

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WVMP.No.13 of 2010 in WPMP.No.22608 of 2009 in**

**WP.No.17242 of 2009**

**&**

**WP.No.17242 of 2009**

**COMMON ORDER :**

Heard the counsel for petitioner, the learned Government Pleader for Endowments for respondent nos.1 and 2, and Sri N. Guru Gopal, counsel for 3<sup>rd</sup> respondent.

2. The petitioner has filed the Writ Petition seeking a *Writ of Certiorari* to call for the records pertaining to O.A.No.44 of 2006 on the file of the Deputy Commissioner of Endowments Department, Hyderabad (i.e., 1<sup>st</sup> respondent herein), and to quash his order dt.23.07.2009; and consequently, declare that petitioner is the absolute owner of premises bearing No.4-7-337 to 339 situate at Esamia Bazar, Hyderabad, and that the said premises is not same as premises bearing Nos.1578-1579 (New 1708-1709).

3. The respondent nos.2 and 3 herein filed O.A.No.44 of 2006 under Section 83 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (**for short, 'the Act'**) against the petitioner alleging that petitioner is tenant of 3<sup>rd</sup> respondent-Temple in respect of the said property, and that he should be evicted therefrom and also directed to pay Rs.14,220/- for use and occupation of the property from 01.01.1987 to 30.09.2006; and Rs.30,000/- from the date of the filing of the O.P. till date of delivery of the property.

4. It is alleged in the O.A. that the 3<sup>rd</sup> respondent-Temple is the absolute owner of the above premises and that such ownership is established under *Munthakab* 1334 of 02, that it was let-out to petitioner's father, that notice was issued on 09.02.1986 to all the tenants terminating the tenancy, but petitioner's father did not vacate the same promising to pay rents. It is alleged that petitioner was using the property for his residential purpose and also running an industry under the name and style 'M/s. Sripad Industries'. It is contended that there is no approval of the lease in favour of petitioner from the competent authority, and that he was continuing in possession of the property unauthorisedly.

5. Counter-affidavit is filed by petitioner opposing the said O.A. stating that the subject premises is owned by him, that it is his ancestral property since more than 100 years, and therefore, it would not come within the purview of definition of the term '*Endowment*'; that the Schedule property is private property and family property of late Sri Gangadhar P. Soni, and petitioner and his brothers are in possession of the said property without any third party interference since last 100 years and the Deputy Commissioner of Endowments had no jurisdiction to entertain the matter on the ground that it is endowed property; that the said authority inherently lacks jurisdiction to entertain the matter under Section 83 of the said Act or to adjudicate any rights in respect of the said property; that no documentary evidence was filed by respondent nos.2 and 3 to

establish that the O.A. Schedule property is one of the endowed properties of 3<sup>rd</sup> respondent-Temple; that the *Munthakab* 1334 of 02, relied upon by 3<sup>rd</sup> respondent, did not pertain to the subject property which has House bearing No.4-7-337 to 339 situate at Esamia Bazar, Hyderabad, and that this property is not same as property with House Nos.1578-1579 (New 1708-1709) mentioned in the *Munthakab*, in respect of which the 3<sup>rd</sup> respondent-Temple has filed the said O.A.

6. Before the Deputy Commissioner of Endowments, a fit person of the 3<sup>rd</sup> respondent-Temple Institution was examined as PW.1, and he marked Exs.A.1 to A.26. The petitioner was also examined but no documents were marked on his behalf.

7. By order dt.23.07.2009, O.A.No.44 of 2006 was allowed by the 1<sup>st</sup> respondent, petitioner was declared an encroacher over the subject property and was asked to vacate the same and hand over vacant physical possession of the property.

8. The 1<sup>st</sup> respondent opined that Exs.A.1 to A.26, which were marked by the 3<sup>rd</sup> respondent, showed that the petitioner's father was a *lessee* of the O.A. Schedule property and paid rents to the Temple Management by way of cheques, and that petitioner did not put forth any material evidence in support of his contention and did not file any documents. He also held that petitioner could not prove that the documents filed by the 3<sup>rd</sup> respondent are fabricated or forged, and that the O.A. Schedule property belonged to 3<sup>rd</sup> respondent-Temple.

