

HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.23659 of 2011

ORDER:

This writ petition is filed by Sri Amareswara Swamy Vari Devasthanam, Amaravati, Guntur District, challenging the correctness of the order, dated 02.04.2011, passed by the Andhra Pradesh Endowments Tribunal (for short "the Tribunal") in O.A.No.1230 of 2010.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

3. The Assistant Commissioner of Endowments, Guntur, the 3rd respondent, has forwarded the proposals submitted by the Devasthanam for taking action in terms of the provision contained under Section 83 of the Andhra Pradesh Charitable & Hindu Religious Institutions and Endowments Act, 1987, Act No.30 of 1987, by declaring the 2nd respondent as an encroacher of an extent of Ac.6.07 cents of agricultural dry land, situated in D.Nos.62 and 63 of Amaravathi, Guntur District. It is the case of the petitioner-Devasthanam that possession of the land in question was delivered to the ancestors of the 2nd respondent in lieu of remuneration payable for rendering archakatvam services in the temple, but however, the 2nd respondent, without rendering any such archakatvam services, has been in possession of the land belonging to the temple and therefore, he shall be treated as an encroacher and evicted therefrom.

4. The 2nd respondent has stoutly disputed that he was in unauthorized occupation of the subject land. He has disputed the allegation that he is an encroacher of the land belonging to the temple. The 2nd respondent has traced and asserted that for the past few generations, right

from his ancestors, they are all involved in rendering services to the temple as archakas and there was never any occasion to complain about the failure on their part to render such services. It is in fact, the fore-fathers of the 2nd respondent, who entered into an appropriate compromise with the Endowments Department and the Endowments Department has relinquished all its rights and handed over certain parcels of land for rendering archakatvam services and to share the yield therefrom in lieu of remuneration for the services rendered. It was also pointed out that the very dispute is also the subject matter of consideration in Writ Petition (C) No.6324 of 1998 which is pending before the Supreme Court.

5. Before the Tribunal, the present Executive Officer of the Devasthanam was examined as PW 3 as the earlier Executive Officers whose affidavits have been filed proposing to examine them as PWs 1 and 2 have been transferred and consequently, those affidavits filed in lieu of chief-examination have become redundant. The copy of the registered notice issued to the respondents on 07.05.2003 and the postal acknowledgment evidencing the receipt of the said notice by the respondents on 08.05.2003 were marked as Exs.P1 and P2. The 2nd respondent examined himself as RW 1 and placed reliance upon Exs.R1 to R9, the correspondence that has been exchanged between the temple and the respondents.

6. The learned standing counsel for the petitioner temple submits that the 2nd respondent, who is undoubtedly an Archaka of the temple in question for decades also had been rendering government service, working in commercial tax department and hence he is not entitled to any benefits of the Archakatvam. He further submits that the lands in question were given to the family decades ago and the family of the 2nd respondent had been performing the Archakatvam by rotations, as per the arrangements and after

the abolition of the hereditary Archakas, the 2nd respondent has failed to surrender the land, even though the remaining Archakas have already surrendered their lands. The learned counsel further submits that the 2nd respondent is not even entitled to any emoluments, since he is already in public employment. Therefore, treating the 2nd respondent as an encroacher in the lands of the temple, notice was issued and proceedings were initiated in the year 2004. The Tribunal erroneously dismissed the O.A. and hence the petition.

7. The learned counsel for the 2nd respondent submits that at no point of time the authorities of the temple or the department authorities have questioned the right of the 2nd respondent to be an Archaka, and his public employment in the commercial department is not in any way affecting his performance of the services as an Archaka, and as a matter of fact, his turn to perform Archakatvam will come only 3 or 4 days in a month, that there are 9 Archakas and the 2nd respondent is one amongst them. Therefore, he cannot be held to be a person not performing the duties of an Archaka and as a matter of fact, at no point of time this issue was raised by the authorities, and on the other hand, voluminous correspondence is filed to show that in several correspondence, the authorities are referring to the 2nd respondent as one of the nine Archakas performing the services to the temple. It is further submitted that on 31.12.2010 the 2nd respondent retired from government service and now he is rendering the services as Archaka to the temple without any hindrance. It is further submitted that the petitioner temple cannot treat the 2nd respondent as an encroacher, since he had been in possession of the lands in question from the days of his fore-fathers and terming the 2nd respondent as an encroacher is improper and cannot be sustained. The learned counsel further submits that the Tribunal has taken

the correct view of the matter and has held that the 2nd respondent cannot at all be treated as an encroacher, and hence the O.A was dismissed.

8. The admitted facts are that the 2nd respondent is one amongst 9 Archakas, performing services to the temple. The family of the 2nd respondent had been the hereditary Archakas of the petitioner temple for decades. They have been given the lands in lieu of any remuneration. The 2nd respondent got about Ac.1.50 cents towards his share along with other members of the family. It is also an admitted fact that the 2nd respondent had been in public service and as a matter of fact retired on 31.12.2010 as Senior Assistant, holding the full additional charge of the post of Assistant Commercial Tax Officer.

