

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.7734 of 2008

ORDER:

This writ petition by the petitioners, under Article 226 of the Constitution of India, is directed against the order, dated 05.12.2007, of the Deputy Commissioner of Endowments, Hyderabad, passed in O.A.No.93 of 2002 whereby, the 1st petitioner herein was declared as an encroacher of the land admeasuring 270 square yards in Sy. No.24 (old No.20), situated at Bholakpur village, Secunderabad, of the 3rd respondent-temple trust and was directed to hand over possession of the said property to the Manager of the said temple within fifteen days from the date of the receipt of the said orders.

2. Be it noted that the 1st petitioner died on 18.01.2013, i.e., during the pendency of the writ petition; and, a copy of his death certificate is placed on record. The Mandal Revenue Officer, Secunderabad Mandal, was impleaded as 4th respondent; vide orders, dated 11.08.2014, passed in WPMP No.28198 of 2014. I have heard the submissions of Sri *W.B.Srinivas*, learned counsel for the petitioners 2 to 4, and of the learned Government Pleader for Endowments, appearing for the respondents 1 and 2, and of Sri *C.Satish Kumar*, learned Standing Counsel appearing for the 3rd respondent-Temple Trust. I have perused the material record.

3. The case of the petitioners, in brief, is this:

The 1st petitioner is the father of the petitioners 2 to 4. The land admeasuring 270 square yards in Sy.No.24 of Bholakpur village, Secunderabad Mandal, is a private land. It belonged to the ancestor of M.S.Ranga Reddy, Vijay Reddy and Vishweswara Reddy. The said land was leased out in the year 1952 on monthly basis to late Ramaswamy, the late father of the 1st petitioner and he was permitted to raise constructions. A house that was constructed on

the said land was assigned Municipal House no.1-4-440/ 445. During his life time, he paid the rents. Presently, the petitioners are paying rents to the said owners. The petitioners are residing in the said house constructed over the said land and are paying municipal taxes besides non-agricultural land assessment tax as and when notices under Section 4 of the Non-Agricultural Land Assessment Act are being issued. Copies of the Tax receipts for the period from 1981-82 to 2000-01 are filed into Court. The premises was provided with electricity service connection and electricity consumption bills are being paid by the petitioners. The 1st petitioner and his eldest son are selling bricks, sand and construction material by keeping the same in front of their said house and are thus eking out their livelihood. The land owners on receiving consideration on installment basis failed to execute a registered sale deed as they are residing in foreign countries. Thereafter, the 1st petitioner continued in possession of the property as owner by virtue of the fact that sale consideration was paid. The petitioners are residing in the house constructed over the said land since 1952 to the knowledge of the owners and all concerned including the revenue authorities. The original owners got constructed Bhavani Shanker Temple in a portion of the land in Sy.No.24 of Bholakpur village. The temple is a private temple. The local people formed a Trust called Bhavani Shanker Temple Trust to manage the affairs of the temple and its administration. When the officials of the Endowment Department, without any notice, tried to evict the first petitioner from the said house premises in the evening hours of 08.05.2001, the 1st petitioner filed O.S.No.768 of 2001 on the file of the Court of the learned XVIII Junior Civil Judge-cum-Additional Rent Controller, Secunderabad, seeking permanent injunction. He initially obtained temporary injunction orders not to dispossess him from the house and the land. The said suit was dismissed on 17.10.2005. The Civil Court held that the land is land of the Endowment Department. The 1st petitioner preferred an appeal in A.S.No.9 of 2006 on the file of the Court of the learned 1st Additional Chief

