

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.5259 and 5557 of 2018

COMMON ORDER:

Since these two writ petitions are inter-related, this Court deems it appropriate to dispose of these two writ petitions by way of this common order.

2. W.P.No.5259 of 2018, which came to be filed on 16.2.2018 by M/s Venkata Swamy & Sons, represented by its Proprietor P.Aravind Kumar assails the order of the Telangana Endowments Tribunal, Hyderabad in O.A.No.48 of 2017 dated 30.8.2017, declaring the petitioner as encroacher of Shop No.5-8-640, Abids, Hyderabad.

2. W.P.No.5557 of 2018 which came to be filed on 19.2.2018 by the Managing Committee, Masjid-E-Amera & Madarasa Diniyat, rep. by its President Janab Dost Mohd. Khan, questions the action of the Assistant Commissioner of Endowments, Hyderabad and Sri Lakshminarayana swamy Temple, Abids, Hyderabad, represented by its Executive Officer (Respondents 3 and 4 herein) in proceeding to auction the lease hold rights over Mulgi bearing No.5-8-640, Abids, Hyderabad by way of Auction Notice bearing No.1/2018 dated 12.2.2018.

3. Along with W.P.No.5259 of 2018, the petitioner filed I.A.Nos.2 and 3 of 2018 seeking stay of eviction and stay of auction of lease hold rights scheduled to be held on 19.2.2018 and this Court in W.P.No.5259 of 2018 passed an order, stating that any further conducting of auction shall be subject to the further orders of this Court while directing the matter to be listed on 15.3.2018. W.P.No.5557 of 2018 came up before this Court on

20.2.2018 and on which date this Court passed the same order as passed in W.P.No.5259 of 2018 and posted along with the same. In W.P.No.5259 of 2018 two vacate petitions i.e., I.A.Nos. 4 & 5 of 2018 have been filed by the State and Temple respectively to vacate the orders dated 19.2.2018.

4. With the consent of the learned Advocates, this Court deems it appropriate to dispose of these writ petitions.

5. Heard Sri Jitender Rao Veeramalla for petitioner in W.P.No.5259 of 2018 and Sri Vedula Srinivas for petitioner in W.P.No.5557 of 2018 and Respondent No.3 in W.P.No.5259 of 2018, learned Government Pleader for the State on behalf of official respondents and Sri Kotha Jaganmohan Reddy for the Respondent Institution apart from perusing the material available on record.

6. It is contended by the learned counsel for the petitioner in W.P.No.5259 of 2018, Sri Jitender Rao Veeramalla that the order impugned in the said writ petition is arbitrary, illegal, unreasonable and opposed to the very spirit and object of the provisions of Endowments Act and the Rules made thereunder. It is also contended by the learned counsel that the petitioner herein cannot be treated as defaulter and in view of the dispute between the Wakf Board and Endowments Department, the petitioner herein is sought to be sandwiched. It is further contended by the learned counsel that from September, 2016 the petitioner herein started paying the amounts to the Wakf Institution and in view of the same, the ground on which the Tribunal passed the impugned order cannot be sustained.

7. On the other hand, it is contended by the learned counsel for the petitioner in W.P.No.5557 of 2018, Sri Vedula Srinivas that the very action of

the Assistant Commissioner and the Respondent Temple in seeking to conduct auction of the subject shop cannot be permitted as the subject Mulgi belongs to the Petitioner Wakf.

8. Sri Kotha Jaganmohan Reddy, learned Standing counsel for the Temple vehemently contends that having taken lease from the Temple, it is not open for the petitioner in W.P.No.5259 of 2018 to contend that he is not a defaulter in view of admitted position and even according to the petitioner in W.P.No.5259 of 2018, they stopped paying the amounts to the Temple.

9. The Assistant Commissioner of Endowments, Hyderabad and Sri Lakshmi Narayana Swamy Temple, Abids, Hyderabad filed O.A.No.48 of 2017 against M/s Venkata Swamy & Sons, petitioner in W.P.No.5259 of 2018, under Section 83(1) of the Endowments Act, 1987 to declare the writ petitioner as encroacher and to evict them from the schedule shop premises bearing No.5-8-640, situated at Sri Lakshminarayana Swamy Temple premises, Abids, Hyderabad to an extent of 22 square yards.

