

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.3052 of 2009

ORDER:

This writ petition is filed for the following relief:

“To issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the orders of eviction passed against the petitioners by respondent No.2-Deputy Commissioner of Endowments, Guntur, dated 18.11.2006, along with confirmation orders of respondent No.3-Regional Joint Commissioner of Endowments, dated 06.02.2008, through Revision Petition Nos.33 to 41 as illegal, arbitrary, unconstitutional and against to the principles of natural justice..”

The brief facts as set out in the writ affidavit for the purpose of disposal of this writ petition are as under:

One Sri Devineni Rangaiah, who is a resident of Kantepudi Village, Sattenapalli Mandal, Guntur District, donated an extent of land admeasuring Ac.0.92 cents, out of which, on Ac.0.30 cents of land, he constructed a Choultry, namely, ‘Sri Devineni Rangaiah Choultry’ (for short ‘the Choultry’), which is encompassed by a boundary wall. To support the Choultry, he also donated land admeasuring Acs.14.00. On the remaining vacant land, the petitioners were living by constructing thatched houses even prior to 1916 and extent of the land which is in occupation of the petitioners is ranging from 200 to 300 square yards in all. While so, on the ground that the petitioners encroached the land, respondent No.4 - Person-in-Management, Sri Devineni Rangaiah Choultry, initiated proceedings against them under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short ‘the Act’) before respondent

No.2-Deputy Commissioner of Endowments, Guntur, for their eviction. The petitioners state that though they filed counter in the said proceedings, respondent No.2 without considering the same, passed orders on 18.11.2006 for their eviction holding that they encroached the land. Aggrieved by the same, the petitioners filed appeals under Section 92 of the Act before respondent No.3-Regional Joint Commissioner, Endowments Department, Multi Zone-II, Tirupati, who in turn, dismissed the same holding that they claimed right over the property through adverse possession, as such, remedy available to them is to file a suit before the civil Court for declaration. They further state that as there are disputes between themselves, the legal heirs of Devineni Rangaiah filed O.S.No.208 of 1999 in the Court of the Principal Senior Civil Judge, Guntur, and the same came to be dismissed on 19.09.2008 and as against the same, A.S.No.952 of 2008 was filed before this Court and the same is pending and thus, there is a dispute with regard to the very title to the property. They further state that before passing the orders for their eviction, respondent No.2 refused to receive the counter sought to be filed by them and thus, he failed to give reasonable opportunity to them to put forward their case. They also state that they have raised similar grounds before respondent No.3, who in turn, also did not consider the same. In the circumstances, they filed the present writ petition.

Respondent No.4 filed a counter-affidavit stating that Sri Devineni Rangaiah had endowed the agricultural land as well as site along with Choultry and the said Choultry was published under Section 6 (c) of the Act 17 of 1996 at Serial No.181 by the Commissioner of Endowments, Andhra Pradesh, Hyderabad *vide*

Rc.No.15388/1967-13, dated 05.10.1967, and thus, there is no manner of doubt that the property is an endowed property and the same is under the control of the Endowments Department. He further states that as the legal heirs of Sri Devineni Nagamalleswara Rao and Sri Devineni Ranga Rao, who are the descendants of the founder, Sri Devineni Rangaiah, had neglected to maintain the Choultry on account of their migration to other places and swallowed the income therefrom, respondent No.1, in exercise of powers under Section 53 of the Act, appointed one Guduru Subba Rao, who is the Executive Officer of Guntur Group Temples, as a fit person to the said Choultry and the said Subba Rao had taken charge on 19.04.1999; that respondent No.1 instructed the said Subba Rao to lease out the land admeasuring Acs.14.00 in public auction and accordingly, he leased out the said land for a period of three years from 1999-2000 to 2001-02; that since there was encroachment in the site adjacent to the Choultry in northern side, notices were issued to the petitioners on 29.01.2002, 25.06.2003 and 25.11.2005 requiring them to vacate and handover the possession; that having received such notices, the petitioners failed to vacate and handover the vacant possession, as such, respondent No.4 by invoking Section 83 of the Act had filed O.A.No.64 of 2006 against them before respondent No.2; that the petitioners having engaged an Advocate to represent their case before respondent No.2, failed to file counter; that respondent No.2 after adjourning the matter on several occasions, set the petitioners *ex parte* and after taking into consideration the oral and documentary evidence, he had come to the conclusion that the petitioners have no manner of right in the property and

passed the impugned order declaring them as encroachers and directing them to hand over the vacant possession to respondent No.4; that in the revisions filed against the impugned order before respondent No.3, their principal contention was to the effect that they have perfected their title over the property in question by adverse possession and that after taking into consideration the grounds raised by the petitioners, respondent No.3 passed an order, dated 06.02.2008, dismissing the revisions holding that the plea of adverse possession cannot be considered in the revisions and the proper forum to adjudicate the same is the civil Court.

