

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

WRIT APPEAL No.691 of 2017

JUDGMENT: (Per 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.28463 of 2012 dated 06.03.2017. The appellant herein is the petitioner in the writ petition wherein she sought a mandamus to declare the high-handed action of the Assistant Commissioner, Endowments, the Manager of Sri Kodanda Ramaswamy Temple, and the Tahsildar, Chirala Mandal, in putting seals to the four mulgies in House No.20-12-34, Assessment No.1032008817, TS No.1 & 2, Ward No.20, Part No.10, Block No.3, Chirala Town and Municipality, Prakasam District, as illegal and arbitrary.

It is the petitioner's case that, while she is the owner of an extent of 300 sq. yards of land which contains four mulgies, she was also given lease of 1000 sq. yards by the respondent-temple, wherein she had erected a shed; on the ground that the respondents were interfering with the mulgies constructed in the 300 sq. yards of land which she had acquired under a gift deed dated 09.04.1992, executed in her favour by her mother-in-law, she had invoked the jurisdiction of this court; the said property was purchased by her father-in-law who constructed four mulgies with iron sheets in the year 1950; he had, thereafter, obtained an electricity connection, and had paid house tax; on his demise, her mother-in-law became the absolute owner; out of love and affection, she had executed a gift deed in the petitioner's favour whose name was mutated in the municipal records; the petitioner had obtained another electricity connection on 15.03.2004; as the

municipal authorities had sought to dispossess them, the petitioner had filed W.P.No.8049 of 2005, which was disposed of by order dated 09.12.2009 directing the respondents not to interfere with the possession of the petitioner without following the due process of law; she had, thereafter, filed O.S.No.300 of 2005 against one Sri Grandhi Siva Rama Chakravarthyk, and the said suit is pending; on 07.09.2012 at 8.00 a.m., the respondents, along with Police personnel, had come over to the property, and had sought to dispossess her; her house was demolished with a proclainer; the respondents had put seals on the four mulgies after sending out the tenants therein; and neither was any notice given to her nor was the procedure prescribed under law followed.

As the respondents contended that the petitioner had suppressed material facts of her having invoked the jurisdiction of the Deputy Commissioner, Endowments Department in O.A.No.67 of 2005, and the fact that the said O.A., was allowed on 28.05.2007, the learned single Judge dismissed the writ petition holding that it was liable to be dismissed on the sole ground that the petitioner had suppressed material facts of the eviction order passed in O.A.No.67 of 2005; as the eviction orders, passed by the competent authority, had become final, vacant possession of the entire property including the four subject mulgies was already obtained by the 3rd respondent-temple, and the shed in the vacant site behind the mulgies and the four mulgies were already demolished after taking possession of the entire property; and, therefore, the contentions on merits did not necessitate consideration.

Before us, Smt.G.Kavitha, learned counsel for the appellant, would submit that the property, which is the subject matter of the writ appeal, is not covered by the order of the Deputy Commissioner, Endowments in O.A.No.67 of 2005 dated 25.08.2007; the description of the encroachment, as recorded in the said order, is the vacant site of 1000 sq. yards along with the residential shed in Chirala Town which is bound on the East by the municipal road, on the South by the municipal vegetable market, on the west by the land belonging to the petitioner under encroachment of Mr.Y.B.Naidu and 3 others, and on the North by the MRO Office and the sub-treasury office; it is clear from the prayer in the writ petition that the petitioner's grievance is with regards the respondents' interference with her property of four mulgies in H.No.20-12-34, Assessment No.1032008817, TS No.1&2, Ward No.20, Part No.10, Block No.3, Chirala Town; both the properties are different; while the order of the Deputy Commissioner, Endowments has no doubt attained finality, the petitioner's grievance is not with regards the subject matter of the property recorded in the order of the Deputy Commissioner, but of a different property of which she is the owner; it is only suppression of relevant and material facts which would justify dismissal of the writ petition; as the order of the Deputy Commissioner, Endowments related to a different property, the petitioner's failure to refer to these proceedings in the writ petition cannot be construed as suppression of relevant and material facts; and the learned Single Judge had erred in non-suiting the petitioner on this ground.

On the other hand, Sri A.Srikanth Reddy, learned Standing Counsel for Endowments, would submit that the subject matter relates to the very

same property as recorded in the order of the Deputy Commissioner, Endowments in O.A.No.67 of 2005; it is evident, from the order of the Deputy Commissioner, Endowments, that vacant land of 1000 sq. yards along with the residential shed covered by T.S.R.No.1, Block No.1, Ward No.7 situated at Chirala Town, belongs to Sri Kodandarama Swamy Temple; the petitioner's contention that she is the owner of another extent of 300 sq. yards of land is not true; the entire extent belongs to the Sri Kodandarama Swamy temple; and the learned Single Judge was justified in dismissing the writ petition.

As noted hereinabove, the petitioner's claim in the writ petition is over an extent of 300 sq. yards, and the address of the property stated in the writ affidavit is different from the location of the property as recorded in the order of the Deputy Commissioner, Endowments in O.A.No.67 of 2005 dated 25.08.2007. If, as is now contended before us by Smt.G.Kavitha, the property, which is the subject matter of the writ petition, is different from the property referred to in the order of the Deputy Commissioner, Endowments, the petitioner's failure to refer to the order of the Deputy Commissioner, Endowments, in the writ affidavit, would not amount to suppression of material and relevant facts. While it does appear that the petitioner's claim is with regards the property, in an address different from that recorded in the order of the Deputy Commissioner, Endowments, these are all disputed questions of fact which this Court would not, ordinarily, examine in proceedings under Article 226 of the Constitution of India. The relief sought for in the writ petition is, in effect, for declaration of the petitioner's title over the subject property. Such issues are, ordinarily, not

examined in writ proceedings, and it is for the appellant-writ petitioner to establish her title in appropriate legal proceedings. It would suffice, therefore, while dismissing the Writ Appeal, to make it clear that, in case the appellant-writ petitioner avails her legal remedies claiming title over any property, other than the one which was the subject matter of the order of the Deputy Commissioner, Endowments in O.A.No.67 of 2005 dated 25.08.2007, her claim shall be examined on its merits without being influenced by the order under appeal or the order now passed by us. It is also made clear that, since the order of the Deputy Commissioner, Endowments has attained finality, the petitioner is not entitled to make any claim over the property referred to in the order of the Deputy Commissioner, Endowments in O.A.No.67 of 2005 dated 25.08.2007. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the appeal stand closed.

RAMESH RANGANATHAN, ACJ

T.RAJANI, J

June 8, 2017
MRR