

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.12644 of 2009

ORDER:

This writ petition, under Article 226 of the Constitution of India, is directed against the Order No.7, dated 15.05.2009, in O.A.No.1 of 2005, passed by the 1st respondent herein, the Deputy Commissioner, Endowments Department, Hyderabad. The writ petitioner seeks to set aside the said order and direct the respondents to permit the petitioner to continue in occupation of mulgi Nos.14-4-13 & 14 (hereinafter, 'the subject property') belonging to the 4th respondent-Mutt situated at Begumbazar, Hyderabad.

2. I have heard the submissions of Sri Sree Ranga Rao, learned counsel for the writ petitioner, and of the learned Government Pleader for Endowments appearing for the respondents 1 to 3, and of the learned counsel appearing for the 4th respondent/Mutt. I have perused the material record.

3. The parties shall hereinafter be referred to as arraigned in this writ petition for convenience and clarity.

4. The facts and contentions, in brief, are as follows:

The subject property is the property of the 4th respondent, Sri Kyalikadas Mutt, (hereinafter 'the Mutt'). The said property is governed by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, ('the Act 30 of 1987', for short). The petitioner is the proprietor of 'Jain Saree Centre' and he is carrying on his business in the subject property as a tenant of the Mutt. On the proposal of the Mutt, the Assistant Commissioner of Endowments, 2nd respondent herein, recommended for eviction of the petitioner from the

subject property after due verification done by the Inspector of Endowments. As there is no subsisting lease agreement in favour of the petitioner and as the petitioner is also irregular in payment of rents to the Mutt and as the rent was a meagre rent and as the subject property would fetch Rs.10,000/- per month if leased out in a public auction and as the property is required by the Mutt for parking of the Chariot of the Lord, the Mahant of the Mutt along with the 2nd respondent herein filed OA.no.1 of 2005 before the Deputy Commissioner of Endowments for eviction of the petitioner, who is an encroacher and unauthorised occupant of the subject property. The petitioner while admitting that the property was leased out at the inception and that he is continuing in possession as a tenant since last 20 years resisted the OA by filing a counter *inter alia* stating that the rent is Rs.800/- per month and that Rs.700/- is also being collected towards rent for furniture and fixtures and that the total amount being paid is Rs.1,500/- per month, but, receipts are being passed only for Rs.800/- per month and that since the inception of tenancy he is very regular in payment of rents and that the subject property was obtained on lease in the year 1984 from the then Mahant, Gopal Das, for running cloth business and that after his demise the present Mahant has enhanced the rent from time to time and that the earlier Mahant, Gopal Das, had inducted other tenants also in other properties of the Mutt and, during his life time, he informed the petitioner that necessary approval was obtained from the competent authority as required under the provisions of the Act, by then in force, and that the petitioner is enhancing the rents for the subject property whenever demanded by the Mutt to maintain cordial relationship and that the rents are being enhanced unreasonably with ulterior motives and that it is being incorrectly alleged that the property is required for

the Mutt for the purpose of store room and shed for the Lord's chariot and that a huge advance was taken from him and that there are other properties, which are vacant, in the occupation of the Mutt and therefore, the subject property is not required for any purpose by the Mutt and that the rents were refused to be received continuously for three months and that, therefore, the petitioner was constrained and compelled to issue a legal notice on 06.03.2004 requesting to specify the name of the Bank and account number to enable the petitioner to deposit the rents and that after the said notice the rent was personally received and that afterwards the notice dated 12.04.2004 was issued terminating the tenancy and calling upon to vacate the property and therefore the petition filed before the 1st respondent is liable to be dismissed.

5. Before 1st respondent/ the Deputy Commissioner, the 2nd applicant therein, Mahant of the Mutt, was examined as PW1 and exhibits A1 to A4 were marked on his side. The writ petitioner was examined as RW1. On merits and by the orders impugned in this writ petition, the Deputy Commissioner, declared that the writ petitioner is an encroacher over the subject property belonging to the Mutt and directed him to vacate and handover vacant peaceful possession of the same to the Mahant of the 4th respondent-Mutt, within 15 days. Aggrieved thereof, the writ petition is filed by the petitioner.

