

HONOURABLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No.9162 OF 2006

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Respondents 1 and 2 and Sri K.V.N.Bhupal, learned counsel for third respondent.

The present writ petition is filed by the petitioner challenging the orders passed in O.A.No.60/2003 dated 18-3-2006 on the file of the Deputy Commissioner for Endowments, Kadapa, Kadapa District and to set aside the same on the ground of violation of principles of natural justice since no notice is issued to the petitioner.

The facts of the case are that the petitioner herein purchased the property bearing D.No.6/154 and 155 situated in Vinayaka Nagar, Proddutur, Kadapa District from one S.Subbanna under a registered sale deed dated 14-10-2002 for a valuable consideration of Rs.1,25,000/-. In fact, the property was purchased by the father of the vendor of the petitioner from the original owner under a registered sale deed dated 30-4-1947 and the same was in possession of his father. Therefore, for the last more than seven decades, the property has been in possession of the father of the vendor and vendor himself and after 2002, it has been in possession and enjoyment of the petitioner. While so, on 5-4-2006, an employee of the second respondent served a Xerox copy of the impugned proceedings on the petitioner wherein the vendor of the petitioner was shown as party respondent and first respondent has

passed the impugned proceedings declaring him as an Encroacher under Section 83 of the Hindu Religious and Charitable Endowments Act. Immediately, on enquiries, the petitioner came to know that his vendor has suffered an order. Therefore, the petitioner, aggrieved by the said proceedings, filed the present writ petition contending that when he has purchased the property under a registered sale deed from his vendor and in possession and enjoyment of the said property, he cannot be dispossessed without issuing any notice. More so, when the proceedings were initiated and are pending, the petitioner has been in possession of the subject property.

Per contra, Sri K.V.N.Bhupal, Standing Counsel appearing for third respondent would submit that when the proceedings were initiated under Section 83 for eviction of the vendor of the petitioner, he sold away the subject property in favour of the petitioner under a registered sale deed. No notice is served on the petitioner and as such, he may be allowed to participate in the proceedings to be initiated afresh.

The fact remains that when the eviction proceedings are pending, a person in possession of the subject property is the petitioner and he is entitled for a notice. That apart, the petitioner's counsel also contended that father of the petitioner's vendor purchased the subject property from his vendor in the year 1947 under a registered sale deed dated 30-4-1947. That being the position, this court cannot go into the aspect as to whether the

petitioner's vendor or a third respondent is the owner of the subject property.

Be that as it may, since the proceedings initiated by the respondent for eviction and when the petitioner has been in possession of the same, he cannot be dispossessed without giving any notice and without giving him any opportunity of being heard.

Since the orders passed in O.A.No.60 of 2003 are without any notice, the same is set aside giving liberty to the respondents to initiate fresh proceedings and take appropriate action after issuing notice to the petitioner as per law.

Accordingly, this Writ Petition is disposed of. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



JUSTICE P.KESHA RAO

Dated 27th November, 2017.

Dvs

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