THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.42880 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed seeking a writ order or direction more particularly in the nature of writ of Certiorari and quash the order, dated 30.03.2017, of the learned A.P. Endowments Tribunal, Amaravathi, Peda Kakani, passed in OA.No.88 of 2014 whereby the writ petitioner was directed to vacate and hand over 4 ½ Ankanams of shop bearing door no.11/905-1 situate beside the 2nd respondent Choultry, Santhapet, Trunk Road, Nellore City more fully described in the schedule annexed to the petition.

2. I have heard the submissions of Sri Anup Koushik Karavadi, learned counsel appearing for the petitioner, learned Government Pleader for Endowments appearing for the respondents 1& 3, and of Sri A. Srikanth Reddy, learned standing counsel representing the 2nd respondent. I have perused the material record.

3. Before proceeding further, it is necessary to refer to the pleadings of the parties.

3.1 The case of the respondents herein/applicants in the OA, in brief, is this: 'The 2nd respondent-public choultry is a charitable endowment and endowment institution under the control of endowment department. It is the absolute owner of the schedule shop property. The same was leased out to the writ petitioner for running a furniture shop. The lease was approved by the Commissioner of Endowments, A.P., Hyderabad, vide proceedings, dated

19.09.2011 for a period of three years from 01.12.2010 to 30.11.2013 on the monthly rent of Rs.5,500/-. The said period had expired. No approval for fresh lease was granted in favour of the writ petitioner. However, the writ petitioner is continuing in unauthorised possession of the schedule property. The 2nd respondent got issued a notice, dated 15.09.2013, to the writ petitioner intimating that the period of lease is going to expire by 30.11.2013 and that the writ petitioner has to vacate the property on the expiration of the lease period, however, after paying the arrears of rent. The writ petitioner issued a reply notice, dated 22.10.2013 with untenable grounds and failed to comply with the demand in the notice. The writ petitioner is thus an encroacher and unauthorised occupant of the schedule property as per the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 [Act 30/1987]. As the writ petitioner failed to vacate the schedule property inspite of repeated requests, the eviction OA is filed under Section 83 of the Act 30/1987.'

3.2 The case of the writ petitioner is this: 'The material allegations in the application filed by the respondents are false. The allegations that the lease period had expired and that the writ petitioner has become an encroacher and unauthorised occupant of the schedule property are all false. The writ petitioner is solely depending upon the income derived from the business being carried on in the schedule shop. In the reply notice, this writ petitioner requested the authorities of the department to permit to continue in the leased out schedule property and requested for extension of lease period while agreeing to enhance the lease amount by 33 1/3% over the existing lease amount of Rs.5,500/- per month in consonance with the Circular of the

Commissioner, Endowments, and offered to continue as a lessee from December, 2013, onwards. The authority orally promised to consider the said request of this writ petitioner. The writ petitioner paid rents up to date and the receipt, dated 03.07.2014 for Rs.11,000/- evidences the said fact. The representation addressed to the Commissioner by this writ petitioner is pending with the said authority for consideration. The said representation was kept pending without taking any decision as regards extension of lease. Hence, the OA may be dismissed with costs.'

3.3 Based on the above pleadings, the Tribunal settled the following issue for determination – 'Whether the writ petitioner, respondent therein, is not an encroacher of the schedule property and is therefore not liable for eviction?'. During course of enquiry/trial, the Executive Officer of the Choultry and the authorised representative of the writ petitioner were examined as PW1 & RW1 and exhibits A1 to A4 & R1 were marked. On merits and by the impugned order, eviction of the writ petitioner from the schedule property was ordered. The operative portion of the order reads as under:

> **'In the result, petition is allowed with costs, directing the respondent to vacate and deliver vacant possession of the petition schedule property after six months, and also pay arrears of rent if any and continue to pay the damages as agreed by the respondent 33.33% above the existing rent as on the date of expiry of lease till delivery of the property. In the event of failure of the respondent, the 2nd petitioner is at liberty to take the property along with structures. This order is subject to the orders that may be passed by the Commissioner of Endowments on the representation made by the respondent, which can be taken independently notwithstanding this order. This order of eviction after six months from today is implementable only if the Commissioner of Endowments rejects the representation of the respondent or no order is passed within six months, as it shall be viewed that the representation is deemed to be not considered….'**

Aggrieved thereof, the respondent in the OA, that is, the writ petitioner filed this writ petition.

4. At the hearing, learned counsel for the writ petitioner while reiterating the pleaded case of the writ petitioner would submit as follows:

The property is not an agricultural land and it is a shop. The said property was granted on lease from 01.12.2010 to 30.11.2013 on a monthly rent of Rs.5,500/- for a period of three years. When the said lease period was coming to an end, the petitioner made a representation for extension of lease agreeing to pay enhanced rent @ 33 1/3% on the above said existing rent. As on the date of representation, only first term of three years of lease has come to an end. No decision is taken by the Commissioner on the representation of the writ petitioner. As per A.P. Charitable & Hindu Religious and Endowments Immovable Properties and Other Rights (Other than Agricultural Lands) Leases and Licenses Rules, 2003, ['Rules' for short], any lease like the present lease can be granted for a period not exceeding eleven years by renewing or granting fresh lease from time to time. Till the expiry of such eleven years lease period, the writ petitioner is entitled to continue as a lessee in the schedule property on the enhanced lease rental by 30% once in every three years over the existing lease rental. Therefore, the Commissioner ought to have granted fresh lease for three more years accepting the offer of the writ petitioner to pay the enhanced rent. Infact, the writ petitioner paid Rs.5,500/- each, on 17.08.2017, 18.09.2017 & 13.10.2017 and Rs.80,000/- on 22.11.2017 by way of a demand draft to the 2nd respondent-Choultry. By keeping the representation pending and without extending the benefit of the Rule to the writ petitioner, she cannot be branded as an encroacher. The Tribunal, which is aware of the

fact that the representation of the writ petitioner is pending with the Commissioner, also recorded a finding that the request of the writ petitioner to grant considerable time to facilitate taking up of the matter with the Commissioner is a reasonable request. However, the Tribunal erroneously held that the writ petitioner cannot be allowed to continue in the property indefinitely. In-fact, the Tribunal observed in the operative portion of its order that the eviction order is subject to the decision of the Commissioner; and, that the eviction order shall be implemented if only the Commissioner rejects the request in the representation of the writ petitioner within six months of time granted for eviction in the order; and, the Tribunal further observed that if the Commissioner passes no order in the said period of six months, it shall be deemed that the Commissioner had not considered the request of the writ petitioner. Such an observation is erroneous as it would amount to the Tribunal disposing of the representation instead of the Commissioner, who is the competent authority.

5. The learned Government Pleader and the learned Standing Counsel appearing for the respondents supported the orders impugned by *inter alia* stating that the order is a well reasoned equitable order and that, therefore, it does not brook interference.

6. I have bestowed my attention to the facts and submissions. The factual matrix and the legal position are not in dispute. The term of lease of three years from 01.12.2010 to 30.11.2013 had expired. Even before the said date, the writ petitioner made oral requests for extension of lease and in fact made a representation to the Commissioner for extension of lease for a further period of three years agreeing to pay enhanced rent by enhancing the rent @ 33 1/3 %

on the existing rent. During the pendency of the proceedings, the said period of three years has also come to an end by 30.11.2016. The writ petitioner, according to her submissions, is entitled to continue as a lessee in the schedule property for a period not exceeding eleven years from the commencement of the original lease by seeking renewal or grant of fresh lease from time to time, that is, every three years, till the expiry of such eleven years lease period. It is no doubt true that the writ petitioner is entitled to continue as a lessee in the schedule property on the enhanced lease rental by 30% once in every three years over the existing lease rental upto a period of eleven years, provided her request for renewal or extension of lease or grant of fresh lease is granted by the Commissioner at the end of every three years within the said total eleven years period. In the case on hand, after the expiry of first term of lease, no extension orders were granted by the Commissioner. Nine years period of lease and the total eleven years period would come to an end respectively by 30.11.2019 and by 30.11.2021. In that view of the matter, the writ petitioner contends that the writ petitioner is entitled to renewal or extension or grant of fresh lease at least up to 30.11.2019 in view of the nature of the business that is being carried on the shop that was leased out. The emphasis was on the fact that the Tribunal was also of the view that the request of the writ petitioner is reasonable and therefore granted six months time for eviction as by then the representation of the writ petitioner pending with the Commissioner is not yet disposed of. Admittedly, there is no express reasoned order passed by the Commissioner rejecting the representation for extension or renewal of lease. However, as per undisputed legal position, once the lease period expires and no renewal or extension or fresh lease is granted, the person in occupation of the endowed property of the institution becomes an encroacher. In that view of

the matter, the impugned order ordering eviction of the petitioner from the schedule property need not be faulted more particularly when a time of six months was granted for eviction keeping in view the representation of the writ petitioner which is pending consideration of the Commissioner. However, learned counsel for the petitioner, alternatively contended that the writ petitioner may be permitted to continue in the schedule property by paying all arrears, if any, and also enhanced monthly rentals till a public auction of lease rights in respect of the schedule property is held and till it becomes necessary for the writ petitioner to vacate and hand over possession of the schedule property to such successful bidder/tenderer in the public auction that may be held by the 2nd respondent-Choultry. He, while stating that there are no arrears, has undertaken that the petitioner would pay the arrears, if any, as well as enhanced monthly rentals as undertaken by the petitioner and that the petitioner would vacate and deliver vacant and peaceful possession of the schedule property without a demur to the successful bidder/tenderer of the schedule property in the public auction that may be held by the 2nd respondent institution.

7. On the above analysis, this Court is of the considered view that the writ petition can be disposed of with appropriate directions.

8. In the result, the Writ Petition is dismissed confirming the orders of the Tribunal subject to the following modifications and observations: '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, as undertaken before this Court, 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 continue in possession of the schedule property, however, on payment of the enhanced monthly rentals by enhancing the monthly rentals at the rate of 30% on the existing rent at the end of every three years to the Choultry and also on payment of the entire arrears, if any. On failure to pay the rents accordingly and also the arrears, if any, by the writ petitioner, the respondents are at liberty to proceed against petitioner in accordance with the procedure established by law and take possession of the schedule property as per the decree of the Tribunal without waiting for finalization of the auction proceedings. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

26.12.2017
Vjl