Sri B.Chinnapa Reddy, learned counsel for the petitioners, raised four grounds, namely, (i) respondent No.4 had no locus standi/authority to file eviction petition before respondent No.2; (ii) the very appointment of respondent No.4 is not in accordance with Section 15 of the Act and it is only respondent No.1 who alone is entitled to initiate proceedings under Section 15 of the Act and thus, respondent No.4 is not authorized to initiate proceedings before respondent No.2 for eviction of the petitioners; (iii) respondent No.2 has failed to deal with the various pleas mentioned in the counter filed by the petitioners, on account of which, the petitioners have been deprived of fair opportunity and (iv) respondent No.2 failed to consider and appreciate the facts and thus, the order is vitiated for non-consideration of the material on record. He would submit that the orders passed by respondent No.2 are *ex parte* in nature and the authorities ought to have given an opportunity to the petitioners instead of passing orders holding that the petitioners had not shown due diligence.

The learned Government Pleader for Endowments appearing for respondents 1 to 3 and the learned Standing Counsel appearing for the fourth respondent opposed the writ petition. They contended that the writ petition itself is not maintainable; that a writ of *mandamus* would not lie as the order passed by the second respondent as confirmed by the third respondent are adjudication orders in discharge of their quasi judicial functions and in exercise of the powers conferred under Sections 83 and 92 of the Act respectively; that the petitioners claimed ownership rights over the subject property stating that they are in possession of the property even prior to 1916 and that they have perfected their title over the property in question by adverse possession; that for the first time they raised such contention only when notices were issued under Section 83 of the Act seeking to evict them on the ground that they are encroachers; that the petitioners had not placed any material whatsoever which would establish their right and title over the property; that as a matter of fact, the petitioners having received notices from the second respondent's office filed vakalat through an Advocate, but they remained silent by not filing counter affidavit making their stand clear and that even before the third respondent, no material whatsoever was placed except raising bald and vague grounds. They further contended that there is no manner of doubt that the property is an endowed property and that there is no challenge to the registration of the property in the registers maintained under the Act. Therefore, both the learned counsel prayed for dismissal of the writ petition.

At the outset, it would be noted that the petitioners prayed for issuance of a writ of *mandamus*. For issuance of a writ of

mandamus, the settled principles are that there has to be a demand and failure on the part of the respondent authorities having vested with power and duty to answer the said demand. In the instant case, the second and third respondents passed orders in exercise of the statutory powers, that too, in discharge of their duties as quasi judicial authorities. In that view of the matter, issuance of a writ of *mandamus* is inappropriate. However, as the prayer of the petitioners is to issue any other appropriate writ, the present writ petition would be treated as the one filed under Article 226 of the Constitution of India for issuance of a writ of certiorari. Further, as rightly contended by the learned counsel for the petitioners, the writ petition, which has been admitted in the year 2009, is not liable to be thrown out at this stage on the ground of maintainability, as this Court has ample power to pass appropriate orders basing on the material available on record. In that view of the matter, the objection raised on behalf of the respondents does not require much consideration and, for all practical purposes, this Court would proceed to consider the submissions made on behalf of the petitioners as well as the respondents treating the writ petition as the one seeking writ of certiorari.

Having regard to the facts and circumstances of the case, it may be noted that practically there is no dispute with respect to the facts. At any rate, there is no other material to dispute the fact that the subject property belongs to the Choultry and that it is an endowment property under the control of the Endowments Department having been entered in the register maintained under the Act as far back as in 1966. While the petitioners assert that themselves and their ancestors are in possession of the subject

land since time immemorial, they appear to have entered into possession of the property on account of the complicity by the legal heirs of the founder of the trustee, Devineni Rangaiah. The negligence of the affairs of the Choultry by the founder members appears to have necessitated initiation of the proceedings by the first respondent-Assistant Commissioner of Endowments and it resulted in appointment of Guduru Subba Rao, who is the Executive Officer of Guntur Group Temples, as a fit person to the said Choultry in terms of Section 15(3) of the Act *vide* order dated 03.04.1999. The said fit person has assumed charge on 19.04.1999 and has taken steps to evict the encroachers and lease out the agricultural lands of an extent of Acs.14.00 cents for a period of three years from the year 1999 onwards.