9. By the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short "the Act"), the hereditary rights of Archakas and other office holders have been abolished. Section 34 of the Act reads as under:

"Sec.34: Abolition of hereditary rights in Mirasidars, Archakas and other office holders and servants: (1)(a) Notwithstanding anything in any compromise or agreement entered into or scheme framed or sanad or grant made or judgment, decree or order passed by any Court, Tribunal or other authorities prior to the commencement of this Act and in force on such commencement, all rights, whether, hereditary, contractual or otherwise of a person holding any office of the Pedda Jeeyangar, Chinna Jeeyangar, a Mirasidar or an Archaka or Pujari or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished.

(b) Any usage or practice relating to the succession to any office or service or post mentioned in Clause (a) shall be void;

(c) All rights and emoluments of any nature in cash or kind or both accrued to an appertaining to any office or service or post mentioned in Clause(a) and subsisting on the date of commencement of this Act shall on such commencement stand extinguished.

(2) Every office holder and servant mentioned in Clause(a) of sub-section(1) holding office as such on the date of commencement of this Act shall, notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-sections (3) and (4) of Section 35

(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section, the qualified members of those Archaka families which were continuing in archakatvam service under the provisions of the repealed the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and recognized as such by the competent authority shall continue to have the right to archakatvam without having any right to emoluments such families used to receive earlier under Act 17 of 1966. However they shall receive emoluments in accordance with the scheme under Section 144.”

10. It is manifest from the above that the qualified members of the Archaka families, who had been continuing in Archakatvam shall continue to have the right to Archakatvam without having any right for emoluments which shall however be subject to the provisions of Section 144 of the Act.

11. Sub-Section (2) of Section 34 of the Act makes it very clear that notwithstanding the abolition of the hereditary rights, a person can continue to hold such office or post on payment of only such emoluments and subject to such conditions of service, referred to therein.

12. Sub-Section (3) of Section 35 of the Act makes it clear that any person holding post of an Archaka, shall continue to get the emoluments or remuneration, either in cash or kind or both as was before the commencement of the Act and is entitled to be paid such emoluments.

13. It is manifest from the above that as on the date when the hereditary rights of Archakas were abolished, since the 2nd respondent is continuing to be an Archaka, against whom no action whatsoever was initiated on the ground that he is already holding a public service, he is

entitled to the remuneration, either in cash or kind. The 2nd respondent was in possession of the temple lands in lieu of the remuneration for performing services as Archaka to the temple.

14. In the instant case, though the hereditary Archakas have been abolished, no remuneration has been fixed for the 2nd respondent. Admittedly, the petitioner temple is classified as 6(a) institution, as the annual income of the temple is less than Rs.2 lakh. Without fixing any remuneration to the Archaka, it cannot be said that the right of the Archakatvam has been abolished. Merely because the 2nd respondent was working in government service, he cannot be denied the emoluments or the right to possess the lands, unless necessary action is specifically initiated there for. The Tribunal has clearly held that if the 2nd respondent was not qualified to be an Archaka and not entitled to any emoluments, appropriate steps ought to have been taken, but at no point of time, such action has been initiated. On the other hand, in the voluminous correspondence between the authorities and the family of the 2nd respondent, the 2nd respondent has been referred to as one of the Archakas performing the services to the temple.

15. Nothing is shown by the petitioner to hold that the 2nd respondent was held to be disqualified from being an Archaka or not entitled to any emoluments in lieu of the land which had been given to the family towards remuneration for performing the services as Archakas.

16. The petitioner has initiated action against the 2nd respondent under Section 83 of the Act holding that the 2nd respondent is an encroacher of the temple lands. The Tribunal has rightly held that the 2nd respondent cannot be termed as an encroacher, since from the times immemorial the family of the 2nd respondent had been in possession and enjoyment of the temple

lands which was given to them. The explanation that is appended to Section 83 of the Act reads as under:

“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.”

17. From the above explanation, it is clear that the person, who had been put in possession of the temple lands in lieu of the remuneration for performing the Archakatvam to a temple, cannot be treated as an encroacher. When possession of a person is legal, he needs to be terminated in accordance with law, but he cannot be treated as an encroacher. The authorities have to fix the remuneration for Archakas and take over the possession of the temple lands, but under no circumstances, an Archaka who had been in possession of the temple lands, which were given to him in lieu of the services of the Archakas, can be treated as an encroacher.

18. Upon considering the material on record and having perused the oral and documentary evidence and also award passed by the Tribunal, I have no hesitation in holding that the 2nd respondent is an Archaka of the petitioner temple, whose services had not been terminated and no emoluments have been fixed for him. The 2nd respondent cannot be treated as an encroacher of the temple lands which had been given to the family and which had been in their possession. The Tribunal has properly appreciated the evidence on record and dismissed the application of the petitioner for eviction of the 2nd respondent on the ground that he is an encroacher. I see

no merit in the writ petition and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 7th November, 2017
Dsr

