. The Tribunal had

exceeded its jurisdiction while passing the orders impugned in this revision. When the title is in dispute, no order under Section 83(6) of the Act should have been passed by the Tribunal. The Tribunal did not state in its orders as to on what basis the rent was fixed. The revision petitioner is an archaka, who has rendered services to the temple for about 35 years. The Assistant Commissioner had also filed affidavit in lieu of examination-in-chief. The Tribunal, therefore, ought to have conducted trial and disposed of the OA, on merits, instead of disposing of the IA. The Tribunal ought to have seen that the question of awarding damages for use and occupation would arise only on the respondents herein succeeding in their OA filed for declaration and eviction.

6. On the other hand, the learned Standing Counsel appearing for the official respondents while supporting the orders of the Court below had contended that the petitioner is admittedly an archaka of the temple; and that he had retired from service; and that on his failure to vacate the property of the temple, the respondents herein are constrained to file the OA for a declaration that he is an encroacher and for his eviction; and that the revision petitioner had taken a false plea that the suit O.S.no.1162 of 1996 was decreed in favour of his sister; whereas the copy of the decree of the judgment dated 16.07.2003 passed in the said suit by the learned I Additional Senior Civil Judge, Hyderabad, would disclose that the said suit was dismissed for default for non-prosecution. He would further submit as follows: "The revision petitioner had set up title in his own sister while disputing the title of the respondents herein. He had further claimed that his sister Deva Kanya had adopted his son Pavan Kumar. In view of the fact that the suit filed by the sister of the revision petitioner was dismissed, the question of her being the owner of the property and the devolution of the property on the son of the petitioner by name Pavan Kumar, who is said to have been adopted by the said Dava Kanya, does not arise for consideration. In view of the very false plea taken in the defence, the revision petition is liable for dismissal. The property is situated in a prominent area, that is, Maharajgunj of Hyderabad. It is a house property. Therefore, the

amount of Rs.10,000/- per month fixed by the learned Tribunal as damages for use and occupation is just, reasonable and fair. In the facts and circumstances of the case, the order impugned does not warrant interference.” Having placed reliance on a writ affidavit in W.P.No.20109 of 2013, which is filed as an additional material paper, it is sought to bring to the notice of this Court that the petitioner-archaka had also made a claim in respect of another house property in an extent of 315 square yards bearing Dr.No.15-2-197, Maharajgunj of Hyderabad, which is also an endowed property and it is sought to be contended that the said claim of the petitioner in respect of another house property of the 2nd respondent-temple would lay bare his conduct in laying claims in regard to the properties, which do not belong to him and his preparedness to take any stand to grab the properties of the temple.

7. I have gone through the pleadings. I have perused the material record. I have noted the submissions.

8. The revision petitioner is admittedly in possession of a house property situated at Maharajgunj, Hyderabad. The respondents having filed the OA are seeking a relief of declaration that the revision petitioner is an encroacher and also the relief of recovery of possession of the schedule property from him. In the schedule of the OA, the extent of property was mentioned as 75 square yards (=670 square feet). The revision petitioner having contended that a suit filed by his sister was decreed and that his sister is the owner of the property and that his son was adopted by his sister had failed to establish the said facts. On the other hand, the respondents herein having produced a copy of the judgment in O.S.no.1162 of 1996 had established *prima facie* that the suit filed by the sister of the revision petitioner was dismissed for non-prosecution. Therefore, the plea of adverse title set up by the respondent *prima facie* appears to be not well founded. He is only a retired archaka of the temple and is continuing in occupation of the OA schedule house property. *Prima facie*, the revision petitioner could not establish his independent right or legal right, if any, to remain in possession of the subject

property. He could not establish *prima facie* any of his contentions required to be established in this interlocutory application to dislodge the *prima facie* case of the respondents herein. It is true that the contentions of the parties and the issues that arise for consideration have to be determined in the OA after full-fledged trial and it is not the stage to record any final findings which will have a bearing on the issues involved in the OA. Dealing with the contention of the respondents herein in regard to the claim in the writ petition said to have been made by the revision petitioner, it is trite to observe that the subject property involved in the present *lis* is a house property of an extent of 670 square feet (=75 square yards) bearing House No.15-2-196, whereas, the subject matter of the writ petition is a house property of a different extent with different door number and therefore, there is no need to deal with the aspect concerning the other house property, which is the subject matter of a writ proceeding. Though the order impugned is a brief order, the same on a perusal would show that a reference was made to the certificate of Executive Engineer (R&B), wherein the rental value is mentioned. Taking the rental value therein and the extent of property and its location in a prime area, the learned Tribunal had arrived at the amount of Rs.10,000/-, and fixed the said amount as the amount payable every month by the revision petitioner towards damages for use and occupation of the OA schedule house, till the final disposal of the OA. Having regard to the reasons aforementioned, this Court is of the considered view that no valid and sufficient grounds are made out in this revision by the revision petitioner warranting interference with the order impugned. If the order is confirmed and a direction is given to the Tribunal for expeditious disposal of the OA, the ends of justice would be met, in the well-considered view of this Court.

9. Before parting with the case, it is necessary to note that the learned counsel for the revision petitioner had contended that the learned Tribunal had exceeded in its jurisdiction in observing in its order that on failure of the revision petitioner to pay the arrears as directed in the order, they are to be recovered as arrears of land revenue from the revision petitioner. He would contend that there is no power conferred on the tribunal to give such a

direction and that if the order is not complied with the respondents herein have to pursue the remedies available under law like execution of the order, but there cannot be a direction that the arrears shall be recovered as arrears of land revenue. Be it noted that Section 148 of the Act deals with recovery of contributions etcetera as arrears of land revenue. Be that as it may, since a temple under the control of Endowments department is an instrumentality of the State, this Court finds no jurisdictional error committed by the learned Tribunal in directing the arrears of rents to be recovered as an arrear of land revenue in case of failure of the revision petitioner to pay the same as directed in the orders impugned.

10. In the result, the Civil Revision Petition is dismissed confirming the orders of the Tribunal. The revision petitioner is granted a time of three months from today for depositing the entire arrears upto date without prejudice to the rights and contentions of both the parties. He shall continue to deposit in future, the said amount every month regularly and without fail, during the pendency of the OA. Having regard to the fact that the OA is of the year 2011, the Tribunal is directed to dispose of the OA as expeditiously as possible and preferably, within four months from the date of the receipt of a copy of this order. No costs.

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

M. SEETHARAMA MURTI, J

22nd April, 2016
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