

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.27367 of 2012

ORDER:

In this writ petition, under Article 226 of the Constitution of India, the grievance of the writ petitioner, Sri Venugopala Bhajana Samajam, is that the 4th respondent, Velpuri Suryanarayana, encroached upon the land belonging to Sri Venugopala Swamy Devastanam, Junamchundur village of Guntur Rural Mandal, and that the respondents 1 to 3 are not taking any steps in accordance with the procedure established by law to remove the encroachment. Therefore, a direction is sought to the respondents 1 to 3 to remove the encroachment made by the 4th respondent in the Devastanam land of an extent of Ac.0.30 cents in Survey Nos.323 and 324 of Junamchundur village of Guntur Rural Mandal.

2. Submissions of the learned counsel for the petitioner-Samajam and the learned Government Pleader for Endowments appearing for the respondents 1 to 3 were heard on 25.01.2017. As there was no representation for the 4th respondent, the matter is directed to be listed under the caption 'For Orders'. Despite listing the matter under the said caption, there is no representation for the 4th respondent. The 4th respondent has not filed any counter. However, the 3rd respondent/ Assistant Commissioner of Endowments filed a counter. Therefore, it is treated that there are no submissions to be made on behalf of the 4th respondent. I have perused the material record.

3. The facts necessary for consideration and the facts as borne out by the record, in brief, are as follows:

Sri Venugopala Swamy Devastanam ('the Devastanam', for brevity) is being managed by a person-in-management, Prathipadu group temple, Prathipadu Village of Guntur District. In the year 2004, the vacant land of the

Devastanam in an extent of Ac.0.30 cents was unauthorisedly occupied by some antisocial elements having muscle power. They were using the occupied land for consuming liquor, toddy and other intoxicants. The said encroachers refused to vacate the occupied Devastanam land despite an effort made by the revenue department to evict them with police aid. The Deputy Commissioner of Endowments, 2nd respondent herein, after due enquiry *vide* order dated 26.06.2004 authorised the Assistant Commissioner/3rd respondent herein to evict the encroachers. Eventually, the writ petitioner herein filed W.P.No.13014 of 2004 before this Court complaining that the respondents 1 to 3 are not taking steps to remove the encroachments made by such antisocial elements. In that writ petition, a counter affidavit is filed stating that the encroachment was removed and that the land of the Devastanam was taken possession of and handed over to the management of the Devastanam on 09.12.2004; that statement was not controverted before this Court. Therefore, this Court felt that no further orders are necessary to be passed in the writ petition and disposed of the writ petition accordingly by order dated 20.04.2005. However, in-fact, only two persons who made unauthorised encroachments vacated the Devastanam land, but, the 4th respondent herein did not vacate the Devastanam land and continued to remain in unauthorised possession of the Devastanam land by raising a thatched hut therein. The former President of the writ petitioner Samajam by a letter, dated 15.03.2008, intimated the said fact to the Commissioner of Endowments and other officials. On the said representation, the 2nd respondent, *vide* his proceedings dated 01.04.2005, called for a detailed report from the 3rd respondent with regard to eviction of the encroachers. The 3rd respondent sent a detailed report, dated 01.12.2007, to the Collector and District Magistrate, Guntur. In the said report, it is stated that there is an encroachment of the Devastanam land by the 4th respondent herein. In the said

report, the management of the Devasthanam was requested to submit its specific remarks about the encroachment by the 4th respondent and also take immediate steps for removal of the encroachment under due process and law. The 3rd respondent by proceedings dated 10.04.2012, in exercise of powers vested in him under Section 84 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, proposed for removal of the encroachment on 17.04.2012 at 10:00 A.M with the help of revenue and police officials and further requested the Tahasildar, Guntur, to depute staff concerned to render necessary help to the 3rd respondent on the said date, time and place for removal of the encroachment. Accordingly, on 17.04.2012 at 10:00 A.M, the officials of Endowments department & their staff and police and revenue officials asked the 4th respondent to remove the hut and vacate the property; the said request was made in the presence of village elders, V. Narasimha Rao and R. Narasimha Rao; however at that stage the 4th respondent stated that he is physically handicapped and that therefore he is unable to vacate the property immediately and sought one month time, that is, till 16.05.2012, on humanitarian grounds, promising to vacate the property before 11:00 A.M on the said date. He further stated that on his failure to do so he can be evicted by taking necessary action. Stating the said facts, he gave a consent letter on 17.04.2012 to the 3rd respondent. But, subsequently he failed to remove the thatched hut due to political support. His unauthorised presence in the Devasthanam land is creating nuisance and offending religious sentiments of the devotees and he is causing disturbance to peace, tranquillity and religious atmosphere of the Devasthanam by continuing his encroachment over the Devasthanam land. He is using the land for his personal occupation and for antisocial activities and is harassing not only devotees but also women and children. Hence the writ petition is filed.