Judge, Secunderabad, and the said appeal was dismissed on 21.07.2007. The 1st petitioner has taken steps for filing a second appeal. In the meanwhile, the Mandal Revenue Officer, Secunderabad, issued a notice, on 09.12.2006, under Section 7 of A.P. Land Encroachment Act, 1905, stating that the 1st petitioner is in unauthorized occupation of the land admeasuring 270 square yards in Sy.No.23, T.S.No.10/ 2, Ward No.110, Block-H of Bholakpur village, Hyderabad District, by constructing asbestos rooms and asking to show cause as to why he should not be evicted from the land under Section 6 of the said Act and as to why penalty should not be charged from him for occupation of the said land. The 1st petitioner submitted his explanation to the said M.R.O on 05.01.2007. The said matter is under enquiry. In the explanation, the 1st petitioner stated that he constructed separate asbestos rooms in the land admeasuring 270 square yards in Sy.No.24 situated at Bholakpur village, and that he and the members of his family are residing there along with children and that they have no other land except the subject land and that they are willing to pay regularization charges in terms of G.O.Ms.No.166, dated 16.02.2008, Revenue, (ASSN. POT.), Department. The Government is regularizing unauthorized possessions of lands in favour of persons like the petitioners herein. While so, the 2nd respondent, Deputy Commissioner of Endowments, passed orders, dated 05.12.2007, in O.A.No.93 of 2002, directing the 1st petitioner to vacate the land in question, which is in the possession of the petitioners; and, in the said orders, it is stated that if the 1st petitioner fails to vacate within fifteen days from the date of service of the said orders, action under Section 84 of the A. P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, (hereinafter, 'Act 30 of 1987') would be taken for eviction. The said order was served on the 1st petitioner on 24.03.2008. In the said orders, it is stated that the land is an endowed land and that the land was endowed to the 3rd respondent temple and that the petitioners have encroached the temple land. If the petitioners are evicted from the property, they will be put to irreparable

loss and injury and they will be shelter less and they will be forced to be on the streets. Hence, the writ petition is filed.

4. The case of the Executive Officer of the 3rd respondent temple as stated in the counter affidavit, in brief, is as follows:

The material allegations in the affidavit filed in support of the writ petition are false. The ancestors of M.S.Panga Reddy and others enjoyed the entire land admeasuring Ac.3.33 guntas and 57 square yards in Sy. No. (old No.20) new Sy.No.24 in Bholakpur village of erstwhile Secunderabad Taluq, situated around the temple and the same has been registered in favour of the said temple under Section 38 of the Act 17 of 1966, vide proceedings No.C4/ 4423/ 84, dated 12.02.1986, of the Assistant Commissioner, Endowments. Thus, the said proceedings were issued several decades back. Therefore, Vijaya Reddy and Vishveshwar Reddy having filed O.A.No.11 of 1999 before the Deputy Commissioner of Endowments, Hyderabad, praying to declare the subject land as their private land had later withdrawn the said OA. No permission was accorded to raise construction and no rents were paid by the 1st petitioner to Panga Reddy, Vijaya Reddy and Vishveshwar Reddy at any point of time. The constructions raised are unauthorized constructions. When constructions are raised, the municipal authorities will assign house number in a routine manner and collect property tax and water tax; and, the Electricity Department will give electricity connection and collect electricity consumption charges. The mere fact of assignment of house number and provision of electricity service connection and payment of municipal taxes and electricity charges does not confer any rights over the property. In O.S.No.768 of 2001, the learned XVIII Junior Civil Judge in his judgment, dated 17.10.2005, held that the 1st petitioner failed to produce any record to show that he purchased the land and paid consideration to the vendors and that the 1st petitioner failed to prove his title or even adverse possession. The said judgment became final

