

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2101 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful applicant is directed against the orders, dated 03.04.2017, of the learned Telangana Endowments Tribunal, at Hyderabad, passed in I.A.No.172 of 2017 in O.A.No.33 of 2017.

2. I have heard the submissions of *Sri Pavan Kumar Pujari*, learned counsel appearing for the petitioner/applicant, and of the learned Government Pleader for Arbitration appearing for the 1st respondent. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The applicant filed the Original Application before the Tribunal under Section 87 (1) (d) of *Telangana* Charitable and Hindu Religious Institutions and Endowments Act, (Act 30 of 1987), seeking to declare that the property bearing municipal Nos.9-8-5 to 7 admeasuring 375.14 Square Yards or 313.66 Square Meters consisting of malgies covered with ACC sheets Roof over iron Tubler Trusses along with open space situated at Kasba Bazar, Prabhat Talkies Road, Khammam Urban, under Khammam Town Municipality, Khammam District, more fully described in the schedule annexed to the OA, as the property of Kaveti Balaji Lodge and that it is a private property and not endowed property nor satram (Choultry), by setting aside the impugned notice, vide Rc. No.D/ 2638/ 2015, dated 26.10.2015, issued by the 1st respondent. The 1st respondent is resisting the said OA. In the pending OA, the petitioner filed the aforementioned interlocutory application requesting to suspend

the operation of the aforesaid notice, which is challenged in the Original Application. The said application was resisted by the 1st respondent by filing a counter. On merits and by the orders impugned, the learned Tribunal dismissed the application of the applicant/petitioner. Therefore, the applicant is before this Court.

4. The case of the applicant in support of the request for suspension of the notice, dated 26.10.2015, in brief, is as follows:

The deponent of the affidavit is the GPA holder of the applicant. The OA schedule property is purely a private property and it is a lodge. It was established by the applicant's father, Gangaiah, after acquiring it in the year 1951 through a registered sale deed duly registered in the office of the Sub-Registrar, Warangal District vide document no. 458 of 1948 (13-04-1958 Fasali) at page nos. 290-291 of book 1, 2nd volume of 1957 Fasali. The property was put to use as a lodge during the life time of the father and it is known as Kaveti Balaji Lodge. On account of his ill health and with a view to settle the properties, he executed a registered settlement deed, dated 04.01.1968, duly registered in the office of the Sub-Registrar, Warangal District vide document no.12 of 1968. The property was allotted to the applicant and his brother, Srinivasa Rao, vide the said document styled as registered family settlement deed. It is never known as Kaveti Balaiah Satram as alleged by the 1st respondent. A notice, vide Rc.No.B-6-3173/ 64, dated 22.09.1964, was issued to the father of the applicant. The father of the applicant sent a reply dated 28.09.1964. On enquires revealing that the property is a private property, the proceedings were dropped. The father of the applicant passed away on 25.12.1970. A letter was received from the office of the 1st respondent vide RC No. A1/ 1142/ 1975, dated 15.04.1975, alleging that the subject property which is a lodge is a

Satram (Choultry) known as Kaveti Balaiah Satram and the notice directed to make a request for the registration of the property/institution under Section 38 of Act 17/ 1966. The mother of the applicant sent a reply stating that the schedule property is not an endowed property and that it is self acquired property of the father of the applicant, Kaveti Gangaiah. Even during the life time of Kaveti Gangaiah, he gave a clear clarification to the Tahasildar, Khammam, when the Tahasildar questioned about the property. After receiving reply notice from the mother of this applicant, a local inquiry was made by the 1st respondent and the 1st respondent came to know that the schedule property is not an endowed property and that it was purchased by the father of the applicant from a Muslim person and it was not a satram. Then, further proceedings pursuant to the notice issued to the mother of the applicant were stopped. The 1st respondent again issued the impugned notice, dated 26.10.2015, to the petitioner, wherein the petitioner was again asked to submit registration proposals under Section 43 of the Act (Act 30 of 1987). For that notice also, the applicant submitted a reply, dated 18.08.2016, along with relevant documents. In the said reply, the applicant asserted that the schedule property is not an endowed property and that it is a private property and that it is being used as a lodge. In order to protect the property, which is the individual private property of the applicant, he is constrained to file OA challenging the notice and seeking a declaration that it is a lodge and private property and not endowed property. In the said circumstances, the applicant is having a *prima facie* case. The father of the applicant ran a lodge in the schedule property for his livelihood as it is his private property. On the death of the father of the applicant, the applicant inherited the property, which is purely a private property.

Hence, during the pendency of the OA, it is necessary to suspend the operation of the impugned notice, in the interests of justice. If the said notice is not suspended, the petitioner suffers serious and irreparable loss.

