

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI**

Writ Appeal No.417 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.19044 of 2008 dated 22.12.2016.

The appellant filed an I.A, before the Endowments Tribunal in the year 2008, seeking to implead the Archakas of the 2nd respondent-Temple as respondents 3 to 5 in O.A.No.101 of 2006. Proceedings under Section 83(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act") were instituted by the Temple by filing O.A.No.101 of 2006 against the appellant seeking to declare them as encroachers, and to pass orders removing them from the encroachments. In the said O.A. the appellant herein stated that the hereditary Archakas of the 2nd respondent-Temple had entered into an agreement with them on 30.12.1992 for a period of 25 years, which would expire only on 30.12.2017. The Endowments Tribunal dismissed the I.A. holding that the proposed parties were not necessary parties. Before the Learned Single Judge it was contended, on behalf of the appellant, that they had acquired rights only through the Archakas, who were proposed to be impleaded as respondents 3 to 5, and therefore they were proper and necessary parties.

In the order under appeal the Learned Single Judge observed that it was not in dispute that the Deputy Commissioner of Endowments was the competent authority to determine whether a person, who is in occupation of the properties belonging to the religious institution, is an encroacher or not; the scope of an enquiry under Section 83 of the Act was to determine the status of the person in occupation of the properties

belonging to the religious institutions; the appellant had admitted that they alone were in possession of the schedule land belonging to the 2nd respondent-Temple; the method and manner under which they came to acquire such right, and the question whether the same was legal or not, were required to be determined by the Deputy Commissioner of Endowments under Section 83 of the Act; once it was admitted that it was the appellant alone who was in occupation of the schedule land, impleadment of persons, through whom they acquired such right, would become irrelevant except in cases where there is a dispute regarding title; in the present case, there is no dispute with regards title of the 2nd respondent over the schedule land; and, in the circumstances, respondents 3 to 5 were not necessary parties for determination of the aspect whether the appellant was an encroacher or not of the schedule land belonging to the 2nd respondent-Temple. The Learned Single Judge directed the Deputy Commissioner of Endowments to dispose of O.A.No.101 of 2006, in accordance with law, within a period of three months from the date of receipt of a copy of the order.

Before us Sri Sai Gangadhar Chamarthi, learned counsel for the appellant, would reiterate the very same submissions urged before the Learned Single Judge. Learned counsel would submit that, in terms of a compromise decree, the subject land was handed over to the Archakas from whom the appellant had obtained a lease; the stand of the Temple, that the Archakas had surrendered the land to the Temple, is without any basis; and it is necessary that the Archakas be impleaded as respondents to establish this fact.

As has been noted by the Learned Single Judge, in the order under appeal, the appellant alone is in possession of the subject land, and not the erstwhile Archakas of the temple. The claim of the Temple is that the

appellant had encroached upon Temple lands and it was necessary, therefore, that they be evicted therefrom.

In an application under Section 83 of the Act, it is only the encroacher who is a necessary party and, as the 2nd respondent-Temple alleges that it is the appellant who is the encroacher, it is they alone who are necessary parties to the proceedings, and not the Archakas who the appellant claims had put him in possession of the subject land, pursuant to the lease agreement. In an appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order appeal.

Sri Sai Gangadhar Chamorthy, learned counsel for the appellant, would seek liberty to take steps to summon the Archakas as witnesses. Suffice it to make it clear that any application filed by the appellant in this regard shall be considered by the Tribunal on its own merits, without being influenced either by the order passed by the Learned Single Judge or by the order now passed by us in this appeal.

Subject to the above observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

05th June, 2017
JSU

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Date: 05.06.2017

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