
(2003) 12 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24427 of 2003

M. Sarojini

APPELLANT

Vs

Joint Commissioner, Endowments M.Z. III and Others

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 2, 2(8), 83, 84, 89

Citation : (2004) 1 ALD 128 : (2004) 2 ALT 90 : (2004) 1 APLJ 68

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : G.V. Krishna Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This writ petition arises under Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) (hereafter called as "the act"). The petitioner's husband was the tenant of premises bearing No. 1-3-1039 (Part), belonging to Sri Mudigonda Shankararadhya Mutt, Kavadiguda, Hyderabad. After the death of petitioner's husband in 1991, petitioner along with her three sons were continuing as tenants. The third respondent filed O.A.No. 80 of 1996 before the second respondent u/s 83 of the Act for eviction of petitioner. Petitioner allegedly approached the third respondent and proposed a compromise which according to the petitioner is still pending till 1999. The petitioner also sent a representation with compromise proposals.

2. The second respondent by order dated 19.12.2002 declared the petitioner as an encroacher and directed her to deliver vacant physical possession to third respondent, failing which action u/s 84 was ordered. Against the orders of second respondent, the petitioner preferred Revision Petition No. 1 of 2003 before first respondent u/s 92 of the Act. By order dated 19.4.2003, the first

respondent refused to interfere with the proceedings of second respondent and dismissed the revision petition. Assailing the same, the present writ petition is filed.

3. The learned Counsel for petitioner submits that the petitioner has submitted proposals for compromise which are pending before the Commissioner. Therefore pending consideration of compromise proposals, the petitioner cannot be evicted u/s 83 read with Section 84 of the Act. He places reliance on the unreported judgment of Division Bench of this Court in "Secretary to Government, Revenue (Endowments) Department, A.P., Hyderabad and others v. Sri Swamy Ayyappa Co-operative Housing Societies Limited, Hyderabad and others" in W.A. No. 1769 of 2001 and Batch dated 15.10.2003 in support of the said submission. The submission of the learned Counsel is devoid of any merit with reference to facts and circumstances of the case. The submission also lacks substance in the light of the provisions of Sections 83, 84 and 89 of the Act.

4. The third respondent filed a complaint before the Assistant Commissioner of Endowments about the encroachment. The Assistant Commissioner submitted a report on 25.6.1996 to the second respondent, who initiated proceedings u/s 83 of the Act, stating that petitioner failed to lead any evidence and did not produce any proof that she is paying the rents regularly, that she is a chronic defaulter in payment of rents, that she sublet the premises to others besides converting the property into non-residential premises. Therefore the impugned order was passed. The petitioner did not raise any grounds that proceedings u/s 83 are not permissible and the compromise proposals are pending before the Commissioner u/s 89 of the Act. Further, even before the first respondent, no grounds were raised regarding compromise. Therefore the petitioner cannot be heard to say that the compromise is pending. Petitioner has filed documents running into 55 pages. The compromise proposals submitted by the petitioner were forwarded to the third respondent for his comments. By a letter dated 2.11.2000, the third respondent sought permission for entering compromise subject to certain conditions. It is not known whether the same is still pending before the Commissioner or not. Be that as it is, though the impugned order of the first respondent was passed on 19.4.2003, the fact that compromise proposals are pending was not brought to the notice of the Joint Commissioner. Therefore the impugned order cannot be held as illegal.

5. Chapter-XI of the Act contains Sections 83 to 86. These provisions contain elaborate procedure for eviction of persons who have encroached the land or buildings belonging to Charitable or Religious Institution or Endowments. As per subsection (4) of Section 83, it is competent for Deputy Commissioner to order eviction of the encroacher on receiving a report from the Assistant Commissioner under subsection (1) of Section 83. The order passed by the Deputy Commissioner under subsection (4) of Section 83 has to be executed by the Assistant Commissioner having jurisdiction in accordance with subsection (1) of Section 84 if necessary by taking police assistance. Sections 83 and 84, nowhere

impose an embargo to proceed in accordance with law if a compromise application is pending before the Commissioner. Section 89 of the Act deals with compromise between the Religious Institution and another person. The same reads as under;

89. Compromise how to be made :--(1) No suit, application or appeal pending before a Court which relates to charitable or religious institution or endowment, shall be withdrawn or compromised by the trustee or other person-in-charge of the management of such institution or endowment except with the previous sanction of the Commissioner.

(2) Where the Commissioner considers that any claim, demand, or cause of action for suing in respect of the affairs, funds, or properties of the charitable or a religious institution or endowment shall, in the interests of the institution or endowment be compromised without instituting or without continuing any suit or other legal proceeding and if the other party to each suit or other legal proceedings is willing to enter into a compromise under the terms and conditions which the Commissioner considers acceptable in the interest of the institution or endowment, the Commissioner may, for reasons to be recorded in writing, pass an order directing the trustee or other person referred to in Sub-section (1) to enter into such compromise.