on the dismissal of the appeal in A.S.No.9 of 2006 by the learned Additional Chief Judge, by his judgment dated 21.07.2007. Thus, the civil Court decided that it is an endowed property. The allegation that the temple is a private temple is absolutely false. The temple is governed by the provisions of Act 30 of 1987. O.A.No.93 of 2002 was filed by the Assistant Commissioner of Endowments and the Chairman of the Temple for declaring that the 1st petitioner is the encroacher and for removing the encroachment. The Deputy Commissioner of Endowment Department, after conducting a detailed enquiry, declared that the 1st petitioner is an encroacher and ordered eviction. The 1st petitioner's claims were rejected by the Civil Court as well as the competent authority under the Act 30 of 1987. The 1st petitioner with a *mala fide* intention brought the Revenue Department into picture to drag on the litigation. The petitioner without exhausting the legal remedies filed the writ petition by directly approaching this Court. G.O.Ms.no.166, dated 16.02.2008, is not applicable to the properties which are endowed and the endowment properties. The Deputy Commissioner clearly held that the subject temple land was an endowed property. The subject land is not a Government land and it is not under the control of the Revenue Department. The said fact is established in the earlier civil proceedings. As the land was endowed by the private pattadars in favour of the temple, the land will not come within the purview of the Government land. The petitioners are squatting on the property, which was endowed, by philanthropic donors long time back, for the benefit and maintenance of Bhavani Shankar temple. Hence, the writ petition may be dismissed.

5. On behalf of the 4th respondent, the Tahasildar, Secunderabad, filed a counter affidavit *inter alia* stating as follows:

The land in an extent of 275 square yards has been identified on ground. Out of the said 275 square yards, 138 square yards falls in T.S.No.10/ 2, Block

H, Ward No.110 of Bholakpur village, Secunderabad Mandal of Hyderabad District. As per the Town Survey Land Records, T.S.No.10/ 2, Block H, Ward No.110 of Bholakpur village, is recorded as Abadi, "Bharaj Khata" at column No. 10 and as "G" at column No.20. The total extent was shown in Col.No.17 as 1780 Sq. Mts and in Col.No.23, it was recorded as "G-vacant land" and in respect of T.S.No.12, Block-H, Ward 110 in Col.no.10, it was recorded as "B.Ranga Reddy" and in column no.20, it was recorded as "B.Ranga Reddy". The total extent shown in Column no.(17) as 14, 012 square meters and in Column No.22, it was recorded as vacant land. Thus, as per the Town Survey Land Records, a part of schedule land falling in T.S.No.10/ 2 to an extent of 138 square yards is a Government land and the State Government is the absolute owner and possessor of the above said land. The 1st petitioner filed an application, vide application No.2452, dated 02.04.2008, for regularization of the encroached Government land in an extent of 275 square yards in respect of the alleged premises 1-4-440 of Bholakpur village, Secunderabad Mandal, as per G.O.Ms.No.166 dated 16.02.2008. After due enquiry, the District Collector, Hyderabad, vide proceedings No.R2/ 3001/ 2002, dated 03.03.2009, recommended for regularization on payment of market value to an extent of 138 square yards, which falls under T.S.No.10/ 2, Block-H, Ward 110 of Bholakpur village, Secunderabad Mandal of Hyderabad District, which is a Government land and rejected the request in respect of land in an extent of 137 square yards for regularization, which falls in T.S.No.12, Block-H, Ward 110 of Bholakpur village, Secunderabad Mandal of Hyderabad District, as it is classified as private land. The Deputy Director, Survey and Land Records, Hyderabad, vide letter No.A3/ 143/ 2015, Dated 21.02.2015, has confirmed the same. O.A.No.93 of 2002 is between the Assistant Commissioner of Endowments and Chairman of the Temple on one hand the 1st petitioner on the other and to the said OA, the Government is not a party. Since the 1st petitioner encroached the Government land, the then Tahasildar rightly

initiated action under A. P. Land Encroachment Act, 1905. The 1st petitioner filed an application for transfer of rights in respect of alleged premises bearing No.1-4-440 to an extent of 275 square yards under G.O.Ms.No.166, dated 16.06.2008. After completion of the formalities, the District Collector, Hyderabad District, vide proceedings no.P2/ 3001/ 2008, dated 03.03.2009, recommended for transfer of right to an extent of 138 square yards falling in T.S.No.10/ 2, Block-H, Ward 110 of Bholakpur village, Secunderabad Mandal, to the 1st petitioner and rejected the request for transfer of rights in respect of remaining 137 square yards.

