(2013) 11 AP CK 0147

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 27415, 27696, 27862, 27904, 27909, 27910, 28380, 32137 and 32139 of 2011

S. Ravindra APPELLANT

Vs

The State of A.P. and 3 Others RESPONDENT

Date of Decision : 04-11-2013

Acts Referred:

Citation : (2014) 2 ALD 211 : (2014) 3 ALT 105

Hon'ble Judges : Nooty. Ramamohana Rao, J

Bench : Single Bench

Advocate : G. Ramachandra Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

Nooty. Ramamohana Rao, J.—All these cases arise out of common set of facts and law. Hence they are disposed of by this common order. Common contentions are canvassed by the learned counsel. Hence, for convenience''s sake, facts as are set up in W.P. No. 27696 of 2011 are set out in detail. This writ petition is filed seeking a Writ of Certiorari calling for records in O.A. No. 2508 of 2010 on the file of the A.P. Endowments Tribunal, Hyderabad and to quash the order passed therein on 16.08.2011 holding the same as illegal. The petitioner is the respondent in O.A. No. 2508 of 2010 on the file of the A.P. Endowments Tribunal, Hyderabad.

2. The petitioner claiming to be a ''Lessee'' of Chunduru Venkata Reddy Charities, instituted this writ petition. The case of the petitioner is that the lease granted in his favour was extended from time to time upto 30.03.2008 and thereafter he was allowed to continue to occupy by collecting enhanced lease amounts. The petitioner is not disputing the right for periodical enhancement of the lease amount, but he has only objected for the proposed eviction from the site in question. According to the petitioner, after the lease was granted, he has set up a small scale industry called Ravindra Mechanical Works in the land in question after obtaining necessary clearances from various departments for establishing

the same, and he has invested huge sums of money. Contrary to the objects of the trust-Sri Durga Malleswaraswamy Vari Devasthanam, which has adopted Sri Chunduru Venkata Reddy Trust, is proposing to evict the petitioner from the leased out premises so that a large chunk of immovable property which is centrally located in Vijayawada City can be knocked away, in the process, rendering C.V. Reddy Charities defend. Infact, realizing the impropriety of adoption of a non-religious trust by a religious institution, the Commissioner of Endowments passed orders through his memo dated 13.12.2010 revoking the order of adoption of Sri C.V. Reddy Charities, Vijayawada, with immediate effect and hence by the time the Tribunal passed its orders on 16.08.2011, Sri Durga Malleswaraswamy Vari Devasthanam could not have maintained O.A. No. 2508 of 2010.

3. Heard Sri G. Ramachandra Reddy, learned counsel for the petitioner and Sri Sasidhar, deputizing for Sri V.T.M. Prasad on behalf of the respondents in the matter.

4. Sri G. Ramachandra Reddy would submit that the C.V. Reddy Charitable Trust is a non-religious trust established for achieving certain charitable objectives set out by the settler of the trust and hence adopting a non-religious trust by a religious organization is absolutely improper and impermissible in terms of Sub-section (1) of Section 145 of The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short henceforth referred to as ''Act'').

As the trust is created for achieving all-round improvement of small scale industries, the petitioner herein has been leased out a small extent of land and the petitioner has established a small scale industry there. Therefore, continuation of the lease in favour of the petitioner would sub-serve the objectives of the trust and hence the petitioner shall be allowed to continue to occupy the land in question. The proceedings for his eviction which are initiated by Sri Durga Malleswaraswamy Vari Devasthanam are, hence incompetent. Further, the order of amalgamation was withdrawn on 13.12.2010 by the Commissioner of Endowments, and hence the authority, if any for Sri Durga Malleswaraswamy Vari Devasthanam to prosecute or press for eviction of the writ petitioner from the land in question is not subsisting thereafter. The proceedings, after 13.12.2010 the date of withdrawal of the amalgamation order are, thus, incompetent.

5. Per contra, learned counsel Sri Sasidhar would submit that the proceedings initiated u/s 83 of the Act are perfectly maintainable and further the writ petitioner has been granted lease for a specified term and even after its extension, it came to an end on 31.03.2008 and thereafter there was no such extension granted to the petitioner and hence the question of the petitioner continuing, lawfully in possession of the site in question belonging to a charitable institution would not arise. Sri Sasidhar would further submit that against the orders passed by the Commissioner of Endowments on 13.12.2010 revoking the

earlier orders of adoption dated 03.08.2007, an appeal was preferred before the State Government and the State Government has suspended the operation of such proceedings initially and later on allowed the appeal there against and hence the orders passed by the Commissioner of Endowments on 13.12.2010 are not subsisting at all. Therefore, the proceedings before the Tribunal are legitimate.

