

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.42698 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, seeking a writ of Certiorari is filed to declare that the order, dated 20.06.2017, of the learned A.P. Endowments Tribunal, Amaravathi, Peda Kakani, declaring the petitioner as an encroacher and directing him to vacate the property covered by the schedule of OA.No.620 of 2014 inspite of subsistence of lease period granted by the 1st respondent/State up to 12.11.2017, is bad, illegal, arbitrary, ultra vires and consequently set aside the said order.

2. I have heard the submissions of Sri V. Surendra Reddy, learned counsel appearing for the petitioner, learned Government Pleader for Endowments appearing for the respondents 1 to 4, and of Smt. K. Lalitha, learned counsel representing the 5th respondent. I have perused the material record.

3. The facts which are necessary to be stated as a preface to this order are as under:

Sri Cherukuvadavari Choultry represented by its Manager and the Assistant Commissioner, Endowments, Eluru, filed the afore-stated OA before the Tribunal against the petitioner herein under Section 83 of the A.P. Charitable & Hindu Religious Institutions & Endowments Act, for eviction of the petitioner herein/respondent therein from the site of an extent of 600 Square yards with tiled house bearing door No.22B-8-16/2 at Cherukuvada vari street, powerpet, Eluru, more fully described in the schedule annexed to the petition. The respondent/writ petitioner herein filed a counter and resisted the

said OA. After full fledged enquiry and on merits, the Tribunal, having recorded a finding that the writ petitioner is an encroacher of the above said property, directed the writ petitioner to vacate the said property and handover vacant possession of the same after six months and further observed that the writ petitioner shall continue to pay damages @ 35% above the existing rent from the date of expiry of lease till the date of delivery of the property and gave further directions for recovery of the property by the applicants in the OA with police assistance. Aggrieved thereof, the respondent/writ petitioner is before this Court.

4. The parties in this writ petition shall hereinafter be referred to as the applicants and respondent/writ petitioner as arraigned in the OA before the Tribunal for convenience and clarity.

5. The case of the applicants is as follows:

The 1st applicant-Choultry is the owner of the schedule property. The same was given on lease to the respondent. On expiry of the term of lease, the term was extended by a period of three years from 01.04.2008 to 31.03.2011 on payment of monthly rent of Rs.3,300/- as approved by the Commissioner of Endowments, Hyderabad, vide proceedings, dated 11.05.2011. After expiry of the said lease period, there is no fresh lease or extension of lease in favour of the respondent. On 02.07.2011, the respondent made a representation for extension of lease for a further period of three (03) years from 01.04.2011 to 31.03.2014 on an enhanced rent of Rs.5,500/- per month. Respondent gave another representation for extension of lease period for ten years. The respondent's proposal is not accepted. The respondent has not paid damages for use and occupation and failed to vacate the property inspite of repeated

requests of the applicants. On 24.02.2014, a notice was issued to the respondent. The respondent issued a reply, dated 09.03.2014 with false allegations. Hence, the OA is filed.

6. Per contra, the case of the respondent is as under:

The material allegations in the petition are false. Cherukuvada family members originally leased out the schedule property to the respondent about 45 years back on a monthly rent of Rs.40/-. The respondent spent Rs.25,000/- on the construction of the mechanic's shed. The monthly rent was being increased from time to time as per prevailing market values and the respondent is paying rent at the rate of Rs.5,500/- per month without any defaults. It was informed that the Cherukuvada family gifted the property to the institution; and, a request was made to pay monthly rents to the applicants. Since then, the respondent is paying monthly rents to the choultry. In the year 2010, it was informed that the maximum lease period is three years and that it will be extended from time to time on the representation of the tenants like the petitioner and that the tenants have to apply formally for extension of lease period and that the lease period would automatically be extended. The respondent is a statutory tenant. On enquiries, the respondent came to know that the lease period is extended by another three years on a monthly rent of Rs.5,500/- and the Commissioner of Endowments received permission order, dated 13.11.2014, issued by Prl. Secretary to Government of Andhra Pradesh, Revenue (Endowments-II) Department. Therefore, there is subsisting lease period upto 12.11.2017. Hence, the OA is liable for dismissal.