It may be noted that the Deputy Commissioner of Endowments is required to take into consideration the report filed by the Assistant Commissioner of Endowments or the person, who is in-charge of the Trust, and based on such report, the Trust is required to initiate proceedings in terms of Section 83 of the Act. There is no dispute that prior to constitution of the Endowments Tribunal, in terms of Section 87 of the Act, the Deputy Commissioner was the competent authority and the proceedings before him were quasi judicial in nature.

The procedure for service of notice, conduct of enquiry and for depositing the amount is governed under the Removal of Encroachments Rules, 1987, as notified in G.O.Ms.No.645, Revenue (Endowments-I), dated 30.06.1989.

The notices of encroachments were issued to the petitioners by the second respondent and in pursuance of the same, Sri B.L. Chinnaiah, Advocate, appeared on their behalf and filed vakalat before the second respondent. However, as there was no representation on behalf of the petitioners, the second respondent passed eviction orders based on the material placed before him. The fourth respondent adduced oral evidence and also got marked Exs.P.1 to P.7 which were uncontroverted.

A perusal of the orders of eviction passed by the second respondent would disclose that the same were not laconic orders and they were well considered and reasoned orders advertng to the material placed before him. In view of the same, the orders passed by the second respondent cannot be termed as *ex parte* orders though they were passed in the absence of the petitioners. Challenging the said orders, the petitioners filed revision petitions before the third respondent raising various grounds but they neither placed any material nor pursued the same to its logical end. They appear to have raised a simple ground of claiming ownership rights by pleading rights acquired through adverse possession. The third respondent dismissed the revision petitions holding that the petitioners claimed title over the property by adverse possession since 1951 and that in view of the title dispute, the remedy provided under the statute is a civil suit under Section 84(2) of the Act to establish that the Choultry has no title over the property.

The plea of adverse possession is the one which cannot be considered by the third respondent in discharge of his functions as a quasi judicial authority sitting either in revisional jurisdiction or

in appellate jurisdiction, as the said ground, at best, could only be considered by a Civil court. Apart from that, the plea of adverse possession over immovable property as against an institution falling under the Act is not available. (See ***Santhakula Sowmiyanarayana Kavaraya Community Endowments, through its trustee M.K. Perumal v. Vellayappa Pillai***¹)

Further, law of limitation has no application to the immovable properties vested in an institution. The said aspect of the matter is now well settled. Section 143 of the Act specifically excludes the applicability of the Limitation Act with respect to endowed properties.

Insofar as the first ground of attack by the petitioners, the same is liable to be rejected for the simple reason that the fourth respondent is authorized fit person to initiate proceedings before the second respondent. In other words, the fourth respondent is being placed in the position of a trustee though he is the Executive Officer of Guntur Group of temples. The proceedings dated 03.04.1999 through which the fourth respondent is appointed as fit person are not challenged. In that view of the matter, there is no substance in the first ground of attack and it is accordingly rejected.

Coming to the second ground of attack, it is interlinked with the first ground. Admittedly, the fourth respondent came to be appointed by the competent authority and such appointment is in terms of Section 15(3) of the Act. Even otherwise, it could also be

¹ (1978) 1 MLJ 354

said that for the purpose of cause title, the second respondent had adopted the proceedings as having been initiated at the instance of the fourth respondent. The proceedings could also be initiated *suo motu* by the second respondent once the information reached him that there are encroachments in the property belonging to an institution, which is under the control of the Endowments Department. As a matter of fact, there is a duty cast upon the second respondent to take appropriate steps to resume or recover the properties in whose ever hands the said properties were locked out. In that view of the matter, the second ground of the attack is liable to be rejected and it is accordingly rejected.

Insofar as the third ground is concerned, the second respondent's failure to deal with the pleas raised by the petitioners in the counter affidavit alleged to have been filed by them does not detain this Court any further for the simple reason that the counter affidavit does not appear to have been placed before the second respondent. The same is fortified from the ground raised by the petitioners before the third respondent as ground No.3 stating that the second respondent did not consider the counter before passing the orders dated 04.11.2006. The petitioners, having filed appeals before the third respondent questioning the orders dated 04.11.2006, raising a ground that the counter filed by them not being accepted by the second respondent, they neither pursued the appeals nor made any grievance about the alleged non-acceptance of their counter. For better appreciation, the ground raised by the petitioners before the third respondent requires to be examined more closely. The said ground reads as under:

“The learned Deputy Commissioner, Endowments Department, Guntur failed to appreciate that the Appellant has prepared a detailed counter to be filed along with a petition to set aside the ex parte order, dt 4-11-2006 but despite his due diligence without considering or accepting the same the above said order is passed.”

