

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.477 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WP.No.12644 of 2009 dated 27.02.2017. The appellant herein is the petitioner in the Writ Petition wherein he sought to declare the order of the Deputy Commissioner, Endowments, in O.A.No.1 of 2005 dated 15.05.2009, as arbitrary and illegal.

The subject mulgi belongs to the fourth respondent-Mutt, and the appellant-writ petitioner is its tenant. On the ground that he continued to occupy the property of the mutt beyond the lease period, action was initiated against him by the Deputy Commissioner; and, by order dated 15.05.2009, the Deputy Commissioner directed him to vacate the property. Aggrieved thereby, the petitioner filed WP.No.12644 of 2009 which resulted in the order under appeal being passed on 27.02.2017.

In the order under appeal the learned Single Judge, after referring to Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 ("the Act" for short), and the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Right (other than Agricultural) leases and Licenses Rules, 2003 ("the Rules" for short), observed that the provisions of law did not permit either extension of leases or licenses; after expiry of the lease or license period, a fresh lease or license in respect of the

property can be granted only by means of tender-cum-public auction, as specified in Rule 3 of the Rules; the petitioner could not, therefore, place reliance on the consent given by the Mahant for extension of lease in his favour as any such consent, contrary to the provisions of law, was invalid; further, in the case on hand, the Mahant, having realised that the course suggested by him was impermissible, had withdrawn his consent; the petitioner, who had suffered an order of eviction under the order impugned in the Writ Petition, was not entitled to continue in possession of the subject property any longer; and he was not, therefore, entitled to continue in occupation of the subject property belonging to the fourth respondent. While dismissing the Writ Petition, the learned Judge granted three months' time, from the date of receipt of a copy of that order, for the petitioner to vacate and hand over vacant peaceful possession of the subject property to the Mahant of the fourth respondent-Mutt. The Learned Single Judge made it clear that, on the petitioner's failure to do so, the fourth respondent-Mutt would take steps for removal of the encroachment made by the petitioner, and obtain possession of the subject property by following the procedure established by law.

Before us Sri V.Hari Haran, learned counsel for the appellant-writ petitioner, would rely on Rule 3(1) of the Rules to submit that power is conferred on the Commissioner to grant permission for extension of the lease, otherwise than by way of public auction; the executive officer of the Temple had informed the Commissioner, by his letter dated 22.01.2017, that the Mutt had no objection for the lease being extended in his favour for a period of three years on a monthly rent of Rs.10,000/-, as per the

Endowments Rules, subject to withdrawal of Writ Petition No.12644 of 2009; the learned Single Judge had, therefore, erred in holding that no power was conferred on the Commissioner to extend the lease otherwise than by way of public auction; and, in the light of Rule 3(1) of the Rules, the Commissioner should be directed to accord permission to the Executive Officer to extend the lease, otherwise than by way of public auction.

The report of the Assistant Commissioner, Endowments, to the Commissioner, Endowments, dated 22.01.2017 records that the Mahant of the subject institution had stated that the petitioner had come forward for enhancement of monthly rent from Rs.1,500/- to Rs.6,000/-, and had requested for extension of lease for three years; the Mahant of the subject institution had requested for extension of the lease, in favour of the petitioner, for a period of three years on a monthly rent of Rs.10,000/- as per Endowments Rules, subject to withdrawal of WP.No.12644 of 2009 pending before the High court; and a copy of the report, submitted by the Mahant, was being submitted for the information of the Commissioner, and for taking further necessary action in the matter.

As is evident from the order under appeal, while the Mahant had given his consent earlier for extension of the lease on a monthly rent of Rs.10,000/-, he withdrew his consent thereafter on the ground that the consent was given on a misunderstanding of the provisions of law. In the absence of the consent of the Mahant, the question which necessitates examination is whether any right is conferred on the petitioner, under Rule 3(1) of the

Rules to claim extension of lease otherwise than by way of public auction?