9. Assailing the same, the present Writ Petition is filed.

10. The counsel for petitioner contended that petitioner had disputed the very jurisdiction of 1<sup>st</sup> respondent to entertain the O.A. on the ground that the property in petitioner's occupation i.e., house bearing No.4-7-337 to 339 situate at Esamia Bazar, Hyderabad is not endowed property, that it is his ancestral property, and that the 3<sup>rd</sup> respondent-Temple did not establish that the property mentioned in the *Munthakab* 1334 of 02, relied upon by it (i.e., premises bearing Nos.1578-1579 (New 1708-1709)) is the same property in petitioner's possession and occupation; that this jurisdictional fact that the property is endowed property ought to have been decided by 1<sup>st</sup> respondent; and by wrongfully deciding the said jurisdictional fact, the 1<sup>st</sup> respondent cannot confer jurisdiction on himself and proceed to direct eviction of petitioner. She contended that no documentary evidence was filed by respondent nos.2 and 3 before the 1<sup>st</sup> respondent to establish even *prima facie* that the O.A. Schedule property is property endowed to the 3<sup>rd</sup> respondent-Temple, and in the absence of any such evidence the 1<sup>st</sup> respondent ought not to have entertained the O.A. and proceeded to decide it. She placed reliance on the evidence in cross-examination of PW.1 (evidence of 3<sup>rd</sup> respondent) who stated that no documents had been filed to show that petitioner's father was a *lessee* of the Temple; that in Ex.A.2 (*Munthakab* 1334 of 02) premises bearing Nos.1578-1579 (New 1708-1709) is mentioned, but the Schedule in Ex.A.2 did not indicate the measurements or

identification or area of the land in question; that no link documents have been filed for Ex.A.2 and even in the Schedule the word 'Esamia Bazar' was not mentioned; PW.1 even admitted that he had not filed any documents to show that the numbers mentioned in Ex.A.2 were correspondingly changed to new numbers, i.e., the new Municipal numbers and he had not filed any document to show that Municipal bearing No.4-7-337 to 339 situated at Esamia Bazar, Hyderabad corresponds to Nos.1578-1579 (Old) (New 1708-1709). She therefore contended that in the light of this evidence adduced by the 3<sup>rd</sup> respondent-Temple, the 1<sup>st</sup> respondent could not have given a finding that the O.A. schedule property is endowed property, and that he had got jurisdiction to direct petitioner's eviction therefrom.

**11.** The learned Government Pleader for Endowments, appearing for respondent nos.1 and 2, and Sri N. Guru Gopal, counsel for 3<sup>rd</sup> respondent, however, sought to support the order passed by 1<sup>st</sup> respondent. They contended that petitioner has a remedy by way appeal under Section 84 of the Act, and that without availing the said remedy petitioner has approached this Court, and therefore on account of existence of an effective alternative remedy, the petitioner should not be granted any relief. They also contended that notwithstanding the evidence of PW.1 there was ample evidence on record on the basis of which the 1<sup>st</sup> respondent came to the conclusion that the O.A. Schedule property is endowed property. Reference is also made to

O.A.No.72 of 1969, which was earlier filed by the 3<sup>rd</sup> respondent-Temple against the petitioner's father and others.