6. I have perused the material record including the material papers and additional material papers filed by both the parties, including the letter of the Deputy Director, Survey and Land Records, bearing No.A3/ 143/ 2015, dated 21.02.2015, addressed to the Tahasildar; Copy of Town Survey Register, Copy of Location Sketch; copy of the order, dated 05.12.2007, of the Commissioner of Endowments; proceedings of the District Collector, bearing No.P2/ 3001/ 2008, dated 04.02.2009; notice dated 19.12.2006 of the Tahasildar issued under Section 7 of the A.P. Land Encroachment Act, 1905; and the letter, dated 02.03.2009, bearing No.P2/ 3001/ 2008, of the District Collector, Hyderabad District.

7. The learned counsel for the petitioners 2 to 4 while reiterating their pleaded case stated that the land in question is not a temple land and that it is a private land and that the original owners, B.Ranga Reddy and two others originally leased out the property to the late father of the 1st petitioner and that he was permitted to raise constructions and that after raising constructions, the late father of the 1st petitioner and the 1st petitioner lived in the said house over the subject land by paying rents to the owners and that electric service connection was also obtained and that the house property was assigned assessment number and that the petitioners are paying property taxes

and also non-agricultural land assessment tax as and when demanded by the Government and that from time to time, the sale consideration was paid to the owners, but no sale deed was obtained as the owners are residing in foreign countries and thus, the petitioners have become owners of the property having paid the sale consideration and were and are residing in the property since the year 1952 and that when the Tahasildar issued a notice of eviction under the Land Encroachment Act, 1905, the 1st petitioner requested for regularization as per the terms of G.O.Ms.No.166 and that the 4th respondent filed a counter stating that out of the subject land, 138 square yards falls in T.S.No.10/ 2. Block-H, and that it is a Government land and recommended for regularization on payment of market value in respect of the said extent and that the remaining extent of 137 square yards falls in T.S.No.12 , Block-H , Ward No.110 of Bholakpur village, and that no recommendation for regularization was made in respect of the said extent of land, which is a private land, and that after due enquiry, the District Collector, vide proceedings, dated 03.03.2009, recommended for regularization on payment of market value insofar as 138 square yards, which falls in T.S.No.10/ 2 of Bholakpur village, for transfer of right in respect of the said extent of land and the matter is pending with the Government. He, therefore, submitted that the petitioners cannot be evicted from the subject land. He, alternatively, contended that in any view of the matter, they cannot be evicted from the land in respect of which regularization proceedings are pending as per the recommendation of the District Collector.

8. Per contra, the learned Government Pleader, Endowments, and the learned Standing Counsel for the 3rd respondent-Temple Trust while reiterating the case of the temple and supporting the orders of the Deputy Commissioner contended that the orders of the Deputy Commissioner and that the judgments of the Civil Court in the civil suit and the civil appeal which have become final are binding on the petitioners and that during the pendency of the proceeding before the competent Courts, any application for regularization made by the 1st

petitioner, with false averments and by suppressing the material facts, is of no avail and that the Collector is not competent to ignore the judgments in the civil proceedings and pass any orders recommending regularization by ignoring the judgments, which are binding on the petitioners, and that in any view of the matter, the Collector is not competent to deal with the endowed property and that even the Government have no right to regularize unauthorized encroachments over endowed properties and that the Government and the officers concerned of the Endowment Department are obligated to deal with the endowed property keeping in view the wishes of the persons, who endowed the property and in accordance with the provisions of Act 30 of 1987 and that therefore, the proceedings of the Collector recommending regularization as stated in the counter of the 4th respondent-Mandal Revenue Officer are not valid and binding and need not be countenanced and that the petitioners are liable to be evicted from the subject house property and land as even according to their admitted case, the property is a private property and it is sufficiently established before the Deputy Commissioner and the Civil Courts that the property is an endowed property of the temple and that the judgments of the civil Courts have become final and binding on the parties to the *lis* and that the petitioners cannot be permitted to contend that part of the land is a Government land as their specific case is that the land is private land and that they purchased it orally.