5. Per contra, the case of the 1st respondent as stated in the counter filed before the Tribunal, in brief, is as follows:

The material allegations in the affidavit filed in support of the petition are false. The same are denied. The said property is an institution known as Kaveti Balaiah Satram and has been so published under Section 6(c) (1) of Act 30 of 1987, by the Commissioner of Endowments, Hyderabad, vide proceedings, dated 31.03.1992. The said institution comes within the purview of the Endowments Act (Act 30 of 1987) and the provisions of Endowments Act are applicable to the subject institution. As per the provisions of the said Act, it is absolutely clear that it is an endowed property. In the year 1975, the then Assistant Commissioner of Endowments, Khammam and Nalgonda Districts, issued notice, vide Rc.No.A1/1142/1975, dated 15.04.1975, directing the then person in management of the subject institution to submit registration proposals under Section 38 of the Act (Act 17 of 1966). However, the said person in management of the property/institution failed to submit proposals and further issued a reply, dated 05.06.1975, stating that the subject property is not an endowed property. No proceedings were dropped as alleged by the petitioner. The petitioner is constantly avoiding submission of proposals for registration under Section 38 of the old Act and under Section 43 of the Act 30 of 1987 from time to time. The petitioner filed W.P. No.43600 of 2016 seeking a writ of *mandamus* to declare the proceedings of the Assistant Commissioner of Endowments, Khammam, vide

proceedings Rc.No.D/ 2638/ 2015, dated 26.10.2015, as contrary to Article 14 and 300A of the Constitution of India. The said writ petition was pending. The subject institution is published as Hindu Religious and Charitable Institution by the Commissioner of Endowments in the year 1992. The petitioner never raised a dispute or sought for deletion of entries under Section 45 of Act 30 of 1987. The petitioner is contending that the property on which the subject institution is situated bears old Municipal No.1909 and that the said property was sold by Mohd. Karimullah and was purchased by one Kaveti Gangaiah on 3rd Isfandar, 1358 Fasli (1948-Gregorian year) and the petitioner had produced the said document. As per the documentary evidence available with the Endowment Department, the subject institution is known as 'Kaveti Balaiah Satram' and the said Kaveti Balaiah happens to be the father of Kaveti Gangaiah, who bought the land of the subject institution. The said facts gives raise to the presumption that Satram was in existence prior to the execution of alleged registered sale deed. The petitioner is enjoying the property as if it is his own property and deliberately avoiding registration of the subject institution. As such, he is liable for punishment under the provisions of the Endowments Act. The documents produced by the applicant have no evidentiary value and the tax receipts do not confer any title upon the applicant in respect of the subject institution. Hence, the petition may be dismissed.

6. Learned counsel for the petitioner and learned Government Pleader for Arbitration advanced arguments in line with the respective pleadings of the parties.

7. At the time of enquiry before the Tribunal, no oral evidence was adduced. Exhibits A1 to A18 were marked. No documents are marked in

'R' series. The impugned notice, the notice earlier issued in the year 1975 and the reply given by the mother of the petitioner to the earlier notice are exhibited as exhibits A2, A6 and A7 respectively. As noted, by the orders impugned, the Tribunal dismissed the petition of the petitioner.

8. I have gone through the pleadings and copies of documents filed. I have given earnest consideration to the facts and submissions.

9. The points that arises for consideration are -

- (i) Whether the petitioner made out a prima facie case and valid and sufficient grounds for suspending the notice impugned in the OA pending disposal of the OA?
- (ii) And, if so, whether the order impugned is liable to be set aside?
- (iii) To what relief?

10. POINTS:

The pleadings and contentions are noted supra. The core question as to whether the subject property is a Lodge as being claimed by the applicant/ petitioner or it is a Satram as it is being claimed by the 1st respondent and the further question as to whether the property is a private property or an endowed property have to be decided after full-fledged trial. The facts borne out by record are as under: 'The petitioner is the son of late Kaveti Gangaiah. The said Gangaiah died in the year 1970. His death certificate is placed on record as exhibit A3. After his death, a letter vide R.C.No.A1/ 1142/ 1975, dated 15.04.1975, was received from the 1st respondent. In that letter addressed by the then Assistant Commissioner, Endowments Department, Khammam, it was stated that the property is a satram known as Kaveti Balaiah

Satram. By that letter, a direction was given to make an application for registration under Section 38 of Act 17 of 1966. A reply was sent by the wife of Gangaiah asserting that it is private lodge. The department kept quiet, thereafter. After long lapse of time, the impugned notice, dated 26.10.2015, was again issued by the Assistant Commissioner requesting to submit registration proposals under Section 43 of Act 30 of 1987 through the inspector of Endowments Department, Khammam, within a week after receipt of the said notice. It is stated in the said notice that the administration of the above satram is vested with the Endowments Department and that the trustee/ executive authority of the satram shall act according to the provisions of the Act 30 of 1987 and that the trustee or other person in management shall make an application, for its registration, to the Assistant Commissioner of the District.'

