

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION Nos.19814, 19819 and 19826 of 2018

COMMON ORDER:

Since these three Writ Petitions are identical and as the petitioners in these cases are also related and as the contentions advanced in these Writ Petitions are also the same, this Court deems it appropriate to dispose of these three Writ Petitions by way of this Common Order.

2. In these three Writ Petitions, challenge is to the Orders, dated 26.02.2018, passed by the Telangana Endowments Tribunal at Hyderabad in O.A.No.689, 690 and 688 of 2010 respectively.

3. The schedules of the properties in these cases are 75 Sq.Yds., bearing Municipal No.13-1-5(A); 176 Sq.Yds., bearing Municipal No.13-1-5(C); and 84 Sq.Yds., bearing Municipal No.13-1-5(D). The said properties are situated at Seetarambagh Temple area, Hyderabad.

4. By way of the Orders impugned, the Endowments Tribunal directed removal of the encroachments and to deliver the vacant physical possession of the schedule properties.

5. According to the learned Counsel appearing for the petitioners, the questioned Orders are highly illegal, arbitrary and unreasonable and violative of Articles 14 and 300-A of the Constitution of India and opposed to the very spirit and object of the provisions of the Telangana State Charitable & Hindu Religious Institutions & Endowments Act, 1987 (hereinafter referred to as 'the Act') and the Rules framed thereunder. It is further submitted by the learned Counsel that without any authority of Law and locus, the 3rd respondent herein initiated the impugned eviction

proceedings under Section 83 of the Act. It is further submitted by the learned Counsel that no opportunity was given to the petitioners even at the time of recognizing the unofficial respondent as hereditary trustee of the temple.

6. On the contrary, it is contended by Sri M.Vidyasagar, the learned Counsel appearing for the 3rd respondent, that there is absolutely no illegality nor there exists any infirmity in the impugned Orders and in the absence of the same, the petitioners herein are not entitled for any relief from this Court in the nature of Writ of Certiorari. In elaboration, it is further contended by the learned Counsel that as long back as in the year 1968, respondent No.3 was recognized as member of the founder family under Section 77 of the Act. It is further contended by the learned Counsel that having regard to the earlier adjudication in the Civil Suit, the contentions advanced on behalf of the petitioners herein cannot be sustained. In elaboration, it is further submitted by the learned Counsel that in the absence of any jurisdictional error and violation of principles of natural justice, a Writ in the nature of Writ of Certiorari cannot be issued.

7. In the above back-ground and on the basis of the material available on record, the following issues emerge for consideration by this Court:-

- 1) Whether the petitioners herein are entitled for any relief from this Court and whether the Orders of the Tribunal are sustainable or tenable?
- 2) Whether a Writ in the nature of Writ of Certiorari can be issued having regard to the facts and circumstances of the case?

8. The material available before this Court, in vivid and clear terms, discloses that earlier one P.Krishnama Chary, father of the writ petitioner in W.P.No.19819 of 2018 and the grandfather of the other petitioners in other cases, instituted OS.No.1349 of 1986 in respect of the self-same property seeking declaration of title and perpetual injunction against the 3rd respondent in these Writ Petitions and the Deputy Commissioner of Endowments, Hyderabad, on the file of the IX-Assistant Judge, City Civil Court, Hyderabad. The said suit was dismissed by the learned Judge by way of Judgment and Decree, dated 25.04.1994, to the extent of relief of declaration but decreed the suit for the relief of perpetual injunction. Against the said judgment and decree, the 3rd respondent preferred A.S.No.22 of 1995 on the file of the Chief Judge, City Civil Court, Hyderabad. The learned Appellate Judge by way of Judgment, dated 30.12.1999, disposed of the said First Appeal, modifying the perpetual injunction order passed by the trial Court by keeping it open for the respondents herein to initiate eviction process, as per law.

9. Aggrieved by the said judgment rendered by the lower Appellate Court, the 3rd respondent herein preferred Second Appeals before this Court. This Court dismissed the said Second Appeals and the operative portion of the said judgment reads as under:-

“After hearing the learned Counsel on either side and after perusing the judgment under appeal, it is seen that the lower appellate Court gave a finding that the temple authorities can only dispossess the plaintiffs-respondents from the suit schedule properties, and modified the order of the trial Court stating that the order of injunction shall be in force as against the

appellant till the temple authorities take up the eviction proceedings against the respondents. The observations made at paras 19 and 21 of the judgment would clearly indicate that there is no bar for the appellant to proceed with taking up the eviction proceedings against the respondents-plaintiffs as per law, if it is proved that the appellant is the hereditary trustee of the temple. Admittedly, neither there was pleading nor issue was framed as to whether the appellant is a trustee or not. Even there is no finding as such. Under those circumstances, the finding of the lower appellate Court to the extent that the appellant is not a trustee is liable to be set aside and accordingly set aside. Further, the above finding does not preclude the appellant from taking steps to evict the plaintiffs-respondents by due process of law, provided he establishes that he is the trustee of the temple.

Subject to above discussed observations, all the second appeals are dismissed.”

10. Obviously, pursuant to the said judgment, the present Original Applications came to be filed before the Endowments Tribunal by the respondent Nos.2 and 3 herein under Section 83 of the Act praying for removal of the encroachments and deliver of the vacant physical possession of the schedule properties. The Tribunal, by way of the impugned Orders, allowed the Original Applications filed by the respondent Nos.2 and 3, ordering eviction of the petitioners herein. There is absolutely no dispute with regard to the reality that the Judgments rendered by the trial Court, appellate Court and this Court in the Second Appeals attained finality in respect of the schedule properties. A copy of Ex.A.2 is also placed on record by the learned Standing Counsel for R.3 along with the vacate application. Ex.A.2 is an order

bearing No.8, dated 20.03.1968, passed by the Deputy Commissioner, Endowments Department, Hyderabad, in O.A.No.19 of 1967, wherein in exercise of the power conferred under Section 77 (1) of the Endowments Act, 1966, the Deputy Commissioner declared the petitioner therein, who is R.3 herein, as hereditary trustee of Sitarambagh Temple and directed inclusion of his name in Column No.11 of the Book of Endowments. Admittedly, the said proceedings attained finality. As such, by any stretch of imagination, it cannot be contended that he has no locus to initiate the proceedings before the Tribunal for eviction of the petitioners herein. A reading of the Orders of the Tribunal demonstrate in candid terms that the Tribunal, after elaborately and meticulously considering the entire oral and documentary evidence, came to a categoric conclusion against the Writ Petitioners and ordered their eviction from the schedule properties.

11. In this context, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **SYED YAKOOB v. K.S.RADHAKRISHNAN AND OTHERS**¹ wherein a Constitutional Bench of the Hon'ble Supreme Court held at para 7 as follows:-

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are

¹ AIR 1964 S.C.,477

passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot

be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.”

12. In the instant case, such contingencies namely lack of jurisdiction, violation of principles of natural justice and patent perversity are conspicuously absent. Therefore, this Court is not inclined to interfere with the well articulated orders passed by the Tribunal.

13. Accordingly, the Writ Petitions are dismissed. No order as to costs. However, having regard to the long standing possession of the petitioners herein and keeping in view of the submissions of the learned Counsel appearing for the petitioners that there are school going children of the petitioners, this Court deems it appropriate to grant six months time to the petitioners herein for vacating the subject premises. It is also made clear that to the said effect, the petitioners herein shall give an undertaking to the respondents. In the event of failure thereof, it is open for the respondents herein to take steps for eviction of the petitioners herein.

Miscellaneous Petitions pending consideration, if any, in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE A.V.SESHA SAI

Date :16.07.2018
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