

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Petition Nos.34361, 39013 and 39151 of 2016

COMMON ORDER: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri P.Sridhar Reddy, learned counsel for the petitioners, learned Government Pleader for Endowments (AP) and Sri A.Sreekanth Reddy, learned Standing Counsel for the 4th respondent-Temple. In all these three writ petitions, the validity of Rule 15 of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Immovable Properties and Other Rights (Other than Agricultural Lands) Leases and Licenses Rules, 2003 (hereinafter called the "2003 Rules"), as amended by G.O.Ms.No.426, Revenue (Endowments-I) Department, dated 09.11.2015, (for short "the Amended Rules") are under challenge, among others, on the ground that it is ultra vires Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short "the 1987 Act").

While the proceedings under challenge, in W.P.Nos.39013 and 39151 of 2016, are the orders passed by the Assistant Commissioner of Endowments, as well as the Executive Officer of the 4th respondent-Temple, declaring the petitioners as encroachers and informing them that they would be evicted in accordance with Rule 15 of the Amended Rules, what is under challenge in W.P.No.34361 of 2016 is the action of the 4th respondent-Temple in issuing a paper notification that they intend taking possession of the subject lands exercising their powers under Rule 15 of the Amended Rules.

Learned counsel, on either side, are in agreement that it would suffice, for the purpose of disposal of all the three writ petitions, if the facts in W.P.No.39151 of 2016 are noted. The relief sought for in W.P.No.39151 of 2016 is for a mandamus to declare Sub-Rules (1) and

(2) of Rule 15 of the Amended Rules, the order passed by the Assistant Commissioner of Endowments dated 02.11.2016, the order passed by the Executive Officer of the 4th respondent-Temple, Nellore, dated 30.10.2016, and the further action of the respondents in seeking to demolish the building constructed by the petitioner in Trunk Road, Nellore, as illegal, arbitrary, unjust, discriminatory and inconsistent with the provisions of the 1987 Act, and as violative of Articles 14, 21 and 300-A of the Constitution of India. A consequential direction is sought to set aside sub-rules (1) and (2) of Rule 15 of the Amended Rules, and to direct the respondents not to demolish the subject premises.

In his proceedings dated 02.11.2016, the Assistant Commissioner (Endowments) held that the petitioner had forfeited his right to continue in possession of the subject land. Thereafter, the Executive Officer of the 4th respondent-Temple, by his proceedings dated 30.10.2016, also held that the petitioner had forfeited his right to continue in possession. Both these proceedings were preceded by a show cause notice issued by the 4th respondent-Temple on 09.09.2016 calling upon the petitioner to deliver vacant possession within 15 days, from the date of receipt of the notice, in compliance with Rule 15(1) of the Amended Rules failing which he would be evicted in terms of Rule 15(2) of the Amended Rules.

Both the 2003 Rules, and the Amended Rules, were made by the Governor of Andhra Pradesh in the exercise of the powers conferred on him under Section 82 read with sub-section (1) of Section 153 of the 1987 Act, and were notified in G.O.Ms.No.426 dated 09.11.2015. It is useful to read Rule 15, as it stood prior to its amendment, and after it was amended in juxtaposition with each other.

Pre-amended Rule 15	Post-amended Rule 15
Rule 15: Any lease or licence granted, continued or allowed to be continued otherwise than in accordance with	Rule 15: Validity of lease or license or occupation:- Notwithstanding anything contained in these rules and

rules shall be null and void: Provided that, any lease or license subsisting by the date of notification of these rules of any immovable property or right may be continued according to such terms and conditions and also on the rent payable thereto, till the expiry of the period of the lease or license as may be decided upon by the Additional Commissioner on a proposal received from the Executive Officer or Chairman or the Person-in-Management as the case may be.	any other rules for the time being:- (1) any Judgment, compromise, scheme, any lease or license granted, continued or allowed to be continued otherwise than by these Rules and all unauthorized occupations with whatever nomenclature they may be, shall be null and void. The Executive Authority shall automatically issue notice in Form-A, appended to these Rules, to the occupier in all such cases with a demand to vacate and hand over possession of the property. If the person in occupation fails to hand over the same, the Executive Authority shall evict such person with the assistance of Police invoking the provisions under Sections 84 and 86 of the Act treating him as an encroacher in the order passed under Section 83(4) and 85(1) of the Act. The Executive Authority shall not take cover under the pretext of seeking permission of higher authorities to carry out the eviction process. Protection of the interest of the temple or endowments institutions shall be the paramount for the Executive Authority under all the circumstances. (2) the Executive Authority or any other endowment authority shall simultaneously file a police report or a complaint to the Judicial Magistrate of First Class or Metropolitan Magistrate having jurisdiction over the institution or property and prosecute the encroacher for criminal trespass as the encroachment of endowment institution property is an offence against the Society. On bringing to the knowledge of the police or Court about the encroachment of any temple
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	or Endowment institution property, the same shall be taken cognizance of as a warrant case. The offence of encroachment of temple or any endowment institution property is cognizable, non bailable and non compoundable.
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Section 82 of the 1987 Act, in terms of which both the 2003 Rules and the amended Rules were made, relates to lease of agricultural lands and, under sub-section (1) thereof, any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment, subsisting on the date of commencement of the 1987 Act shall, notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person, stand cancelled. Section 82(3) of the 1987 Act stipulates that the authority to sanction the lease or licence, in respect of any property or any right or interest thereon, belonging to or given or endowed for the purpose of any charitable or religious institution or endowment, the manner in which, and the period for which, such lease or licence shall be such as may be prescribed by way of Rules. Under Section 82(4), every lease or licence of any immovable property, other than the agricultural land belonging to, or given or endowed for the purpose of, any charitable or religious institution or endowment, subsisting on the date of commencement of the 1987 Act, shall continue to be in force subject to the rules as may be prescribed under Section 82(3).