7. No oral and documentary evidence was adduced during course of enquiry/trial before the Tribunal.

8. Learned counsel for the respondent/writ petitioner while reiterating the pleaded case would further contend as follows:

On expiry of the lease period of 2008-2011, the respondent applied through proper channel for extension of lease and his application was forwarded to the 2nd respondent herein/Commissioner of Endowments. The 2nd respondent enhanced the rent to Rs.4,455/- and fixed the lease amount for the period from 01.04.2011 to 31.03.2014 and made a recommendation to the State, on the respondent's request for ten years lease on enhancement of the existing rent as per the prevailing rents in the vicinity. The 2nd respondent herein while recommending the case of the writ petitioner was of the view that the Government are alone competent to enhance the lease if the proposed period of lease is more than five years. Thus, the 1st respondent-Government alone is the competent authority for enhancement of the lease period beyond five years as per G.O.Ms.No.866 Revenue (Endts-I) Dept. dated 08.08.2003. After consideration of the case of the writ petitioner, on the recommendation of the 2nd respondent herein, the State-1st respondent herein vide proceedings, dated 02.01.2013, enhanced the lease period by three years vide proceedings in Memo No.3687/Endowments-II(1)/2013, dated 13.11.2014, and fixed the rent payable @ Rs.5,500/- per month basing on the rental values in the vicinity. The lease period is subsisting up to 12.11.2017. The proceedings for eviction initiated even before the expiry of the said lease period by terming the writ petitioner as an encroacher are illegal and the institution of the OA is nothing but an abuse of process of law and it is contrary to the spirit of the provisions of the Endowments Act. The OA ought not to have been entertained by the Tribunal during the subsistence of the lease period. This writ

petitioner/respondent in the OA filed a writ petition challenging the same. This Court permitted him to raise the said contention before the Tribunal. However, the Tribunal failed to consider the said aspect and erroneously passed the impugned order. The applicants have no cause of action or power to institute the OA during the subsistence of the lease period by treating the writ petitioner as an encroacher. The Tribunal has no jurisdiction to entertain such an OA instituted by the applicants. Hence, the impugned order passed in such OA is liable to be set aside.

9. Learned Government Pleader and learned Standing Counsel appearing for the respondents, while supporting the orders of the Tribunal, *inter alia*, submitted as follows: “The proceedings extending the lease period are illegal and contrary to the provisions of the statute and that the Government have no power to extend lease period by the alleged proceedings and that any lease period extended contrary to the provisions of the statute is unenforceable and on such illegally extended lease period, the writ petitioner cannot contend that he is not an encroacher. The lease period expired on 31.03.2011. Thereafter no fresh extension of lease was granted. His representations for extension of lease upto 31.03.2014 and by a period of ten years were not considered by the competent authority. Despite a notice, dated 24.02.2014, the petitioner failed to vacate the property having issued a litigious reply. Hence, the OA was instituted, on 12.08.2014. The Tribunal, in the facts and circumstances of the case, is justified in passing the impugned order. There is no illegality or irregularly or impropriety in the said order warranting interference in a writ petition filed under Article 226 of the Constitution of India.”

10. I have given earnest consideration to the facts and submissions. The jural relationship is not disputed. Admittedly, the OA was instituted on 12.08.2014 by treating the petitioner as an encroacher. The case of the applicants is that the lease period expired on 31.03.2011 and that after the expiry of the lease period, there was neither a fresh lease nor was extension of lease in favour of the petitioner and that, therefore, the petitioner is an encroacher liable for eviction. Per contra, the case of the respondent/writ petitioner is that on the recommendation of the Commissioner of Endowments, the Government by proceedings, dated 13.11.2014, granted extension of lease for a period of three years by fixing rent @ Rs.5,500/- per month and, therefore, there is subsisting lease period and hence, the OA instituted for eviction by branding the respondent/writ petitioner as an encroacher is not maintainable and hence, the order passed in such an OA is unenforceable and is liable to be set aside.

11. It is apt to note that the Government's extension proceedings are dated 13.11.2014, and they were issued after the OA was instituted on 12.08.2014. Even the extended period of lease had expired as on today as the extended lease period has come to an end by 12.11.2017. Admittedly, the writ petitioner's request for grant of lease for a period of ten years is not considered. Hence, as on today there is no subsisting lease period in favour of the petitioner even if the defence of the respondent/writ petitioner is to be countenanced. Be that as it may.