9. I have given earnest consideration to the facts and the submissions.

10. The 1st petitioner admittedly pleaded that the property is a private property and it belonged to the ancestor of M.S.Ranga Reddy and two others and that the said property was obtained on lease by his late father and that his father and he made constructions with permission of the owners and that the said property was assigned municipal assessment number and that he obtained service connection and was paying property taxes and electricity consumption

charges and that later, consideration was paid but sale deed was not obtained as the said owners of the property were residing abroad and that since 1952, the 1st petitioner and his father were and are in possession of the property and that the property is not an endowed property. Admittedly, the 1st petitioner filed a civil suit in O.S.No.768 of 2001 for perpetual injunction and the same was dismissed on 17.10.2005 on contest by the Commissioner of Endowments and the temple trust. The appeal preferred by the 1st petitioner in A.S.No.9 of 2006 was dismissed on 21.07.2007 by the learned Additional Chief Judge, Secunderabad. In the civil proceedings, it was held that the property is an endowed property. Eventually, by the orders, dated 15.12.2007, in O.A.No.93 of 2002, that are impugned in this writ petition, the Deputy Commissioner after elaborate enquiry held that the subject property being claimed by the 1st petitioner is the endowed property of the temple and therefore, ordered eviction of the 1st petitioner from the property. On his death, the petitioners 2 to 4 who are his legal heirs filed this writ petition admitting *inter alia* all the facts and events. Thus, as per the specific stand of the deceased 1st petitioner and the writ petitioners 2 to 4, the property originally belonged to the ancestors of M.S. Ranga Reddy and two others; and that the property was initially taken on lease by the late father of the 1st petitioner; and that later, the 1st petitioner orally purchased the property by paying sale consideration to the owners, but did not obtain the sale deed as they were residing abroad. Thus, the petitioners claim ownership of the property without any valid document of title. However, after an elaborate enquiry, the Deputy Commissioner held that the property was recorded in the relevant register, several decades back, as endowment property and that the 1st petitioner is an encroacher and that the property was endowed by the original owners to the temple and that the 1st petitioner failed to establish any of his contentions. It is not in dispute that the said property as per the pleadings in the writ petition and as per the contentions of the temple is of an extent of 270 square yards in

Sy.No.24 of Bholakpur village, Secunderabad Mandal. However, taking advantage of a notice, dated 19.12.2006, that was issued, during the pendency of the matters, by the Mandal Revenue Officer, Secunderabad Mandal, under the provisions of Land Encroachment Act, 1905, calling upon the 1st petitioner to show cause as to why he should not be evicted from the government land and to show cause as to why charges shall not be collected from him for being in occupation of the Government land of an extent of 270 square yards in Sy.No.23, T.S.No.10/2, Ward No.110, Block-H, where house bearing No. 1-1-440/445 is situated, the deceased 1st petitioner and the petitioners 2 to 4 now want to contend that the property is not a private property and that it is a Government land and that their explanation to the notice was already submitted to the Government. The petitioners now want to further contend that in their explanation submitted to the said notice of the MRO, they sought regularization of their unauthorized occupation of the Government land and that the matter is pending with the Government. Admittedly, the encroachment notice relates to the property in 270 square yards in Sy.No.23, T.S.No.10/2, Ward No.110, Block-H, but does not relate to the property in Sy.No.24 (New) [Old No.20]. Further, the 1st petitioner failed to bring to the notice of the Government the pendency of O.A.No.93 of 2002 before the Deputy Commissioner and the Government also did not conduct a detailed enquiry in the matter. Even as per counter of the 4th respondent-Tahasildar/MRO, the District Collector, Hyderabad District, vide his proceedings, dated 03.03.2009, recommended for regularization, on payment of market value, in respect of land in an extent of 138 square yards, which falls under T.S.No.10/2, Block-H, Ward 110 of Bholakpur village, Secunderabad Mandal of Hyderabad District, and no further action was taken on the said recommendation and rights are thus conferred on the petitioners. Admittedly, G.O.Ms.No.166 under which regularization was sought by the 1st petitioner was issued on 16.02.2008 and by which time, the order of eviction was passed by