Section 153 of the 1987 Act relates to the power to make rules, and Section 153(1) enables the Government, after previous publication and by notification in the Andhra Pradesh Gazette, to make rules for carrying out all, or any of the purposes, of the 1987 Act. The power, to make the Amended Rules, is traceable to Sections 82 and 153(1) of the 1987 Act. Conferment of rule-making power by an Act does not enable

the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto, (**State of Karnataka vs. H.Ganesh Kamath**¹), and a protection given by the Statute cannot be nullified by Rules authorised by the Statute. (**Management, D.T.U vs. B.B.L. Hajelay**²).

Section 83 of the 1987 Act relates to encroachments by persons on land or buildings belonging to charitable or religious institutions or endowment and the eviction of encroachers. Under Section 83(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 any land, building etc belonging to the institution or endowment, wherever situated, he shall be deemed as an encroacher under any of the provisions under the 1987 Act, and 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. Under the Explanation thereto, the expression “*encroacher*” shall mean any person who unauthorisedly occupy any land or building etc, and is deemed to include any person who is in occupation of the land or building without the approval of the competent authority sanctioning the lease or mortgage or licence, and also a person who continues to remain in the land or building after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.

Section 83(2) stipulates that where, on a perusal of the report received by it under sub- section (1), the Endowments 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, calling on him to show cause before a certain date why an

¹ (1983) 2 SCC 402

² (1972) 2 SCC 744

order requiring him to remove the encroachment, before the date specified in the notice, should not be made. A copy of the notice shall also be sent to the trustee of the institution or endowment concerned. Section 83(3) stipulates that the notice, referred to in sub-section (2), shall be served in such manner as may be prescribed. Section 83(4) provides that, after 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 Endowments 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 encroached upon to the trustee before the date specified in such order. Section 83(5) requires the order of the Endowments Tribunal, under sub-section (4), to be in writing, and to contain the grounds on which the order was passed.

Section 83 of the 1987 Act provides certain safeguards for a person, in possession of land or a religious endowment or a charitable institution, to be held to be an encroacher, and against his being unilaterally evicted from the lands under his possession. While the definition of an “*encroacher*” under the Explanation to Section 83(1) is no doubt wide, the power conferred thereunder is for the Assistant Commissioner, if he is satisfied that there is an encroachment, to make a report to the Endowments Tribunal which, if it is *prima facie* satisfied that a case of encroachment has been made out, is then required to put the encroacher on notice, give him an opportunity of being heard and, thereafter, to pass a reasoned order in accordance with law.

Rule 15(1) of the amended rules, on the other hand, confers power on the Executive Authority to issue a notice to the occupier with a demand to vacate and hand over possession of the property. If the person, in occupation of such land, fails to hand it over, the Executive

Authority is required to evict such a person, with the assistance of Police, invoking the provisions of Sections 84 and 86 of the 1987 Act treating him as an encroacher in the order passed under Sections 83(4) and 85(1) of the Act. The Executive Authority is required not to take cover, under the pretext of seeking permission of higher authorities, to carry out the eviction process as protection of the interest of the temple or endowment institution is paramount for the Executive Authority under all circumstances.

Rule 15(2) confers power on the Executive Authority to simultaneously file a report or a complaint to the Judicial Magistrate of First Class or Metropolitan Magistrate having jurisdiction over the institution or property, and to prosecute the encroacher for criminal trespass, as the encroachment of the endowment institution property is an offence against Society; and, on bringing the encroachment of any temple or Endowment institution property, to the knowledge of the Police or Court, the same is required to be taken cognizance of as a warrant case. The offence of encroachment of temple or any endowment institution property is cognizable, non bailable and non compoundable.

