

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

WRIT PETITION No.10658 of 2012

ORDER:

In this Writ Petition, the petitioner assails the order dt.03-01-2012 in O.A.No.729 of 2011 passed by the Endowments Tribunal, Hyderabad directing eviction of petitioner from Shop No.90 of Sri Prasanna Anjaneya Swamy Temple Complex, L.B. Nagar.

2. The subject premises is a shop in Sy.No.49/13 of Bahadurguda village, Saroornagar Mandal, now within the L.B. Nagar Municipal Circle, Greater Hyderabad Municipal Corporation. The 2nd respondent temple was collecting rents from the petitioner since 1986.

3. In 1989, L.G.C. No.9 of 1989 was filed before the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 by the State Revenue Department against 2nd respondent as well as 54 other persons who were in possession of an extent of Ac.1.15 guntas in Sy.No.49/13 of the above village contending that the said land belongs to Government. The above extent included the area where the shop in the occupation of petitioner is located.

4. The Special Court, on 25-01-1993, passed a judgment holding that only Ac.0.38 guntas on which the 2nd respondent temple exists out of Ac.1.15 guntas is exempted and the remaining extent of Ac.0.17 guntas on which the shops of the petitioner and others were located is Government land and directed the Revenue Department officials to take steps for taking possession of the land.

5. The 2nd respondent challenged the judgment dt.25-01-1993 in W.P.No.2959 of 1993 before this Court. The said Writ Petition was dismissed on 12-03-1993 at the admission stage.

6. The 2nd respondent then filed Writ Appeal No.259 of 1993 before a Division Bench of this Court. On 31-03-1993, the said Writ Appeal was disposed of by this Court directing the Commissioner, Endowments to send the representation of the temple for regularization of occupation of land by it to the Government and the Government was directed to dispose of the same in three months. It further directed that till then *status quo* would prevail.

7. Till date, almost 23 years have elapsed, there is no order issued by the Government regularizing the alleged

occupation of

2nd respondent.

8. The 2nd respondent, notwithstanding the fact that it had lost in the challenge to L.G.C.No.9 of 1989 when W.P.No.2959 of 1993 was dismissed on 12-03-1993, and notwithstanding the fact that there is no regularization of its right in the land by the State Government till date, filed O.A.No.729 of 2011 before the A.P.Endowments Tribunal, Hyderabad against the petitioner seeking eviction of petitioner alleging that petitioner is an encroacher of the property which belongs to it.

9. The statement in the O.A. that the land in question belongs to

2nd respondent is not true because in L.G.C.No.9 of 1989, the land in occupation of petitioner was held to belong to State Government and not to the 2nd respondent. The 2nd respondent suppressed in the O.A. the fact that it lost L.G.C.No.9 of 1989 and W.P.No.2959 of 1993 before this Court and the fact that there is no regularization or assignment in its favour by the State Government pursuant to the order dt.31-03-1993 in W.A.No.259 of 1993. It is most unfortunate that a religious institution played fraud on the Tribunal by not disclosing its lack of

title to the subject shop and sought eviction of petitioner under Section 83 of the Act pleading that it belongs to it.

10. In the O.A, notice was served on petitioner but due to some reasons, the petitioner did not respond and contest the O.A. He was accordingly set exparte and an order of eviction was passed against him on 03-01-2012.

11. On coming to know about it, the petitioner filed I.A.No.273 of 2012 under Order IX Rule 13 C.P.C. to set aside the said order and permit him to contest the O.A. on merits. In the said application, he specifically referred to the Order in L.G.C.No.9 of 1989 and the orders in W.P.No.2959 of 1993. While the said application was pending, he was evicted on 29-02-2012. The petitioner then filed the present Writ Petition.

12. It is stated across the Bar that I.A.No.273 of 2012 was dismissed on 16-03-2012.

13. Learned counsel for petitioner contends that respondents had committed fraud on the Tribunal by suppressing the fact that

2nd respondent had no title to the land in view of the judgment in L.G.C.No.9 of 1989, which was also confirmed in W.P.No.2959 of 1993 and therefore the 2nd respondent could not have invoked the jurisdiction of the

Endowments Tribunal and obtained the impugned order. According to him, the said order is void and without jurisdiction.

14. The 2nd respondent filed a counter admitting that L.G.C.No.9 of 1989 was dismissed and W.P.No.2959 of 1993 was also dismissed. It referred to the order dt.31-03-1993 in W.A.No.259 of 1993 and contended that since there is *status quo* order granted therein till regularization order is passed by the Government, it is entitled to maintain the O.A. It is contended that the Commissioner of Endowments had recommended to the Government to regularize the land in favour of the temple on 03-08-1992. It is nowhere stated that any such order has been passed in favour of 2nd respondent. It is also stated that I.A.No.273 of 2012 had become infructuous on account of the execution of O.A. judgment. A plea is raised that petitioner was not a party to the L.G.C., that he was inducted afterwards by the Temple authorities as a tenant and he cannot dispute the title of 2nd respondent.

15. No explanation is furnished in the counter affidavit why 2nd respondent has failed to disclose before the Tribunal

in the O.A. the fact that it had no title by virtue of judgment dt.25-01-1993 in L.G.C.No.9 of 1989 and the dismissal of W.P.No.2959 of 1993 on 12-03-1993,

16. I am of the considered opinion that this amounts to suppression of material facts on the basis of which the jurisdiction of the Endowments Tribunal would depend, in as much as the Tribunal would have jurisdiction only if the property in question belonged to the 2nd respondent and not otherwise. I am of the considered opinion that the 2nd respondent had played fraud on the Tribunal by suppressing the facts about its lack of title by virtue of judgment dt.25-01-1993 in L.G.C.No.9 of 1989. It is settled law that a judgment obtained by playing fraud on Court is a nullity and the respondents cannot be allowed to place any reliance on such a judgment and enjoy the benefit thereof (**A.V.Papayya Sastry Vs. Govt. of A.P.** [\[1\]](#)).

17. The plea of the Temple authorities that the petitioner is a tenant and his eviction was sought in that capacity and he cannot dispute the title of 2nd respondent, cannot be countenanced in as much as 2nd respondent ceased to have ownership over the

property after the judgment in L.G.C.No.9 of 1989 and therefore it could not have maintained the O.A. before the Tribunal at all. As long as the State Government had not passed any orders assigning or regularizing the land in favour of 2nd respondent, the 2nd respondent has no jurisdiction to claim any rents or to evict the persons in occupation of the land which was held to belong to Government in L.G.C.No.9 of 1989. Of course the State Government would certainly have jurisdiction to evict the petitioner by following due process of law, if it so chooses.

18. In this view of the matter, the Writ Petition is allowed and the order dt.03-01-2012 in O.A.No.652 of 2011 of the A.P. Endowments Tribunal, Hyderabad is declared as having been obtained by 2nd respondent by playing fraud on the said Tribunal. Consequently, it is declared that the said order is a nullity. The respondents are directed to restore possession of the subject property to petitioner within one month from today. No costs.

19. As a sequel, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 26-02-2016

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[\[1\]](#) 2007(4) SCC 221)