6. Learned counsel for the petitioner while reiterating the pleaded case of the petitioner would contend that the petitioner is continuing in the subject property since several decades and that he never defaulted in payment of rents even though the rents were enhanced exorbitantly from time to time and that the Mahant of the Mutt initiated proposals

for eviction against the writ petitioner alone leaving the other tenants of other properties as he has some prejudice against the petitioner as the petitioner has issued a legal notice to accept rents and that out of prejudice only he made a proposal to the Assistant Commissioner to recommend for eviction and got filed the eviction OA and that the Deputy Commissioner erroneously ordered eviction by declaring that this petitioner is an encroacher while, in-fact, the petitioner is a tenant of the subject property. He would further submit that recently, considering the request of the petitioner, the Mahant himself addressed a letter, dated 28.03.2016, to the Assistant Commissioner, *inter alia*, stating that the case of the petitioner may be recommended to the Commissioner, Endowments, to extend the lease for a period of three years on necessary and suitable conditions subject to the withdrawal of the writ petition by the petitioner and that therefore the Mutt has no objection to continue the petitioner in the subject property as a tenant. The learned counsel specifically drew the attention of this Court to the contents of the said letter wherein it is stated that the petitioner approached the Mahant to enhance monthly rent to Rs.6,000/- and sought extension of lease in his favour for a period of three years undertaking to enhance the rent every three years on the existing rent as fixed by the authorities and that the Mahant advised the petitioner to approach competent authority for extension of lease as per law and that the Mahant further advised the petitioner to enhance the monthly rent of the subject property to Rs.10,000/- and that the petitioner agreed for the same and that in the said circumstances the Mahant recommended for extension of lease of the petitioner. He, therefore, prayed that in view of the said subsequent developments, the writ petition may be disposed of directing the official respondents 1 to 3 to consider the

recommendation made by the Mahant of the 4th respondent-Mutt and permit the petitioner to continue in the occupation of the subject property till the recommendation is disposed of.

7. Per contra, the learned counsel for the 4th respondent-Mutt while reiterating the case of the Mutt as stated in the OA and while supporting the orders impugned in the writ petition contended that admittedly there is no approval of the lease given by the Mutt in favour of the petitioner and that since there is no approval from the competent authority, the lease is *ab initio* void and that in any view of the matter there is no subsisting lease or lease agreement and that under the provisions of the Act 30 of 1987, any person in occupation of the property either after the expiry of the agreed term of lease or without any valid lease agreement is an encroacher and that the respondents are not competent to renew or extend lease and that any fresh lease or licence shall be granted by following the procedure envisaged under the provisions of Act 30 of 1987 and that therefore the petitioner is not entitled to seek extension of lease more particularly when he is an encroacher as per the provisions of the Act 30 of 1987 and hence he cannot seek extension of the alleged lease and that he is bound to vacate the property when once he is an encroacher and that therefore, in the facts and circumstances of the case, the findings of the Deputy Commissioner are justified and do not warrant interference by this Court. He would further bring to the notice of this Court that in view of the provisions of the Act 30 of 1987, the Mahant of the Mutt is not competent to recommend for extension of lease and that in any view of the matter, the Mahant has subsequently written a letter to the 2nd respondent withdrawing the recommendation for extension of lease and

that in the said letter, dated 19.10.2016, the Mahant had clearly stated that his earlier letter was given under the pressure of the encroacher, the petitioner herein, and that he is not interested in continuing the petitioner as a tenant in the subject property and, therefore, the request for extension of lease by private negotiations may be rejected. He further contended that there is no necessity to grant the alternative relief, sought for on behalf of the petitioner at the time of hearing, as no such recommendation is subsisting before the authorities and any such recommendation contrary to the provisions of law cannot be countenanced more particularly when it is already withdrawn by the Mahant of the Mutt.

8. From the pleadings and contentions it emerges that the petitioner who entered the subject property long time back as a tenant continued in possession of the same by paying monthly amounts towards rent despite the fact that there is no subsisting lease or renewal of expired lease or valid lease agreement between the petitioner and the 4th respondent-Mutt. The Mahant of the Mutt no doubt stated no objection and gave consent for extension of the lease in favour of the petitioner and directed the petitioner to approach the Endowment authority for appropriate orders and that tenant also requested for extension of lease agreeing to pay the rent as stated by the Mahant and as fixed by the authority, but, later the Mahant withdrew his offer or consent for extension of lease in favour of the petitioner stating, *inter alia*, that he gave the letter to the Endowment authority for extension of lease in favour of the petitioner under pressure being unaware of the provisions of law. In view of the said subsequent event, the petitioner alternately contended that the writ petition may be disposed of directing the

respondents 1 to 3 to consider his case for extension of lease as he is continuing in possession since several decades as a tenant and as he is prepared to abide by any terms that may be fixed while extending the lease.