the Deputy Commissioner, on 05.12.2007, in O.A.No.93 of 2002. Therefore, G.O.Ms.No.166 has no application to the facts of the case and is of no legal validity and significance. Further, when the property is an endowed property, the District Collector or any other officer of the Government, except the officer concerned with the Endowment Department, is not competent to deal with the property. Even those officers of the Endowment Department are not entitled to part with the endowed property and regularize unauthorized encroachments as the provisions of Act 30 of 1987 do not envisage such regularization of unauthorized occupations. The provisions of the Act postulate a specified procedure for alienating or selling the endowed properties and it is only after following the procedure and after consideration of all objections and suggestions received from public and interested persons, the competent authority is entitled to sanction for sale or transfer of immovable property of a religious institution. It is well settled that endowed property or public property or property in which public interest is involved is not to be dealt with at the absolute discretion of the Executive and certain precepts and principles must be observed in such matters as public interest is the paramount consideration and such properties shall be used for public purpose and/ or the purpose for which such properties are intended or endowed, as the case may be, and in such matters, where public trust is involved there is no place for other considerations. If any property of the Endowment Department is to be alienated, permission of the Court is to be obtained by stating necessary facts and circumstances. Further, as already noted, the District Collector made recommendation for regularization on payment of market value in respect of 138 square yards that falls in T.S.No.10/ 2 and did not make recommendation for the extent of 137 square yards that falls in T.S.No.12, Block-H, Ward 110 of Bholakpur village, Secunderabad Mandal of Hyderabad District, as that land is a private land and does not belong to Government. The regularization proceedings have not become final. Further, when the land is registered in the

relevant register of the Endowment Department as an endowed property, even the Executive cannot deal with the property as it pleases and if the Executive of the Government is of the view that the property, which is entered in the Endowment Register as an Endowment property, is a Government land, it is for the Executive to follow the procedure established and known to law for deletion of the property from the Endowment Register and after doing so only, the Executive of the Government is supposed to deal with any property which is entered in the Endowment Register as an endowed property. When once the property is entered in the relevant Register of the Endowment Department and the Executive of the Government is supposed to act in a manner which is transparent and known to law. Therefore, in the facts and circumstances of the case, the action of the Collector recommending regularization of the subject land is invalid and illegal. Further, even as per the original pleaded case of 1st petitioner, the subject land is a private land and not a Government land. Therefore, he and his legal heirs cannot be permitted to prevaricate and contend that the land is a Government land, more particularly in the light of the fact that eviction orders by the Deputy Commissioner were passed as long as back on 05.12.2007 in the OA instituted in the year 2002 after recording a finding that the property was endowed to the 3rd respondent temple trust several decades back and it was duly recorded in the relevant Register under Section 38 of Act 17 of 1966 and a copy of the same is also exhibited as Exhibit A3 in the proceeding before the Deputy Commissioner. On the above analysis, this Court finds that the petitioners could not make out any ground much less valid and sufficient ground to set aside the order, dated 05.12.2007, of the Deputy Commissioner, Endowments Department passed in O.A.No.93 of 2002. In the light of the said orders in the said OA, the petitioners cannot any longer squat on the property, which is an endowed property and they are bound to vacate and deliver possession of the same.

11. In the result, the Civil Revision Petition is dismissed. However, it is made clear that if there is any other Government land other than the subject temple land, which is not the subject matter of this *I/s*, the petitioners are at liberty to pursue their request for regularization in respect of the said some other land, which is said to be a Government land, but they cannot continue in possession of the land of the temple, which is the subject matter of the OA aforementioned. However, the petitioners are granted a time of two months from the date of receipt of a copy of this order to vacate and hand over vacant possession of the subject property to the Manager of the 3rd respondent temple trust; failing which the 3rd respondent is at liberty to obtain vacant possession of the subject property in accordance with the procedure established by law.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

10.02.2017
RAR



M. SEETHARAMA MURTI, J