4. As already noted, the 4th respondent having entered appearance did not file a counter resisting the writ petition.

5. The 3rd respondent filed a counter affidavit and while, *inter alia*, not disputing the chronology of events stated by the writ petitioner Samajam affirmed that when the 3rd respondent proposed to remove the encroachment, the 4th respondent addressed a letter stating that he is unable to vacate and handover the property immediately as he is handicapped and that the 4th requested to grant one month time on humanitarian grounds by undertaking that he would vacate and handover possession before 11:00 A.M on 16.05.2012, and that in the said letter the 4th respondent has also stated that he can be evicted from the property if he fails to vacate the property as undertaken. It is further stated in the counter affidavit that the 4th respondent is handicapped and that he is having a blind sister living with him and that on 17.04.2012 when an attempt to evict the 4th respondent was made, the villagers gathered there and protested for removal of the encroachment made by the 4th respondent and a tense situation has arisen and therefore the 3rd respondent is unable to remove the encroachment.

6. From the facts of the case, which are undisputed, it emerges that the 4th respondent is in unauthorised occupation of the Devasthanam land and that when an attempt was made to remove the encroachment made by him, he gave a consent letter on 17.04.2012 agreeing to vacate the subject land by 11:00 A.M on 16.05.2012 by *inter alia* stating that his continuation in the property upto that date may be permitted as he is physically handicapped and is unable to vacate the property immediately. However, he did not abide by the undertaking given in his consent letter. Now the 3rd respondent, who is also endorsing the fact that the 4th respondent is an encroacher and that the encroachment made by him has to be removed from the Devasthanam land, *inter alia*, submits that since the 4th

respondent is handicapped and he is having a blind sister, the villagers are protesting for evicting the 4th respondent from the encroached Devastanam land and that such resistance from the villagers is giving rise to a tense situation.

7. Be that as it may, when admittedly the land is the Devastanam land and it is encroached by the 4th respondent and when his occupation of the Devastanam land is unauthorised, the respondents 1 to 3 are enjoined with the statutory duty to do the needful in the matter. Unless the Statute makes provision, there is no place for mercy or other extraneous considerations. If the respondents are of the view that the 4th respondent's occupation of the Devastanam land can be regularised by way of license or otherwise, they ought to have taken steps in that direction, provided the law permits such a course of action. Nevertheless, no provision of law from the enactment which authorises regularisation of any unauthorised encroachments of the lands of the Devastanam is brought to the notice of the Court, during the course of hearing. Be that as it may. If such a course is impermissible under facts and in law, the respondents 1 to 3 should have taken steps for eviction of the 4th respondent by removing the encroachment made by him on the land of the Devastanam. Mere baldly stating that the villagers resisted when steps were taken for removal of the encroachment made by the 4th respondent and that such resistance gave rise to a tense situation, the 3rd respondent cannot make it a ruse for not discharging the statutory duties enjoined upon the 3rd respondent. The respondents, particularly the 3rd respondent, is enjoined with a statutory duty to remove the encroachment made by the 4th respondent and evict the 4th respondent from the Devastanam land by following the procedure established by law; if necessary by taking police aid; but, they cannot disown their statutory responsibility and allow the encroachment to continue by keeping quiet without pursuing the legal remedies.

8. Viewed thus, this Court finds that sufficient case is made out by the writ petitioner for granting the relief.

9. In the result, the Writ Petition is allowed directing the respondents 1 to 3 to follow the procedure established by law and remove the unauthorised encroachment made by the 4th respondent in the Devastanam land of an extent of Ac.0.30 cents situate in Sy.No.323 and 324 of Junamchundururu village of Guntur Rural Mandal of Guntur District, belonging to Sri Venugopalaswamy Devastanam of the said village. The respondents 1 to 3 shall initiate necessary legal action in this regard as per the procedure established by law within one month from the date of receipt of a copy of this order and shall do the needful for removing accordingly the encroachment made by the 4th respondent in the land of the Devastanam.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed. There shall be no order as to costs.

01.02.2017
Vjl

M. SEETHARAMA MURTI, J