10. The said O.A. was filed, contending interalia that Sri Lakshminarayana Swamy Temple, Abids, Hyderabad is a registered charitable institution with the Endowments Department under Section 38 of Repealed Act 17 of 1966; that the Temple is having commercial property in and around temple premises; that the shops were constructed for the maintenance of the Temple and the income derived from therein is being used for daily Dhoopa Deepa Naivedyam of the presiding deity. The petitioner in W.P.No.5259 of 2018 was awarded extension of lease for (11) years vide Memo No.5479/ENDTS-II/A1/2013 dated 19.6.2013 with a condition of enhancement of 40% of rent for every three years. In the said O.A., it was further stated that in gross violation of terms of lease, the petitioner in

W.P.No.5259 of 2018 started committing default from September, 2016, thereby causing immense financial loss to the Temple. On behalf of the applicants in the said O.A., one Sri M.Srinivasa Sharma, Executive Officer of the Temple was examined as P.W.1 and Exhibits A1 to A5 were marked and the writ petitioner in W.P.No.5259 of 2018 remained exparte.

11. By way of an order dated 30.8.2017, the Tribunal allowed O.A.No.48 of 2017 and directed the writ petitioner to vacate the premises and to pay the outstanding arrears of rent within three months. The ground for instituting O.A. obviously being non-payment of rentals for a period of six months and the said aspect is not in dispute and the justification sought to be offered by the writ petitioner in W.P.No.5259 of 2018 is that the Chief Executive Officer, Wakf Board issued a Demand Notice No. F.No.R3/232/Rent/Hyd/2012 dated 6.11.2016. The said letter reads as under:

- “1. Whereas the subject institution with its attached shop bearing No.5-8-640 situated at Abids, Hyderabad is registered waqf as per Gazette No.32-A dated 30.8.1984 (Serial No.1701).
2. Whereas the above said Mulgi is in your possession and enjoyment and rent of the demise mulgi is not being paid by you for the last so many years to TSWB or to Managing Committee, as such a notice was issued on 10.2.2012 for payment of monthly rent Rs.10,700/- to TSWB.
3. Because no rent is received by TSWB or Managing Committee from you of the waqf mulgi you rendered yours self as wilful defaulter.
4. You are directed to pay the entire arrears of rent due as on today within (15) days failing which necessary action will be initiated against you for eviction and recovery of rental arrears as per provision of waqf act 1995 treating to you as encroachers as per section 3(ee) of the said Act”.

12. The further justification sought to be offered by the petitioner in W.P.No.5259 of 2018 is that under the threat, the Wakf Board officials started collecting rents in favour of the Wakf Board.

13. It is significant to note that though the order was passed on 30.8.2017, till the Temple issued auction notice on 12.2.2018, the petitioner did not move and for justifying the said delay, petitioner in W.P.No.5259 of 2018 pleads that though he engaged an Advocate, he did not properly represent and it is pertinent to note that the petitioner does not furnish any particulars of the said counsel and the date on which he engaged the said counsel. Even as per the petitioner, the subject shop has been in their family's possession for the last one century and lastly lease for (11) years was extended by way of Memo dated 19.6.2013 and lease deed was also entered into in between Temple and the petitioner. It is also not in dispute that they have been paying lease amounts all these years to the Temple only. As such, the petitioner in W.P.No.5259 of 2018 is bound by the said lease. Simply because Wakf Board issued a demand for rents for the first time in 2016, it does not mean that the petitioner in W.P.No.5259 of 2018 can take shelter under the same. Though it is stated that the said demand by the Wakf Board was brought to the notice of the Temple, no piece of evidence is produced before this Court in order to substantiate the same.

14. In W.P.No.5557 of 2018, the Committee is laying a claim on the subject shop and pleads that the said property belongs to them. The Endowment authorities are disputing the same. A number of rival pleadings are advanced on behalf of the Temple and the petitioner in W.P.No.5557 of 2018. The said controversy, touching upon the title to the schedule shop cannot be enquired into under Article 226 of the Constitution of India and it is

open for the parties to approach an appropriate forum of law including the State Government. It is the case of the Temple that for all these years they are leasing out the property. It is also the case of the Temple that in response to the letter of the Chief Executive Officer, Wakf Board in the years 2012 & 2016, the Endowment authorities gave reply and in reply to the letter of the Chief Executive Officer dated 6.11.2016 addressed to the Commissioner, the Assistant Commissioner vide letter Rc.No.D/2799/2016 dated 7.1.2017 requested the Chief Executive Officer not to interfere in the property on the ground that the property in question is already entered in book of endowments long back. It is also stated that the eviction order was already executed and after taking over the property, lease hold rights were auctioned and knocked down in favour of Mr.Om Prakash Tiwari for Rs.21,500/- per month and the earlier lessee and the Committee Members are colluding. All these aspects in the direction of claiming title to the properties, as observed supra, cannot be the subject matter of verification before this Court under Article 226 of the Constitution of India and in fact they are required to be agitated before an appropriate forum.

15. In the result, both the writ petitions are dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 21.8.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.5259 and 5557 of 2018



21.8.2018

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