

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.41240 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the respondent assailing the *ex parte* interim order, dated 20.11.2017, granted by the learned Member, A.P. Endowments Tribunal, Amaravathi, Peda Kakani, in IA.No.1244 of 2017 in OA.No.711 of 2017.

2. I have heard the submissions of Sri M. Soloman Raju, learned counsel appearing for the petitioner, learned Government Pleader for Endowments appearing for the respondents 1,2 & 4, and of Smt. K. Lalitha, learned standing counsel representing the 3rd respondent. I have perused the material record.

3. The facts which are required to be stated as a preface to this order, in brief, are as follows:

The Assistant Commissioner of Endowments, Vijayawada, and Sri Tirupathamma Ammavari Devasthanam, Penuganchiprolu, represented by its Executive Officer, filed the OA against the respondent/writ petitioner herein for a perpetual injunction restraining the respondent, his men, agents, servants and followers from making any constructions in the vacant site of an extent of 85 Square Yards out of 2092 Square Yards in R.S.No.435 of Penuganchiprolu village morefully described in the schedule annexed to the OA. In the said OA, the said applicants also filed the afore-stated Interlocutory Application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908, read with Rule 26B of The Andhra Pradesh Charitable & Hindu Religious Institutions and Endowments Tribunal Rules, 2010. After hearing the learned counsel for the applicants and perusing the record, including the material documents,

learned Member of the Tribunal passed the impugned order granting an interim *ex parte* injunction in favour of the applicants and against the respondent/writ petitioner and ordered notice to the said respondent by 27.11.2017. Aggrieved thereof, the respondent preferred this writ petition.

4. The parties in this writ petition shall hereinafter be referred as the applicants and respondent as arraigned in the OA filed before the Tribunal.

5. The case of the respondent/writ petitioner and the submissions made on his behalf are as follows:

The respondent is the absolute owner of land admeasuring Ac.0.02 cents in Plot No.12 in R.S.No.435 with door no.4-121 & assessment No. 526 of Penuganchiprolu village. The said land was assigned to the respondent by the revenue authorities. Since the old building in the said site dilapidated, the respondent started constructing a new house. He filed O.S.No.191 of 2017 on the file of Principal Junior Civil Court, Nandigama, against the Tahasildar and others, when the revenue authorities tried to interfere with his possession over the said site. In the said suit, notices were ordered. The applicants filed OA.No.274 of 2012 before the Tribunal seeking eviction of this respondent and 29 other members from the properties in their possession. The said OA is pending. Though the above said earlier OA is pending, the present OA is once again filed for bare perpetual injunction to restrain this writ petitioner/respondent from making constructions in the site and an *ex parte* interim injunction was obtained in the above said Interlocutory Application filed in the present OA. The construction of the respondent was stopped at the stage of laying the slab on account of the *ex parte* order of injunction obtained by the applicants. The respondent gathered building material like cement, sand and

iron bars to lay a slab and complete the construction. The acts of the applicants in filing a fresh OA and obtaining an *ex parte* order for stopping constructions are illegal and contrary to the provisions of A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 [Act 30 of 1987]. Rule 26B of the Rules, 2010, and Order XXXIX Rules 1 & 2 of the Code have no application to the present case. Hence, the learned Member of the Tribunal ought not to have granted *ex parte* interim order.

Learned counsel for the petitioner has further drawn the attention of this Court to the photographs filed with the material papers to show that the construction has reached the stage of laying a slab. He submitted that the *ex parte* interim injunction order may be vacated to enable the respondent, who is a poor person, to complete the construction as stoppage of constructions causes irreparable loss and hardship to him and his family members.

6. Learned standing counsel appearing for the Devasthanam and the learned Government Pleader for Endowments submitted as follows:

The entire property of an extent of 2090 Square Yards in Sy.No.435 is the property of the Devasthanam. It is originally entered in the register maintained under Section 25 of the then Act. It was subsequently entered in the register of Endowments being maintained under Section 43 of the Act 30 of 1987. Once the property is duly registered and entered in the book of endowments, it shall be presumed that the particulars entered in the register maintained under Section 43 of the said Act are genuine until the contrary is established. Since the respondent and others are encroachers of the endowed property of the Devasthanam, OA.No.274 of 2012 was filed on the file of the Tribunal for declaring them as encroachers and for their eviction and recovery