Rule 15(5)(a) of the amended Rules stipulates that, after exhausting the remedy mentioned in Sub-Rule (1), if the executive authority fails to remove the encroachment despite best efforts for any convincing reason, then the Executive Officer or Trustee or the Chairman or the Assistant Commissioner of the District shall report the fact, together with the relevant particulars, to the Judicial Magistrate of First Class or Metropolitan Magistrate having jurisdiction over the institution or property. Such Magistrate is required to dispose of the complaint or petition within a period of thirty days, with a direction to the Station House Officer having jurisdiction over the property, after notice and summary enquiry, to evict and cause delivery of the property or record

etc, to the temple or endowment institution concerned. Under Rule 15(5)(b) where such Magistrate, in the summary enquiry, holds that there is a bonafide title dispute which is required to be adjudicated by trial or enquiry, rather than summary eviction, either the person claiming title or the executive authority, as the case may be, can maintain an original application before the Endowments Tribunal to decide any such dispute, question or matter.

While Section 84(1) of the 1987 Act confers power on the Assistant Commissioner, where the encroacher has not removed the encroachment within the period specified in the order made by the Endowments Tribunal under Section 83(4) and has not vacated the subject land, to remove the encroachment and obtain possession of the land or building encroached upon, and to take assistance of any police officer in this regard, the safeguard provided in Sections 83 and 84 of the 1987 Act is for the matter to be examined by the Endowments Tribunal; and it is only after an order is passed by the Endowments Tribunal that the person, in occupation of the subject land, is held to be an encroacher, and action can be taken against him thereafter, under section 84(1) of the 1987 Act, to have the encroachment removed.

All that Section 83(1) of the 1987 Act enables the Assistant Commissioner to do, on his having reason to believe that any person has encroached upon land belonging to an institution or endowment, or a person is deemed to be an encroacher under the Explanation to Section 83(1) of the 1987 Act, is to report the fact together with the relevant particulars to the Endowment Tribunal; and it is for the Endowments Tribunal, thereafter, to put the alleged encroacher on notice, give him an opportunity of being heard, and thereafter pass an order requiring the encroacher to remove the encroachment and deliver possession of the land to the trustee of the temple or endowment. This safeguard

conferred by Section 83 of the 1987 Act, on a person in occupation of the property belonging to a religious institution or endowment, has been negated by Rule 15(1) and (2) of the Amended Rules notified in G.O.Ms.No.426 dated 09.11.2015, whereby power is given to the Executive Authority to evict a person in occupation of the land with the assistance of police treating him as an encroacher without recourse to any such determination by the Endowments Tribunal.

While the language employed in Rule 15(1), of the Amended Rules, can possibly be construed as action being required to be taken by the Executive Authority thereunder, only after an order is passed under Section 83(4) of the 1987 Act by the Endowments Tribunal, a reading of Rule 15(5)(a) and (b) of the Amended Rules would clearly show that a completely different, albeit harsher, procedure, than what is contemplated under Section 83 of the 1987 Act, has been prescribed under Rule 15 of the Amended Rules. It is only in cases where a person in occupation is able to resist the Executive Authority's attempt to evict him from the encroached land, and the Executive Authority is unable to remove the encroacher, is he then required to approach the Judicial Magistrate of First Class or Metropolitan Magistrate requesting him to conduct a summary enquiry and direct eviction. It is only in cases where such a Magistrate is satisfied that there is a bonafide dispute of title, which is required to be adjudicated by trial or enquiry, can the jurisdiction of the Endowments Tribunal be invoked by either of the parties.

It is clear from a bare reading of Rule 15(5)(a) and (b) of the Amended Rules that the power conferred on the Executive Authority under Rule 15(1) is to be exercised, not after an order is passed by the Endowments Tribunal under Section 83(4) of the 1987 Act, but on the unilateral satisfaction of the Executive Authority that the person, in

occupation of the land, is an encroacher. It is clear, therefore, that sub-rules (1) and (2) of Rule 15 of the Amended Rules (which alone are under challenge in these Writ Petitions) go far beyond, and nullify the protection conferred, on a person in occupation of lands belonging to a religious endowment, by Section 83 of the 1987 Act. Rules 15(1) & (2) of the Amended Rules are, therefore, *ultra vires* Section 83 of the 1987 Act and must therefore be, and are accordingly, declared as such.

On Sub-Rules (1) and (2) of Rule 15 of the Amended Rules, notified in G.O.Ms.No.426 dated 09.11.2015, being set aside, the other clauses of Rule 15 (including sub-rules 5(a) and 5(b) of Rule 15) may well become redundant. We, however, refrain from striking down the said provisions, since the challenge in these writ petitions is confined only to sub-rules (1) and (2) of Rule 15 of the Amended Rules.

As Sub-Rules (1) and (2) of Rule 15 of the Amended Rules have been declared *ultra vires* Section 83 of the 1987 Act, the impugned orders passed by the Assistant Commissioner and the Executive Authority of the 4th respondent-Temple, under Rule 15(1) and (2) of the Amended Rules must also be, and are accordingly, set aside. It is made clear that the order now passed by us shall not disable the respondents from taking action against the petitioners, if they so choose, under Section 83 of the 1987 Act.

All the three Writ Petitions are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

04th July, 2018
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI**



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Date: 04.07.2018

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