

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21498 of 2011

ORDER:

The present Writ Petition came to be filed under Article 226 of the Constitution of India, seeking issuance of writ of certiorari, calling for the records relating to O.A.No.1440 of 2010 on the file of the 1st respondent/Endowments Tribunal, Hyderabad, and consequently to set-aside the order dated 26.03.2010 as arbitrary, illegal and violative of Section 83 of Act 30 of 1987.

2) Originally, the 2nd respondent/Executive Officer is said to have filed O.A.No.20 of 2010 on the file of the Deputy Commissioner, Endowment, Guntur under Section 83(i) of the Act 30 of 1987. After the constitution of Endowments Tribunal, the same was transferred to 1st respondent/Tribunal wherein it was re-numbered as O.A.No.1440 of 2010.

2.1) The averments made in the affidavit filed in support of the petition shows that the site admeasuring 9x7 belonging to the 2nd respondent was leased out to the petitioner for a period of one year i.e., from 01.03.2002 to 28.02.2003, as per the proceedings dated 21.12.2002, on a monthly rent of Rs.1,300/-, wherein he was running a photo stall. The lease was extended for a further period of 3 years on a monthly rent of Rs.1,400/-. It is admitted that since February

2006 the petitioner has been continuing in the said premises as an encroacher. Having regard to the above, the petitioner made a representation seeking renewal of the lease, but the inaction of the authorities lead to filing of W.P.No.6821 of 2006 by the petitioner. But the said W.P., came to be dismissed with a direction to the petitioner to participate in public auction. On receipt of the said order, the Commissioner, Endowment addressed a letter dated 02.09.2006 for eviction of the encroacher and further to conduct public auction. Challenging the same, the petitioner filed W.P.No.13465 of 2006. By an order dated 04.07.2008, the said Writ Petition was disposed of with a direction that the petitioner shall not be evicted without following due procedure of law. Hence, a notice came to be issued demanding the petitioner to vacate the site in question. On receipt of the copy of the said order, the Executive Officer of 2nd respondent issued a notice to the petitioner asking him to vacate the photo stall within 30 days. Even after receipt of notice, the petitioner failed to vacate the premises, which lead to filing of O.A., by the 2nd respondent, seeking eviction. By filing counter in the O.A., the petitioner herein contended that he has been paying monthly rent of Rs.1,400/-and in view of the circular No.9 dated 21.10.2010 the request of the petitioner for continuing in the premises on lease, at an enhanced monthly rent may be considered. During the course of trial, the Executive Officer examined himself as P.W.1 and got marked Exs.P-1 to P-5. The writ petitioner herein was examined as R.W.1 and

got marked Exs.R-1 and R-2. After considering the oral and documentary evidence, the said O.A., was allowed. Challenging the same, the present Writ Petition came to be filed.

3) The only ground urged by the learned counsel for the petitioner is that the complaint came to be filed in violation of Section 83 of the Endowments Act. According to him, the Executive Officer is not the competent person to file the complaint and that the Assistant Commissioner, Endowments Department alone has to file the complaint. It is said that though the cause title indicates the first applicant as Assistant Commissioner, Endowments Department and the second applicant as temple represented by Executive Officer, but the complaint is filed by the 2nd respondent, who is the Executive Officer of the temple. In view of the above, he submits that order under challenge needs be set-aside.

4) A Counter came to be filed by the 2nd and 3rd respondents opposing the same. It is stated that as per the procedure, the complaint under Section 83(i) of the Act 30/87 was forwarded to the 3rd respondent/Assistant Commissioner, Endowments Department, Nellore District along with the application, enclosures and challan to be filed before the Deputy Commissioner, Endowments Department, Guntur vide Rc.No.63/2009 dated 04.01.2010. The Assistant Commissioner, Endowments Department, Nellore District sent proceedings to the 2nd respondent informing to

enclose the challan towards process fee as required under Section 83 and correct address of the encroacher. Pursuant thereto, the 2nd respondent also sent a letter No.63/2009 dated 11.02.2010 enclosing the challan for Rs.50/- towards processing fee and giving the latest residential address, to the Assistant Commissioner, Endowments Department, Nellore District. The said fact was reported by the Assistant Commissioner, Endowment Department to the Deputy Commissioner, Endowments, Guntur and then filed O.A.No.20 of 2010. The Deputy Commissioner, Endowment sent notice to the petitioner and after constitution of the Tribunal, the matter was transferred to Endowments Tribunal, where it came to be renumbered as O.A.No.1440 of 2010. Hence, it is urged that there is no irregularity or illegality in filing the same.

5) As seen from the material placed before the Court, the cause title in the complaint shows the 1st applicant as Assistant Commissioner of Endowments Department and 2nd applicant as Sri Mallikarjuna Swamy Kamakshi Tayee Temple, Zonnawada (V), Buchireddypalem Mandal, Nellore District, represented by its Executive Officer. The material filed along with the counter would show that on 02.09.2006 the Assistant Commissioner & Executive Officer of the temple issued a letter to the writ petitioner asking to vacate the shop within 30 days from the date of notice, failing which the next course of action under Section 83 of the Act would be taken

against him by filing the cases before the Deputy Commissioner, Endowments Department, Guntur without issuing any further notice. Thereafter the Assistant Commissioner and Executive Officer wrote a letter dated 04.01.2010 to the Assistant Commissioner, Endowments Department, Nellore enclosing an application under Section 83(1) of the Act 30 of 1987, with its enclosures and challan, to be filed before the Deputy Commissioner, Endowments Department, Guntur. On 12.01.2010, the Assistant Commissioner, Endowments Department, Nellore wrote a letter to the Assistant Commissioner & Executive Officer, Sri Mallikarjuna Swamy Kamakshitayee temple, Zonnawada, informing about the non enclosure of the challan towards process fee as required under Section 83 of the Act 30/87 and also to furnish the address of the encroacher. The said letter was received on 20.01.2010. Immediately thereafter, the second respondent wrote a letter bearing No.63 of 2009 dated 11.02.2010 to the Assistant Commissioner, Nellore, enclosing all the necessary documents and also requesting to file the same before the Deputy Commissioner, Endowments at an early date.

6) A perusal of the communication placed before this Court would show that the 2nd respondent/Executive Officer has been asking the Assistant Commissioner, Endowments, Nellore to file complaint before the Deputy Commissioner and accordingly Assistant Commissioner, Endowments has filed the complaint before the Deputy

Commissioner. The said fact also gets support from the cause title in the order of O.A., which shows that the Assistant Commissioner, Endowments Department as the first applicant and then the Executive Officer as the second applicant. Therefore, it cannot be said that the authorities have grossly violated Section 83 of the Act, in filing the O.A. Further, as per Rule 2 of the Rules framed pursuant to G.O.Ms.No.180 Revenue (Endowments-I) Department, dated 28.02.2011, the Assistant Commissioner would be the applicant and the concerned institution represented by its Executive Authority would be 2nd applicant. It has been amply demonstrated before the Court that the Assistant Commissioner, laid the complaint before the Deputy Commissioner, Endowments Department, Guntur, showing the institution/second respondent herein as the second applicant. Therefore, it cannot be said that the procedure contemplated under Section 83 has not been followed, while laying the complaint. Having regard to the above, I see no merits in the petition and the same is liable to be dismissed.

7) Accordingly, the Writ Petition is dismissed. No costs. Miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:17.03.2017
GM