of vacant possession of the afore-stated entire extent of property. In the said OA enquiry is in progress and is coming for cross examination of PW1. Being an encroacher, the respondent is not entitled to make any constructions and is expected to maintain *status quo* during the pendency of the said OA. However, he started making constructions illegally and unauthorisedly even without a building permit and did not stop his illegal activities despite several requests of the Officers & staff of the Department. Even according to him, even when the revenue authorities objected to the construction, he did not stop the constructions and filed a suit against them. On the complaint of the temple, dated 25.10.2017, the Tahasildar issued a notice, dated 26.10.2017, requesting to stop the unauthorised constructions. However, the respondent failed to honour the directions of the Tahasildar. Since the constructions are being made in the endowed property of the endowment institution, the applicants are constrained to file the OA to stop the constructions being illegally and highhandedly made even without a building permit and to protect the interests of the institution. The order granted is an *ex parte* order. If the respondent is aggrieved, he ought to have approached the Tribunal and requested for vacating the said orders instead of approaching this Court by filing this writ petition. When an efficacious alternative remedy is available, this writ petition is not maintainable.

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

8. To begin with, it is to be noted that as per the Rules, 2010, as amended in the year 2015, singly, the Member of the Tribunal may hear applications and pass orders. Therefore, the competence of the Member of the Tribunal to pass the impugned order is not in dispute. Dealing with the aspect of the

jurisdiction to pass interim orders in the nature of injunctions also, there is no dispute as Rule 26 of the said Rules postulates that the endowments Tribunal is having jurisdiction to pass any interim or final order, order for eviction, mesne profits, damages, monthly or yearly, liquidated or unliquidated, arrears of rent or fee, attachment, appointment of a receiver, commissioner or order of injunction, direct any person or authority to comply with its orders and further competent to pass such other order or orders, as the case may be, to meet the ends of Justice. As per the Rule, the reliefs ordered may either be independent or joint depending upon circumstances of each application. The sub-rule (ii) of the said Rule also postulates that who ever fails or omits to comply with any order made by the Endowments Tribunal, shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both and that subject to above, any violation or non compliance of any interim order or direction results in striking out the claim or defence of the person or persons concerned. Further, the said Rule states that in exceptional circumstances, the Endowments Tribunal can even take cognizance of any matter for the protection of endowment institution properties, cause enquiries and pass appropriate orders. In view of the jurisdiction vested with the Tribunal, the Tribunal's power to grant the impugned order is not in doubt. The Tribunal is vested with powers to cause enquiries and pass appropriate orders for protection of endowment institutional properties, in exceptional circumstances, by even taking cognizance of any matter. Therefore, the contentions that during the pendency of one OA for eviction, the present OA for perpetual injunction not to make constructions ought not to have been entertained by the

Tribunal and the Member of the Tribunal ought not to have granted the *ex parte* injunction orders need no countenance in this writ petition. Further, in the well considered view of this Court, in this writ petition, which is filed challenging an *ex parte* order of injunction, this Court is not obligated to examine the merits of the issues involved in the interlocutory application. Instead of approaching this Court and assailing an *ex parte* order, the respondent ought to have approached the Tribunal and ought to have made a request for vacating the order of *ex parte* injunction or for deciding the Interlocutory Application on its merit. However, the respondent did not adopt the said course. Be that as it may. A plain perusal of the order impugned in this writ petition would show that the Tribunal while stating that it perused the petition, affidavit, documents and photographs and while noting that the OA for eviction is pending observed that in view of the urgency it is better to order the parties to maintain *status quo* as to the physical features of the property and that the rights of the parties have to be protected pending disposal of the said OA for eviction, and held that it is necessary to restrain the respondents from making constructions and, accordingly, granted the *ex parte* order and directed notice simultaneously to the respondent and posted the matter to 27.11.2017.

9. A plain consideration of the order of the Tribunal would show that it is a reasoned and sustainable *ex parte* order and therefore, the writ petition assailing the reasoned *ex parte* order is not maintainable, more particularly, in the absence of special circumstances to entertain the writ petition. Viewed thus, this Court finds that the writ petition is misconceived and is liable to be dismissed.

10. Accordingly, the Writ Petition is dismissed. However, the writ petitioner is directed to approach the Tribunal and file his counter, if not already filed,

and make a request for hearing and disposal of the subject application filed for granting temporary injunction. It is needless to state that in the event the respondent makes such a request, the Tribunal shall dispose of I.A.No.1244 of 2017 as expeditiously as possible, however, in strict accordance with the procedure established by law.

Pending miscellaneous petitions, if any, in this writ petition shall stand closed. No costs.

M. SEETHARAMA MURTI, J

27.12.2017

Vjl