**12.** It is not in dispute that the document on the basis of which the 3<sup>rd</sup> respondent-Temple is claiming title to the property is Ex.A.2, a *Munthakab* 1334 of 02 issued in the year 1350 Fasli, and that the said document mentions premises bearing Nos.1578-1579 (New 1708-1709). Therefore, in order to maintain the said O.A. the 3<sup>rd</sup> respondent has to establish that premises bearing No.4-7-337 to 339 situate at Esamia Bazar, Hyderabad is the same as the premises bearing Nos.1578-1579 (New 1708-1709). Unless this link is established it cannot be said that the property which is subject matter of Ex.A.2 is the O.A. Schedule property. In his cross-examination, PW.1 admitted that he had not filed any document to show that authentically premises bearing No.4-7-337 to 339 situated at Esamia Bazar, Hyderabad corresponds to premises bearing Nos.1578-1579 (New 1708-1709). In the absence of this evidence adduced by the 3<sup>rd</sup> respondent it cannot be said by any stretch of imagination that premises bearing No.4-7-337 to 339 situate at Esamia Bazar, Hyderabad, mentioned in the O.A. Schedule property by the 3<sup>rd</sup> respondent is same as the premises bearing Nos.1578-1579 (New 1708-1709) in the *Munthakab* Ex.A.2. In fact, PW.1 went to the extent of admitting that the Schedule property in Ex.A.2 did not indicate the measurements or identification or area of the land, and

that even the word 'Esamia Bazar' where the O.A. Schedule property is said to be located, is not mentioned in the Ex.A.2.

**13.** Coming to O.A.No.72 of 1969 relied on by the counsel for petitioner, it is pertinent to note that in the petition O.A.No.44 of 2006 (filed by respondent nos.2 and 3) there is no reference to the said O.A. In the chief-examination affidavit of PW.1 filed by the 1<sup>st</sup> respondent also there is no reference to this O.A. or the order passed therein. Therefore, no reliance can be placed on any order which might have been passed in O.A.No.72 of 1969, particularly when it is not clear as to what property was subject matter of the said O.A.

**14.** Having regard to the fact that there is no evidence adduced by respondent nos.2 and 3 to show that the premises bearing No.4-7-337 to 339 situate at Esamia Bazar, Hyderabad is the same as the property bearing House Nos.1578-1579 (New 1708-1709) mentioned in Ex.A.2 (*Munthakab* 1334 of 02), and since no document has been filed by respondent nos.2 and 3 to establish the link between the two, it has to be held that the O.A. Schedule property has not been proved to be endowed property by respondent nos.2 and 3.

**15.** The 1<sup>st</sup> respondent has jurisdiction under the Act to direct eviction of persons in occupation of 'endowed' property only under Section 83 of the Act. If the property in question is not 'endowed property' he has no jurisdiction to direct eviction.

**16.** But he did not go into the question whether the O.A. Schedule property is same as property mentioned in the *Munthakab*. Failure to decide the said issue is a clear jurisdictional error on part of 1<sup>st</sup> respondent. He also did not independently consider the contents of Exs.A.1 to A.26 to come to conclusion that petitioner is an encroacher of the endowed property.

**17.** Once there is such error of jurisdiction, this Court is entitled to interfere in a Writ Petition under Article 226 of the Constitution of India, and it cannot be said that the existence of remedy of appeal under the Act is a bar for this Court to entertain a Writ Petition.

**18.** In *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors*<sup>1</sup>, the Supreme Court has held that if an order is passed by an authority without jurisdiction it is not necessary to invoke alternative remedy, and that this Court can entertain a Writ Petition and grant relief.

**19.** In this view of the matter, the Writ Petition is allowed. The order dt.23.07.2009 in O.A.No.44 of 2006 of the 1<sup>st</sup> respondent is quashed on the ground that the 1<sup>st</sup> respondent has no jurisdiction to entertain the said O.A.

**20.** Consequently, WVMP.No.13 of 2010 in WPMP.No.22608 of 2009 is dismissed, and the interim order dt.14.09.2009 granted in WPMP.No.22608 of 2009 is made absolute.

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<sup>1</sup> (1998) 8 SCC 1

**21.** The amount deposited by the petitioner in WPMP.No.22608 of 2009 (pursuant to the order dt.14.09.2009 in WPMP.No.22608 of 2009) shall be refunded to the petitioner by the Registrar (Judicial) of this Court.

**22.** Accordingly, the Writ Petition is allowed as above. No order as to costs.

**23.** As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 29-08-2017  
Ndr/\*