10.1 In this backdrop, the petitioner filed the Original Application before the Endowments Tribunal, to declare that the property is a private property and not an endowed property and to set aside the said notice. In the said OA, the present application is filed seeking suspension of the notice pending final disposal of the OA. The Endowment Department/ 1st respondent *inter alia* contends in the counter that the institution was published as a Hindu Religious and Charitable Institution by the Commissioner of Endowments in the year 1992 and that the petitioner never raised any dispute or sought deletion of the entries under Section 45 of the Act 30 of 1987. Petitioner disputes the said contention by stating that a unilateral publication without following the procedure established by law and without issuing notice to the person in possession of the property and without conducting any enquiry or survey is illegal and has no validity in the eye of law and that if the said contention is true, there was no need to issue

a notice in the year 2015 requesting the petitioner to apply for registration of the institution under Section 43 of Act 30 of 1987 and that therefore, the said contention is false and untenable. Admittedly, the Department did not take any action in spite of the mother of the petitioner issuing a reply to a similar notice issued in the year 1975 and kept quiet till 2015, that is, till the notice impugned in the OA was again issued in that year. The petitioner claims rights by virtue of registered documents, viz., registered sale deed, dated 03.04.1958-exhibit A4; certified copy of family settlement deed bearing document No.12/ 1968, dated 04.01.1968-exhibit A5; certified copy of partition deed bearing document no.8523/ 2011, dated 11.12.2011-exhibit A8. He further states that his father was in management for quite a number of years till his death and that after the death of his father, he is continuing in management of the property by claiming that it is a lodge and that only since he is in management, the impugned notice was issued to him. He filed his documents and exhibited them in exhibit 'A' series. The said documents are - lodge licence fee receipts, property tax demand notices, property tax payment receipts, property tax assessment order, registration certificate of establishment of lodge with registration no.583/ 68, dated 31.12.1968, (exhibit A15), notices for water pipe charges & supply charges, payment receipts thereof and profession tax payment receipt. They disclose a *prima facie* case of long possession and management of the property/ institution by his father earlier and by him after the death of his father and till date. The notice is under challenge in the OA, and its legal validity and enforceability have to be determined after full-fledged trial in the OA. In the considered view of this Court, until a final decision is made in the OA, it is appropriate, just and fair to allow the petitioner to continue in possession/ management

of the property/ institution without any threat of removal from possession or management in view of his long possession and the admitted fact that since his father's death, he is continuing in possession/management of the property/institution. Therefore, this Court finds that the petitioner made out a *prima facie* case and the balance of convenience is also in favour of the petitioner. Since the Department having issued a notice in the year 1975, that is, after the death of the father of the petitioner, had kept quiet after receiving a reply from the mother of the petitioner and had again woken up in the year 2015 and issued the impugned notice, the petitioner's long possession and management over the property/ institution deserve to be protected till the disposal of the OA on merits. On weighing competing possibilities or probabilities of likelihood of injury, i.e., the amount of substantial mischief or injury which is likely to be caused if the notice is not suspended, pending final disposal of the OA and comparing it with that which is likely to be caused to the other side if the order is granted, this Court is satisfied that the balance of convenience is only in favour of the petitioner and that if no order of temporary suspension is granted, the petitioner suffers irreparable loss.

10.2 Having thus examined the facts and the contents of the documentary evidence and for the reasons assigned, this Court is satisfied that the impugned order dismissing the petition of the petitioner making far-reaching observations even without the parties entering trial, is unsustainable under facts and in law. Viewed thus, this Court finds that the petitioner is entitled to an order as prayed for. Points are accordingly answered in favour of the revision petitioner.

11. In the result, the Civil Revision Petition is allowed and the impugned order is set aside and I.A.No.172 of 2017 in O.A.No.33 of 2017 on the file of the learned Telangana Endowments Tribunal is allowed. Accordingly, the notice vide Rc.No.D/ 2638/ 2015, dated 26.10.2015, is temporarily suspended, pending final disposal of the OA. However, considering the nature and extent of property and the subject matter of the *lis*, the Tribunal is directed to dispose of the OA on its merit and in strict accordance with the procedure established by law, as expeditiously as possible. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

21st September, 2017

Note:-
Issue CC by 06-10-2017
(B/ o)
RAR

JUSTICE M. SEETHARAMA MURTI