6. A plain reading of Section 89 would show that unless and until the Commissioner of Endowments accords sanction, a suit or application or appeal pending before a Court can be withdrawn or compromise by the trustee or other person-in-charge of the management. An application suo-motu initiated u/s 83(1) by the Deputy Commissioner does not fall within the categories of suit, application or appeal before a Court. Therefore Section 89(1) has no application at all. Insofar as Sub-section (2) is concerned, the same refers to a suit or other legal proceedings which can be compromised with the previous sanction of the Commissioner. As Sub-section (2) refers to Sub-section (1) and empowers the Commissioner to accord sanction by recording reasons for the purpose of Sub-section (1), it must be held that the term "other legal proceeding" referred to in Sub-section (2) of Section 89 also in relation to a suit, application or appeal before a Court referred to in Section 89(1). Therefore I am not able to agree with the submission of the learned Counsel for petitioner that pendency of compromise in relation to application u/s 83(1) before the Commissioner of Endowments is a bar for execution of an eviction order u/s 84(1) of the Act. A reading of Section 89 would show that the Legislature does not envisage any compromise between the trustee or other person-in-charge of management of a Charitable Religious Institution or Endowment when such application or legal proceeding is pending before the Deputy Commissioner. Such compromise is permitted with the previous sanction of the Commissioner only in relation to a suit, application or appeal pending before a Court. Be it noted, as per clause (8) of Section 2 "Court" means either City Civil Court or District Court or a Court having jurisdiction in relation to a Charitable Religious Institution or a specific

endowment. The Deputy Commissioner acting u/s 83 or 87 is not a "Court" and therefore Section 89 has no application in relation to an application or legal proceedings u/s 83.

7. I have perused the judgment in W.A. No. 1769 of 2001 and Batch dated 5.10.2003 relied upon by the learned Counsel for petitioner. In the said case, the properties belonging to Gurukul Ghatkesar Trust (GGT) admeasuring Ac.627 was sold by managing trustee from 1960 onwards in favour of various Co-operative House Building Societies and individuals. These societies in turn sold away the property to various individual members of the respective societies. When these members applied to Serilingampally Municipality for building permission, they were asked to produce no objection certificate (NOC) from the Revenue Department. As Government of A.P. and the District Collector, Ranga Reddy District had instructed the Municipality not to sanction any building permissions on the land belonging to GGT, Sri Swamy Ayyappa Co-operative Housing Societies filed a Writ Petition seeking a direction to municipal authorities not to insist for NOC from the Revenue Department for the purpose of considering applications for building permission. The learned Single Judge allowed the writ petitions and directed the Municipality to entertain applications without insisting for NOC. In the meanwhile, the Fit Person of GGT initiated action under the Act declaring the purchasers of trust property as encroachers. A number of Original Applications were filed before the Deputy Commissioner against the Cooperative Society and other persons who purchased the land. The Government of A.P. also issued G.O. Ms. No. 703 dated 30.9.2000 declaring the sale transactions up to 1997 effected by the then Managing Trustee as null and void and the Commissioner and Inspector General of Registration and Stamps, Hyderabad was directed to take necessary action in the matter. Challenging the said G.O., number of writ petitions were filed. These writ petitions were heard along with W.A. No. 1769 and 1792 of 2001 which were filed against the judgment of the learned Single Judge in W.P.No.14387 of 1999 filed by Sri Swamy Ayyappa Co-operative House Building Society. It was contended for the State that alienation of immovable property without prior sanction of commissioner of Endowments is null and void. The Division Bench by holding that the provisions of the Act as well as its precursor (Act 17 of 1966) are applicable to GGT and also held that the sale of trust lands by the President are invalid and void ab initio and the same do not confer any valid title upon the purchasers. Dealing with the validity of G.O. Ms. No. 703 dated 30.9.2000, the Division Bench observed that it merely declared the legal position and that sale of lands by the President of the Trust without prior sanction of Commissioner is illegal. On behalf of the Co-operative Societies and individuals, it was contended that the purchasers are willing to enter into compromise u/s 89 of the Act. The Division Bench left the remedies of the petitioners open to approach the Commissioner, but did not indicate nor laid down that the pendency of compromise applications u/s 89 bars jurisdiction under Sections 83 and 84. Indeed the question whether Section 89 is applicable to the legal proceedings/applications u/s 83 pending before Deputy

Commissioner do not fall for consideration, The judgment of the Division Bench is not of any assistance to the petitioner.

8. In the result, the writ petition is misconceived and is accordingly dismissed in limini.