12. Be it noted that under the A.P. Charitable & Hindu Religious Institutions & Endowments Immovable Properties and Other Rights (Other than Agricultural Lands) Leases and Licenses Rules, 2003, as amended deal

with leases of all endowment properties other than agricultural lands and rights pertaining thereto. These Rules deal with mode of confirmation of lease or license rights. The Rules postulate that the lease or licence rights shall be conferred by public auction and that the lease rental or licence fee shall be enhanced by 30% once every three years over the existing lease rent or licence fee and no lease or licence of immovable property shall be granted for a period exceeding 11 years and that the executive authority shall conduct tender cum public auction compulsorily before three months of expiry of existing licence or lease period. The Rules also provide that all leases or licences shall immediately after the auction is conducted be reported to the competent authority for confirmation and the said authority may either confirm or for the reasons to be recorded reject lease or licence and that the Commissioner shall only be the competent authority for approval of the leases or licences otherwise than by way of public auction in all cases irrespective of the category of the institution and the value of the lease and that no lease or licence shall be valid until it is approved by the competent authority, that is, the Commissioner. As per Rules, the Government has only the power to alter the financial limits of the competent authority from time to time. In the case on hand, the Commissioner who is the competent authority for granting extension of lease for a period of three years and for fixation of the monthly rental has not given any orders for extension of lease. Therefore, it is contended on behalf of the applicants in the OA, that is, the respondents in this writ petition that the proceedings whereby the Government/the Principal Secretary to Government granted extension of lease for a period of three years in favour of a sitting tenant are of no avail to the writ petitioner.

13. However, learned counsel for the petitioner placing reliance on Section 93 of the Act 30 of 1987 dealing with the powers of the Government contended that the proceedings, dated 13.11.2014, issued by the State through the Principal Secretary extending the lease by three years up to 12.11.2017 are valid and binding on the Commissioner and all his subordinates and, therefore, there is subsisting lease as on the date of the institution of the OA by the applicants. Section 93 of the Act reads as under:

93. Power of Government to call for records and pass orders: -

(1) The Government may either suo motu or on an application call for and examine the record of the Commissioner or any Deputy Commissioner or any Assistant Commissioner or any other Officer subordinate to them, or any Executive officer or any trustee of a charitable or religious institution or endowment, other than a math or specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application, or a reference to Court is provided by this Act, to satisfy themselves as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Government that such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly.

Provided that the Government shall not pass order prejudicial to any party unless he has had an opportunity of making his representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under sub-section (1) in respect thereof.

(3) No application to the Government for the exercise of their power under this section shall be made in respect of any matter unless an application had already been made in respect of the same matter to the Commissioner under Section 92 and had been disposed of by him.

(4) Every application to the Government for the exercise of their powers under this section shall be made within ninety days from the date of which the decision or order to which the application relates was received by the applicant.

14. In reply, it is also contended on behalf of the applicants in the OA that if the lease period is to be extended by three years only, the Commissioner is the

only competent authority and not the Government. It is also submitted on their behalf that unless the Commissioner disposes of the request of the petitioner by an adverse order, the question of the Government either suo motu or on the application of the respondent/writ petitioner examining the record of the Commissioner and passing an order or issuing the proceedings for extension of lease does not arise for consideration. Be that as it may. The Tribunal and/or this Court is/are having power to take subsequent events into consideration. If that be so, there is no subsisting lease period in favour of the petitioner as the lease period extended by the Government by the proceedings, dated 13.11.2014, even if valid, expired by 12.11.2017. Once the said lease period expired, the petitioner becomes an encroacher as per the provisions of the statute and is under obligation to deliver vacant possession of the property to the applicants.

15. An eviction order was already obtained by the Choultry against the writ petitioner. The writ petitioner has no subsisting terms of lease after 12.11.2017 even according to his submissions. Therefore, his possession of the property beyond that date is not legal and, as per settled legal position obtaining, he has no right whatsoever to continue in possession of the subject property, being an encroacher and person in unauthorised possession of the property. As rightly contended, as per the provisions of the Act 30 of 1987 and the relevant Rules, the applicants in the OA are not entitled to grant extension of leases/licences or fresh leases or licences in respect of any property by private negotiations or by any arrangement contrary to the procedure established by law. The Endowments Department is entitled to hold public auction for lease/licence rights of the institution/endowment and put the successful bidders in

possession of the property, as per the procedure established by law after taking possession of the property from the Respondent. The Rules, 2003, postulate that all leases or licenses shall be made by way of Tender-cum-Public Auction on annual advance rental basis. Thus, it is well settled law and it is not in dispute that the Commissioner or the Regional Joint Commissioner or the Joint Commissioner of Endowments are not having powers to grant lease in respect of any endowed property otherwise than by a tender-cum-public auction. This Court, in a common Order, dated 08.06.2010, passed in W.P.Nos.12674, 12686, 12691 of 2010 (unreported), having referred to the precedents and the provisions of law, which are relevant, held that the persons, who continue to remain in illegal occupation of the property belonging to a charitable trust, cannot be heard to contend that, though they continue to remain in illegal occupation, the respondents can only have them evicted in accordance with the summary procedure prescribed under Section 83 of Act 30 of 1987. In this context, it is profitable to refer to Section 83 of the said Act, which reads as under:

“Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers:

(1) Where the Assistant Commissioner having jurisdiction, either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this Chapter referred to as ‘encroacher’) any land, building tank, well, spring or water-course or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provisions of this Act the Assistant Commissioner shall report the fact together with relevant particulars to the (Endowments Tribunal) having jurisdiction over the division in which the institution or endowment is situated

Explanation:- For the purpose of this Chapter, the expression ‘encroacher’ shall mean any person who unauthorisedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building

or space after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.

(2) Where, on a perusal of the report received by him under sub-section (1), the Endowment Tribunal finds that there is a prima facie case of encroachment, it shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified in the notice should not be made. A copy of the notice shall be sent to the trustee of the institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Whereafter considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such enquiry as may be prescribed, the Endowment Tribunal is satisfied that there has been an encroachment, it may, by order, require the encroacher to remove the encroachment and deliver possession of the land or, building or space encroached upon to the trustee before the date specified in such order”.

(5) The order of the Endowment Tribunal under sub-section (4) shall be in writing and shall contain the grounds on which he has passed the order.

(6) During the pendency of the proceedings, the Endowment Tribunal shall order the encroacher to deposit such amount as may be specified by it in consideration of the use and occupation of the properties in question in the manner prescribed.”

16. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. (See: **C.R.Reddy Law College Employees’ Association, Eluru, West Godavari District v Bar Council of India, New Delhi**¹). The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognised lines and subject to certain self imposed limitations. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily; and one of the

¹ 2004 (5) ALD 180 (DB)

limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case, unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law, which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. (See: ***Samgram Singh v. Election Tribunal, Kotah***)².

17. In *Kalinga Mining Corporation v. Union of India and others*³, it was held as follows:

“62. It is by now well settled that judicial review of the administrative action/quasi judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be re-appreciated by the court in exercise of its powers of judicial review. The court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the court would be justified to interfere in the decision. The scope of judicial review is limited to the decision making process and not to the decision itself, even if the same appears to be erroneous.”

Even when some defect is found in the decision making process, this Court will exercise its discretionary power, under Article 226 of the Constitution of India, with great caution and only in furtherance of public interest and not merely on the making out of a legal point. This Court is required to keep larger

² AIR 1995 SC 425

³ (2013) 5 SCC 252

public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference, it would intervene in the matter. (**Air India limited v. Cochin International Airport Limited**: [2000(2) SCC 617]).

18. Having regard to the facts and circumstances of the instant case and the legal position obtaining, this Court finds no reason to exercise the discretion under Article 226 of the Constitution of India in favour of the petitioner. However, the fact of the matter is that the applicants in the OA have not yet initiated any proceedings for auctioning the lease/licence rights in respect of the subject property. Considering the said fact and the further fact that the writ petitioner is carrying on business in the subject property and also the legal position obtaining, this Court is of the considered view that the writ petitioner can be allowed to continue till such tender-cum-public auction is held and is finalized.

19. On the above analysis, the Writ Petition is dismissed; and, the respondents herein are directed to proceed in accordance with the procedure established by law for auctioning the lease/licence rights in respect of the subject property as envisaged under the Act and the Rules as and when they desire so to do; but, however, the respondents shall allow the writ petitioner to continue in possession of the subject property till the auction proceedings are finalized and till possession of the subject property requires to be delivered to the successful tenderer/bidder in such public auction. It is made clear that the petitioner is also at liberty to participate in the tender-cum-public auction that may be held by the respondents in respect of the subject property. However, if a person other than the petitioner becomes successful tenderer/bidder at such

public auction held in respect of the subject property, the petitioner shall vacate the subject property forthwith without any demur to facilitate handing over of possession of the subject property to such successful person. Till such time, the petitioner shall without fail continue to pay the rents he is presently paying and the enhanced rents to the Choultry as per the orders of the Tribunal. On failure to pay the rents by the writ petitioner, the respondents are at liberty to proceed against the petitioner in accordance with the procedure established by law and execute the eviction order passed in the OA. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

27.12.2017
Vjl

M. SEETHARAMA MURTI, J