Rule 3(1) of the Rules empowers the Commissioner, on a request made in writing by the Executive Authority, to permit lease of any property or right, otherwise than by way of public auction, if he is satisfied, for reasons to be recorded in writing, that the interest of the institution or endowments would not suffer thereby. The pre-requisite for the Commissioner granting permission for lease of any immovable property, otherwise than by way of public auction, is for a request to be made in writing by the Executive Authority. It is only on a specific request made by the Executive Authority, and if he is able to show how extension of lease of immovable property, otherwise than by way of public auction, is in the interests of the Mutt, would the Commissioner be required to exercise jurisdiction, under Rule 3(1) of the Rules, to extend the lease. Even then, the Commissioner is not entitled to mechanically grant permission, for Rule 3(1) of the Rules requires him to record reasons in writing why he considers extension of lease, otherwise than by way of public auction, to be in the interest of the institution. The requirement of Rule 3(1) of the Rules is the interest of the institution (in the present case, the fourth respondent-Mutt), and not the interest of the petitioner-tenant.

As noted hereinabove, neither has the Assistant Commissioner (Executive Authority) recommended extension of lease otherwise than by way of public auction, nor does the report of the Assistant Commissioner show how such an extension would be in the interest of the Mutt. The right conferred, under Rule 3(1) of the Rules, is only on the Executive Authority of the institution,

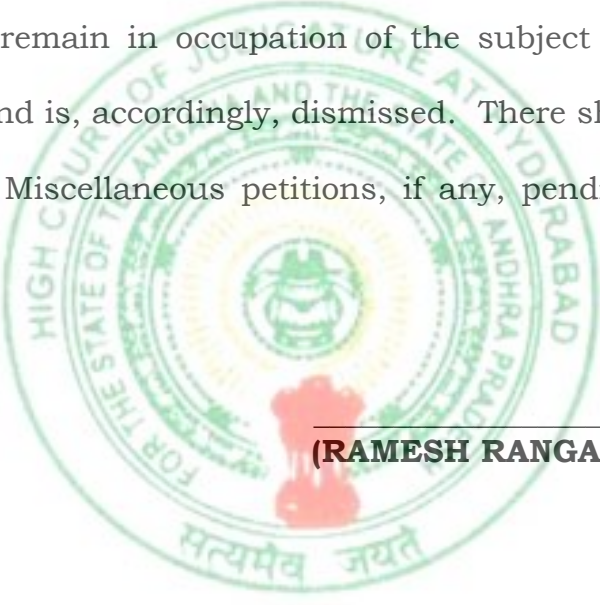
and that too to seek permission of the Commissioner only if such extension of lease is in the interest of the institution. It is not open to a tenant to claim, as of right, that he is entitled for extension of the lease.

Even otherwise, Rule 4(1) of the Rules stipulates that a lease shall be granted only in respect of immovable properties such as buildings used only for residential purposes; and in case of other immovable properties, such as shops used for the purpose of running a business, only licenses shall be granted. We find considerable force in the submission of Sri C.Srinivasa Murthy, learned counsel for the fourth respondent, that, since the subject mulgi is not being used for residential purposes but for carrying on the business of selling sarees, a license is required to be granted under Rule 4, and not a lease under Rule 3 of the Rules. The submission of the learned counsel is that Rule 3(1) of the Rules confers power on the Commissioner to extend a lease which would mean extension of the lease of a residential building; Rule 3(1) of the Rules makes no reference to a license; only a license can be granted to a person carrying on business in a building owned by the Mutt or a religious institution and not a lease; and the question of the Commissioner even considering grant of extension of the lease does not arise in the present case as the appellant-writ petitioner is using the mulgi to carry on his business.

Rules 3(1) and 4(1) of the Rules make a distinction between a lease and license, and Rule 3(1) of the Rules refers only to leases and not licenses. Since the subject building is being used by the appellant-writ petitioner for carrying on business, he is only entitled to seek a license under Section 4(1), and not extension of

the lease under Section 3(1) of the Rules. In any event, the right conferred under Rule 3(1) of the Rules is on the Executive Authority to seek permission from the Commissioner for extension of lease otherwise than by way of public auction if it is in the interest of the Mutt. As noted hereinabove, the report of the Assistant Commissioner makes no reference to the extension of lease, as sought for by the petitioner, being in the interest of the Mutt.

Viewed from any angle, we see no reason to interfere with the order passed by the learned Single Judge, or to permit the petitioner to remain in occupation of the subject property. The appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.



(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

13th April 2017
RRB