

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.1684 of 2011

ORDER:

Sri Annavastra Vydy Vidya Dana Samajam, a Charitable Institution within the meaning of A.P.Charitable and Hindu Religious Institution & Endowments Act, 1987 (for short 'the Act') and the Assistant Commissioner, Endowments Department, Eluru filed O.A.No.2210 of 2010 for eviction of revision petitioner.

The revision petitioner admittedly is a lessee for a period of five years and now the cause of action for filing the eviction petition or removing the encroachment is that the revision petitioner is enjoying the property belonging to Charitable Institution without order of renewal or lease in favour of revision petitioner.

The circumstances leading to filing of O.A. or the limited defence taken by the revision petitioner are not in dispute. Therefore, the revision is considered from the admitted circumstances, referred in the order under Revision.

The Tribunal framed the following points for consideration :-

- (i) Whether the respondent is an encroacher under Section 83 and is liable to be evicted ?
- (ii) To what relief ?

Smt.Nimmagadda Revathi contends that the finding of the Tribunal under Section 83 of the Act is vitiated inasmuch as the request of revision petitioner for extension of lease is pending consideration. Therefore, till an order is passed and communicated,

the status of revision petitioner vis-à-vis the property belonging to Charitable Institution cannot and could not be treated as encroachment. She alternatively prays for a reasonable time to handover vacant possession to the respondents herein.

Smt.G.Gayatri, learned Assistant Government Pleader submits that the revision petitioner could not prove the plea which was taken before the Tribunal. She places strong reliance on the reasoning of the Tribunal, as stated in paragraph No.6(i) and 6(iii), which reads as under :-

“6(i)The position of a tenant by sufferance even is nothing better trespasser and unauthorized occupant was discussed in HUNDUSTAN PETROLEUM CORP. LTD. Vs. KHWAJA ASADULLAH BAIG – 1996(2)ALD-2589(D.B.) holding that: “we are unable to agree with the learned counsel for the appellant that the appellant being a tenant at sufferance need not pay anything more than the rent stipulated under the lease. It is fairly well settled that in a case of tenancy at sufferance there is no relationship of land lord and tenant. Such possession, although it may amount to judicial possession and the person in possession cannot be evicted except by due process of law, it is not on the same footing as a tenant at will. M.N.Venkatachalaiah,J., as he then was, sitting in a Division Bench of the Karnataka High Court explained the concept of tenancy at sufferance in the following words (vide M/s.Sudarshan Trading Co. Ltd. V. L.D.souza). “If, after the expiry of the period of lease or after its determination, a tenant merely holds over without the landlords’ consent there is no tenancy of any kind at all. If in such case, the tenant continues in possession without landlord’s consent, he becomes what in English law is called a ‘tenant by sufferance’. This is really no tenancy at all in the strict sense and requires no notice to determine it, the expression being merely a

fiction to avoid the continuance of possession operating as a trespass. It is different from the concept of a tenancy at will, which arises by implication of law in certain cases of permissive possession. No notice is necessary to terminate a tenancy at sufferance. But, the case of tenancy by holding over is different and is governed by the provisions of Section 116 T.P.Act. Tenancy by holding over is a creature of a bilateral consensual act and does not come into existence by a mere unilateral intendment or declaration of one of the parties". In the case of unlawful possession of a tenant at sufferance, the liability arises ex delicto and he will be liable for damages in the form of mesne profits. Therefore, in ultimate analysis, whether the position of the appellant is that of a trespasser or a tenant at sufferance, it hardly makes any difference as far as the liability of the defendant to compensate". In the case of JOINT COMMISSIONER, ENDOWMENTS DEPARTMENT A.P., HYDERABAD Vs. SHAIK MEERA SAHEB, AIR 1977 AP 100 (D.B.) it was held that "from a reading of the provisions of T.P.Act and A.P.Endowments Act, 1966; the tenants of Religious or Charitable Institutions who continue to be in possession, after the expiry of lease, or after the cancellation of lease are termed as "encroachers". When he is a tenant by sufferance his possession is no better to a trespasser and he is an encroacher within the definition of Sec.83 of the A.P.Endowments Act, 1987.

6(iii) Thus, the respondent is liable to vacate and despite demands to vacate, he fails to comply and squat on the premises as an encroacher under Sec.83 of the Act, it is just to order him to vacate and handover the premises within one month by written intimation to the petitioners or else to evict him by the First Petitioner (Assistant Commissioner) with police aid."

and prays for dismissing the Civil Revision Petition.

The revision petitioner can successfully invoke the jurisdiction of this Court, if the revision petitioner is in a position to point out illegality or infirmity in the findings excerpted above.

Except raising a few grounds, which are very general in nature, no substantive point is urged for consideration of this Court. The court is in agreement with the reply of the Assistant Government Pleader that the findings of the Tribunal do not warrant interference of this Court.

For the above reasons, I do not see any ground or merit in the Civil Revision Petition.

The Civil Revision Petition fails and is accordingly dismissed. No order as to costs.

The petitioner is given two months time from today to vacate and deliver vacant possession to respondents subject to the petitioner filing an undertaking to that effect within fifteen days from today and also pay all arrears till today and till the date of delivery of possession to respondents. The undertaking, if is not filed within the time granted by this Court, it is open to the respondents to remove encroachment.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 05-09-2018
Prv

