

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.715 and 717 of 2018

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

These two appeals are preferred, under Clause 15 of the Letters Patent, against the ad-interim order passed by the Learned Single Judge in I.A. Nos. 1 and 2 of 2018 in W.P. No. 14464 of 2018 dated 24.4.2018 granting interim directions as prayed for.

The main relief sought for in the Writ Petition is for a mandamus to declare the action of the respondents in partially dispossessing the petitioners from their respective shop Nos.1 to 14, leased to them by the subject temple, illegally and forcibly on 14.4.2018 during the subsistence of a lease agreement as per the proceedings of the Secretary to the Government, Endowments Department dated 28.2.2017, without prior notice or without initiating any proceedings under law, as illegal and arbitrary.

In I.A. No. 1 of 2018, the interim relief sought for was to direct the respondents to remove the seals put on 14.4.2018, to the respective shops of the petitioners, pending disposal of the Writ Petition. The interim relief sought for in I.A. No. 2 of 2018 was to direct the respondents not to allot, alienate or auction lease of the shops, owned by the 4th respondent-temple, pending disposal of the Writ Petition.

As a result of the interim order, passed in both the IAs, the appellants herein are not only disabled from conducting auction for the lease of the shops owned by the temple, but are also required to put the respondent-writ petitioners back in possession of the shops

by removing the seal put on 14.4.2018, pending disposal of the Writ Petition.

The parties to the present writ proceedings were also parties to W.P. No. 13106 of 2011 wherein the relief sought was for a mandamus to declare the action of the respondents in seeking to evict the petitioners from the respective shops situated at Sree Padmavathi Venkateswara Swamy Devasthanam, without considering their representations dated 11.2.2009 and 20.4.2011 for extension lease of their shops, as arbitrary and illegal. The said Writ petition was disposed of by order dated 25.1.2018 wherein this Court observed as under:

“..... It is not in dispute that the subject shops belong to the respondent-endowment, or that the petitioners were initially granted a lease for a period of five years which were periodically extended thereafter for a term of three years each. The petitioners cannot claim extension of lease in perpetuity. As the rules require the subject shops to be leased through public auction, it is always open to the petitioners, on an auction being held, to participate therein. No mandamus can be issued to the respondents to grant leases to the petitioners in perpetuity. The Writ Petition, as filed, is wholly misconceived and is, accordingly, dismissed.”

During the pendency of W.P. No.13106 of 2011, the Secretary to the Government, Revenue (Endowments Department) issued Memo dated 28.2.2017 granting extension of lease of the shops in favour of the sitting tenants, on enhancement of 100% rent over the existing rent, for a period of three years from 1.10.2015. On the ground that the enhanced lease amount was not paid, the temple is said to have approached the Endowments Tribunal.

The order passed by this Court, in W.P. No.13106 of 2011 dated 25.1.2018, has attained finality as no appeal has been

preferred against the said order. As held therein, the respondent-writ petitioners cannot claim extension of lease in perpetuity. Since the rules require the subject shops to be leased through public auction, this Court observed that it was always open to the petitioners to participate in the auction; and no mandamus could be issued to the respondents to grant leases to the petitioners in perpetuity. The said Writ Petition was dismissed as being wholly mis-conceived. According to the Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General, the action taken by the appellants, to have the respondent-writ petitioners evicted from the subject shops, is only with a view to conduct a public auction afresh, in accordance with the order passed by this Court in W.P. No. 13106 of 2011 dated 25.1.2018.

On their own admission, the respondent-writ petitioners were evicted from the subject shops on 14.4.2018 questioning which they filed the present Writ Petition. The interim orders under appeal, directing the appellants to remove the seal and put the respondent-writ petitioners back in possession, was passed at the stage of admission without giving the appellants herein a reasonable opportunity of filing their counter-affidavit. The cumulative effect of the orders passed by the learned Single Judge, in I.A. Nos. 1 and 2 of 2018 dated 24.04.2018, is to grant the respondent-writ petitioners the main relief sought for by them in W.P. No.14464 of 2018.

Reliance is placed by Sri Vijay Ashrit, learned counsel for the respondent-writ petitioners, on the judgment of the Supreme Court, in **Maria Margarida Sequeira Fernandes vs. Erasmo Jack De Sequeira**¹, to contend that the appellants could only have

¹ (2012) 5 Supreme Court Cases 370

dispossessed the respondent-writ petitioners in accordance with law; they could not have forcibly taken possession of the subject property from them; and the mere fact that the respondent-writ petitioners had failed to bring to the notice of this Court that, during the pendency of W.P. No.13106 of 2011, the lease was extended till October, 2018 would not disable them from filing a Writ Petition afresh seeking their continuance till expiry of the extended lease period upto October, 2018.

On the other hand, the learned Special Government Pleader, appearing on behalf of the learned Additional Advocate General for the State of Telangana, would contend that the action taken by the appellants was only in conformity with the order passed by this Court in W.P. No.13106 of 2011 dated 25.01.2018; the Commissioner was constrained to grant extension of lease, in view of the pendency of W.P.No.13106 of 2011; the endeavour of the Commissioner was to enhance the revenues of the subject temple atleast by twice the existing rent; and the respondent-writ petitioners have not even paid the enhanced rent till date, much less arrears thereof.

The relevant Rules, made under the Endowments Act, obligate the Commissioner to have a public auction conducted for grant of lease on expiry of the lease period of existing tenants. The appellants were, therefore, required to conduct an auction for grant of lease, on expiry of the original term of lease of the respondent-writ petitioners. The mere fact that they have continued to illegally retain possession of the subject shops for the past several years, even after expiry of their original lease term, does not confer any right on the respondent-writ petitioners to claim entitlement to retain possession of the subject shops in perpetuity. Having failed to abide by the conditions

of lease, to peacefully vacate the subject shops on expiry of the lease period, the respondent-writ petitioners cannot now seek this Court's protection to be put back in possession of the shops of the temple which they have illegally retained, for the past several years, after expiry of the original lease period. They were obligated, on expiry of their original term of lease, to vacate the premises, and participate in the public auction if they desired to have a lease granted in their favour for another term. In the absence of any specific power conferred on the Commissioner, to extend the lease except in cases where it is in the interests of the temple, and as continuing the respondent-writ petitioners as lessees at the rent originally paid by them, would evidently not be in the interest of the temple, reliance placed by the respondent-writ petitioners, on the proceedings of the Commissioner dated 28.02.2017, is of no avail. In any event the respondent-writ petitioners have not complied with the order of the Commissioner dated 28.02.2012, and have admittedly not paid the enhanced rent or its arrears till date.

Even otherwise, the effect of the interim orders under appeal is to grant the main relief, sought for in the Writ Petition, at the admission stage without giving the appellants herein a reasonable opportunity of filing their counter-affidavit. As no such order could have, ordinarily, been passed at the stage of admission, we consider it appropriate to set aside the orders under appeal and restore I.A. Nos. 1 and 2 of 2018 in W.P. No. 14464 of 2018 to file. The appellants shall file their counter-affidavits, in I.A. Nos. 1 and 2 of 2018 in W.P. No. 14464 of 2018, before the learned Single Judge, within two weeks from today. It is open to the Learned Counsel for the respondent-writ petitioners to request the learned Single Judge to

take up the I.As. for hearing any day after two weeks. As the opinion expressed by us in this order, is in appeals preferred against interlocutory orders, the Learned Single Judge shall consider I.A.Nos.1 and 2 of 2018 on its merits, uninfluenced by the observations made in this order.

The Writ Appeals are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

2nd May, 2018

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Date:02.05.2018

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