

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

WRIT PETITION Nos.3834 and 7477 of 2018

COMMON ORDER:

These writ petitions are filed under Article 226 of the Constitution of India, seeking the following reliefs:

W.P.No.3834 of 2018:

“to issue a writ, order or direction, more particularly a writ in the nature of Writ of MANDAMUS declaring the action of the 1st respondent i.e., the Assistant Commissioner of Endowments, Hyderabad in not initiating proceedings under Sec.84(i) of the Endowments Act, 30 of 1987 to take vacant position of the premises bearing D.No.14-9-671/5 admeasuring an extent of 1950 sq.yards belonging to Sri Khemdas Mutt, Chudibazaar, Begum Bazaar, Hyderabad, as bad, illegal, arbitrary, opposed to law and pass such other ...”

W.P.No.7477 of 2018:

“to issue a Writ, Order or Direction, more particularly a writ in the nature of the Writ of MANDAMUS declaring the action of the respondents i.e., respondents Nos.1 to 3 in not initiating proceedings under Section 89(1) of the Endowments Act 1987 to implement the compromise proposals submitted long back pertaining to sri Khemdas Mutt, Goshakut, Jumeraat Bazar, Hyderabad bearing D.No.14-9-671/5, admeasuring an extent of 1950 Sq.Yards as bad, illegal, arbitrary, opposed to law and pass such other order or orders as this Hon'ble”

2. Sri Kemdas Mutt, Chudi Bazaar, Begum Bazar, Hyderabad, is the petitioner in W.P.No.3834 of 2018 maintained against six respondents viz., 1. The Assistant Commissioner of Endowments, Hyderabad, 2.The Commissioner of Endowments, State of Telangana, 3. The State of Telangana, Revenue (Endowments) Department, 4.Vedprakash Agarwal, who is no other than petitioner in W.P.No.7477 of 2018, 5. The Commissioner of Police, Telangana State and 6. The Station House officer, Shaw Inayath Gunj Police Station, Hyderabad.

3. W.P.No.7477 of 2018 is filed by one Vedprakash Agarwal against five respondents viz., 1. The Commissioner, Endowments Department, 2.The Deputy Commissioner, Endowments Department, 3.The Asst.Commissioner, Endowments Department, 4. The State of Telangana, Revenue (Endowments) Department and 5.Sri Khemdas Mutt, Gosaket, Jumeraat Bazaar, Hyderabad, who is no other than petitioner in W.P.No.3834 of 2018.

4. It is stated in the affidavit filed in support of W.P.No.3834 of 2018 that despite the eviction order passed in O.A.No.57 of 1954, dated 16-06-1988, ordering eviction of Vedprakash Agarwal, who is in occupation of premises in question bearing D.No.14-9-671/ 5 admeasuring 1950 Sq.yards and because of inaction of the respondents under Section 84 of the Endowments Act (for short 'the Act') pursuant to the eviction order to cause deliver possession of the Mutt, the petitioner is constrained to file the writ petition.

5. The submission of the learned Government Pleader for Endowments and Home respectively are that they will abide by any order passed by this Court in the Writ Petitions.

6. The averments of counter-affidavit filed by respondent No.4- Vedprakash Agarwal vis-à-vis his submissions in the writ petition supporting affidavit in W.P.No.7477 of 2018 for the prayer in seeking direction to the Deputy Commissioner to dispose of the compromise proposal in respect of self-same premises, are that the Deputy Commissioner of Endowments did not choose to

take any steps under Section 89 of the Act for the compromise affected in respect of the premises between Vedprakash Agarwal and Mutt in question, thereby, without disposal of the said compromise proposal, the question of eviction or implementation of the order in O.A.No.57 of 1984 does not arise, thereby, W.P.No.3834 of 2018 is to be dismissed and W.P.No.7477 of 2018 is to be allowed is the sum and substance of the submission.

7. Heard both sides.

8. In Chapter V of the Telangana Charitable and Religious Institutions and Endowments Act, 1987, amended from time to time, in relation to Mutt and specifically attached thereto covered by Sections 47 to 55, there is no any special provision for recording compromise but for general provision under Section 89 of the Act, which is, no doubt, subject to power under Section 80 of the Act. Section 89 of the Act reads as follows:

“Compromise how to be made:-

(1) No suit, application or appeal pending before a Court which relates to charitable or religious institution or endowment, shall be with-drawn or compromised by the trustee or other person in charge of the management of such institution or endowment except with the previous sanction of the Commissioner.

(2) Where the Commissioner considers that any claim, demand, or cause of action for suing in respect of and affairs, funds or properties of the charitable or a religious institution or endowment shall, in the interests of the institution or endowment be compromised without instituting or without continuing any suit or other legal proceeding and if the other party to such suit or other legal proceedings is willing to enter into a compromise under the terms and conditions which the Commissioner considers acceptable in the interest of the institution or enjoyment, the Commissioner may, for reasons to be recorded in writing, pass an order directing the trustee or other person referred to in sub-section(1) to enter into such compromise.