In that view of the matter, and in the absence of any material, ground No.3 does not require to be considered any further. At any rate, even assuming that the grounds raised in the counter affidavit are required to be considered, there is nothing to substantiate the same except denying the institute's title to the property in question by adverse possession.

It may also be noted at this stage that the claim of the legal heirs of late Devineni Rangaiah that the property is their own, stands negated on account of dismissal of the civil suit filed by them in O.S.No.208 of 1999 by the Principal Senior Civil Judge, Guntur, on 19.09.2008. Merely because an appeal was filed by the legal heirs of the original donor before this Court and the same is pending in A.S.No.952 of 2008, it does not in any way aid the case of the petitioners. The petitioners do not have any right even assuming that the said appeal is likely to be allowed by this Court. Therefore, the ground raised with respect to pendency of the Appeal Suit also does not merit any further consideration.

The fourth ground of the attack, which is made before this Court, is with regard to non-consideration and appreciation of the facts. Except contending that the second respondent has not appreciated the facts, the petitioners have not placed any material before this Court to prove the same. This ground is also interlinked

with ground No.3. Hence, there is no merit in this ground also and it is accordingly rejected.

The argument of the learned counsel for the petitioners that the petitioners are all poor and therefore, the respondent authorities may be directed to consider their application, cannot be accepted, as it is the duty of the Court to protect the properties belonging to a deity or endowment and to ensure that they are put to best possible use. This duty is cast upon the Court on account of the legal principle, which is now well settled under the title '*parens patriae*'. A reference may be made to the judgment of the Supreme Court in ***Charan Lal Sahu v. Union of India***².

In that view of the matter, a writ of *mandamus* cannot be issued directing the authorities to regularize the illegal and unauthorized occupation of the petitioners.

Yet another hurdle the petitioners have in the instant case is that though orders were passed in O.As. viz., O.A.Nos.56, 59, 62, 63, 64, 66 and 69 of 2006 on the same date, a single writ petition challenging the proceedings by making an omnibus prayer to set aside the orders passed in the said O.As., is not maintainable, as each individual proceedings are required to be challenged independently by the respective parties. Even on this technical ground also, the writ petition fails. In the present case, if at all any relief could be granted, for the sake of argument, it is not clear as to which of the petitioners would be entitled to as there is no challenge to any specific order before this Court.

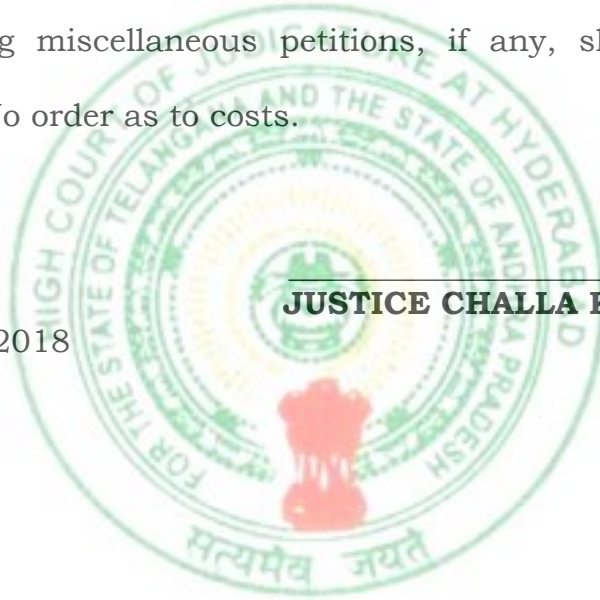
² AIR 1990 SC 1480

Further, neither of the grounds i.e., total lack of jurisdiction for the authority exercising the power or violation of principles of natural justice are available to the petitioners as they deliberately chosen to be absent before the authority concerned. As per Section 83 of the Act, it can never be said that the second respondent has no jurisdiction to entertain the application for eviction of an encroacher.

For all the above reasons, the writ petition fails, and it is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date: 27-08-2018
kdl/va



JUSTICE CHALLA KODANDA RAM