9. In the light of the facts and contentions, it is necessary to briefly refer to the relevant provisions of the Act 30 Of 1987. Section 8 of the Act relates to the powers and functions of the Commissioner. Under sub-section (1) thereof, subject to the other provisions of the Act, the administration of all Charitable and Hindu Religious Institutions and Endowments shall be under the general superintendence and control of the Commissioner, and such superintendence and control shall include the power to pass any order, which may be deemed necessary, to ensure that such institutions and endowments are properly administered, and their income is duly appropriated for the purposes for which they were found or exist. Section 14 of the Act 30 of 1987 speaks of vesting of all properties in the institution or endowment; and, thereunder, all properties belonging to or given or endowed to a charitable or religious institution or endowment shall, vest in the charitable or religious institution or endowment, as the case may be. Section 83 of Act 30 of 1987, which relates to encroachments by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers, read as under:-

Section 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 provisions of this Act, the Assistant Commissioner shall report the fact together with relevant particulars to the Deputy Commissioner

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 unauthorisedly 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 Deputy Commissioner finds that there is a *prima facie* case of encroachment, he 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 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 Deputy Commissioner is satisfied that there has been an encroachment, he 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 the Deputy Commissioner 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 Deputy Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed.

10. A.P. Charitable & Hindu Religious Institutions & Endowments Immovable Properties and Other Rights (Other than Agricultural Lands) Leases and Licenses Rules, 2003, are framed in exercise of the powers conferred by Section 153 of the Act 30 of 1987. Rule 3 of the said Rules deals with 'mode of confirmation of Lease or License rights'. The said Rule postulates that all leases or licenses shall be made by way of tender-cum-public auction on annual advance rental basis and the executive authorities shall also call for tender or auction electronically if the value of the transaction exceeds Rs.10 lakhs and that the e-tenders

have to be opened after the completion of public auction and opening of regular tenders, if any. Under Sub-rule (2) of the said Rule, the public auction shall be held at the place where the properties are situated or right exists. The executive authority of the institution subject to the provisions of the Rules and instructions issued by the Commissioner from time to time shall decide the terms and conditions of lease or license and the auction shall be conducted by the executive officers of the institution or endowment concerned. If there is no executive officer the auction shall be conducted by the Chairman of the Board of Trustees or any other person who is in-charge of the management. At every auction conducted, a departmental officer deputed by the competent authority shall be present and lease or license shall ordinarily be given to the highest bidder. In the case of all leases and licenses security to the satisfaction of the executive authority shall be taken. All lease deeds or deeds of license shall be obtained in writing and shall be registered wherever so required by law. Rule 15 of the Rules deals with validity of lease or license or occupation. The said Rule which starts with a non obstante clause provides that any judgment, compromise, scheme any lease or license granted, continued or allowed to be continued otherwise than by these Rules and all unauthorised occupations with whatever nomenclature they may be, shall be null and void and that the executive authority shall automatically issue notice in Form-A appended to the rules to the occupier in all such cases with a demand to vacate and handover possession of the property and that if the person in occupation fails to handover the same, the executive authority shall evict such person with the assistance of police invoking the provisions under Sections 84 and 86 of the Act 30 of 1987 treating him as an encroacher in the order passed under Section 83(4) or 85(1) of the Act. Therefore, the

provisions of law do not permit either extension of lease or license. After expiry of the lease or license period, a fresh lease or license in respect of the property shall be only by means of tender-cum-public auction as specified in Rule 3. Therefore, the petitioner cannot place reliance on the no objection stated or consent given by the Mahant for extension of lease in favour of the petitioner as any such statement of no objection or consent contrary to the provisions of law is invalid. Further, in the case on hand, the Mahant having realised that such a course as suggested by him is impermissible withdrew his consent. Therefore, the petitioner, who suffered an order of eviction by means of the orders impugned in this writ petition, is not entitled to continue in possession of the property any longer and, therefore, he cannot be permitted to continue in occupation of the said property belonging to the 4th respondent-Mutt. In that view of the matter, there is no merit in the writ petition and the writ petition is liable to be dismissed.

11. In the result, the Writ Petition is dismissed. The petitioner is granted a time of three months, from the date of receipt of a copy of this order, to vacate and handover vacant peaceful possession of the subject property to the Mahant of the 4th respondent-Mutt. On the petitioner's failure to do so, the 4th respondent-Mutt shall take steps for removal of the encroachment made by the petitioner and obtain possession of the subject property by following the procedure established by law.

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

M. SEETHARAMA MURTI, J

27-02-2017
Vjl