(Provided that the Commissioner shall pass an order after taking into consideration the recommendations of the Committee of the three officers drawn from Endowments, revenue and Law Department to be constituted for this purpose.)”

9. From the very wording of Section 89(1), it is crystal clear of no question of compromise can be affected without the previous sanction of the Commissioner. It is also the wording of Section 80 of the Act that no any alienation in any manner of any immovable property of religious charitable institution without previous sanction of the Commissioner can be affected.

10. Undisputedly, in the case on hand, there is no written consent for any compromise of the Commissioner contemplated by Section 80 of the Act or 89(1) of the Act in asking the relief in W.P.No.7477 of 2018 by the petitioner to dispose of any proposal for compromise. Even any such proposal initiated by the Mutt and the said Vedprakash Agarwal for the prerequisite, it is lack of sanction of commissioner. Thereby, this Court cannot direct the Deputy Commissioner to dispose of any proposal under Section 89 of the Act, for what is the prerequisite under Section 89(1) of the Act, admittedly, is lacking, W.P.No.7477 of 2018 is liable to be dismissed. Accordingly, the same is dismissed for any such proposal has no any legal sanctity to process or directed to be processed.

11. Coming to W.P.No.3834 of 2018 with reference to the expression supra, undisputedly, there is an eviction order suffered by Vedprakash Agarwal that is made final without any availment of statutory remedies of appeal or revision including by approaching any Constitution Court, much less, with any reversal order, leave about any such proposal with the Deputy

Commissioner stated pending that is answered supra for no stay against enforceability of the execution to come in the way; leave about even pendency of appeal or revision will not be preventing executing authorities to execute the order. Once such is the case, it is the duty of the Assistant Commissioner of Endowments concerned to address the concerned Police to provide necessary Police assistance to vacate the said Vedprakash Agarwal, who is squatting on the property despite eviction order without vacating, to cause vacate and handover back to the Mutt. Without going into the aspect as to the eviction order passed is under the old Act, 1966, though after coming into force in 1987 because of the order was dated 16.06.1988. Under the old Act, there is a provision, particularly, under Section 87 of the Act with reference to the Code of Criminal Procedure provisions of getting the Magistrate concerned to deliver possession through Police. In the expression of this Court in *CH.Purushotham Gurukkal v. Sree Ramalingeswaraswamy Temple, Chilumuru*, represented by Managing Trustee Hain Satya and others¹, it is categorically held that even under Section 151 C.P.C. under Order XXI Rule 35 C.P.C. or by any process, for, order of eviction passed, Court can grant Police aid for eviction of the person causing resistance. Thereby, W.P.No.3834 of 2018 is allowed directing the Assistant Commissioner to address the Police concerned to provide necessary Police assistance at the expenses of the Mutt, to

¹ 1962(2) ALT 73

deliver possession of the property to the Mutt from the said Vedprakash Agarwal within one month from today and the Police are directed to provide necessary assistance as referred supra, without fail.

12. Accordingly, W.P.No.3834 of 2018 is allowed and W.P.No.7477 of 2018 is dismissed.

13. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 16.03.2018
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L.R.Copy to be marked - Yes



* HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ WRIT PETITION Nos.3834 and 7477 of 2018

%d6-03-2018

W.P.No.3834 of 2018:

Between:

Sri Khemdas Mutt

...Petitioner

Vs.

The Assistant Commissioner of Endowments,
Hyderabad and five others

... Respondents

W.P.No.7477 of 2018:

Vedprakash Agarwal

...Petitioner

v.

The Commissioner,
Endowment Department and four others

... Respondents

!Counsel for the Petitioner in W.P.No.3834/ 18: Sri M.Vidya Sagar

Counsel for the Respondents in W.P.No.3834/ 18:

Learned Government Pleader for
Endowments

Sri Naresh Kumar Neemkar for
respondent No.4

!Counsel for the Petitioner in W.P.No.7477/ 18: Sri Naresh Kumar
Neemkar

Counsel for the Respondents in W.P.No.7477/ 18:

Learned Government Pleader for
Endowments

Sri M.Vidya Sagar for respondent
No.5

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>Head Note:

? Cases referred:

¹ 1962(2) ALT 73

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION Nos.3834 and 7477 of 2018

16-03-2018

W.P.No.3834 of 2018:

Between:

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... Respondents

W.P.No.7477 of 2018:

Vedprakash Agarwal

...Petitioner

v.

The Commissioner,
Endowment Department and four others ... Respondents

DATE OF JUDGMENT PRONOUNCED: 16.03.2018

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/ No
- 2 Whether the copies of judgment may be marked to Law Reports/ Journals Yes/ No
- 3 Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? Yes/ No