6. Section 2 of the Act defined various expressions found mentioned in the Act. The expressions ''Charitable Endowment'', ''Charitable Institution'' and ''Charitable Purpose'' are defined in Subsections 3, 4 and 5 in the following manner:

(3) ''charitable endowment'' means all property given or endowed for any charitable purpose;

(4) ''charitable institution'' means any establishment, undertaking, organization or association formed for a charitable purpose and includes a specific endowment and dharmadayam;

(5) ''charitable purpose'' includes-

(a) relief of poverty or distress;

(b) education

(c) medical relief;

(d) advancement of any other object of utility or welfare to the general public or a section thereof not being an object of an exclusively religious nature;

7. In juxtaposition, the expressions ''Religious Charity'', ''Religious Endowments'', ''Religious Institution'' and ''Specific Endowment'' have been defined under Sub-section 21, 22, 23 and 25 in the following manner:

(21) ''Religious charity'' means a public charity associated with a Hindu festival or observance or a religious character, whether connected with a religious institution or not;

(22) ''Religious endowments'' means property (including movable property) and religious offerings whether in cash or kind, given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof.

(23) ''Religious institution'' means a math, temple or specific endowment and includes a Brindavan, Samadhi or any other institution established or maintained for a religious purpose;"

(25) ''Specific Endowment'' means any property or money endowed for the performance of any specific service or charity in a charitable or religious institution or for the performance of any other charity, religious or otherwise;

8. Thus, the statute has maintained certain distinction between a ''Charitable Institution'' with that of a ''Religious Charitable Institution''.

9. Sri C.V. Reddy, an extraordinarily gifted philanthropic personality has settled a charitable institution for securing the welfare of people. The objectives for which he has settled the endowment would read as under:

a) By establishing in or in the immediate vicinity of Bezwada Schools and Colleges providing courses of instruction in Arts and Sciences, Ayurvedic and other Indian systems of medicine or by contributing for the development of existing High Schools and Colleges and also establishing technological institutions providing instruction and practical training in Mechanical and Electrical Engineering, Mining, Metallurgy and applied Sciences and in case providing instruction at or near Bezwada in all or any of the subjects mentioned above is not found to be feasible in the near future, to award scholarships to deserving students so as to enable them to pursue their studies, undergo training and carry on research at places where facilities for the same already exist, either in India or in other countries.

b) By developing the Sarva Tantra Swatantra Kalasala already started by the founder, by providing instruction in various Sastras besides Vyakarana, Tarka and Vedanta, which are already provided, or by granting scholarships to deserving students for study in institutions or with individual pandits elsewhere in India, by collecting a Library of all Sanskrit and Telugu works in print and manuscript and all English works dealing with Indian Religion, Philosophy, Culture, Art and History, by publishing translations of well known Sanskrit works into Telugu and English, and arranging extension lectures, by publication of periodicals, tracts, and pamphlets and original works in Telugu, English and Sanskrit, not inculcating doctrines opposed to the principles of Varnasrama Dharma and time-honoured standards of Hindu Dharma, Morality and good conduct, to popularize the principles of Hindu Religion, Philosophy, History, Literature Culture and Art.

c) By rewarding well-known pandits who are known to be teaching students free.

d) By encouraging indigenous arts and crafts such a Sculpture, Painting, Carving, Music, Natya Kala etc.

e) By rewarding Well-known artists and by grant of scholarships to deserving apprentices and students.

f) By constructing and maintaining a hospital and providing the same with up-to-date surgical equipment and affording facilities for medical treatment according to Allopathic as well as Ayurvedic methods.

g) By opening free messes or alms-houses to dole out grains or money or freely distribute articles of clothing for the poor and by constructing Dharmasalas for the accommodation of pilgrims and travelers at such places as the trustees may deem proper and necessary, the Dharmasala promised by the founder to be constructed at Badrinath being preferred to the construction of any other

Dharmasala.

h) By providing free homes and gratuities to industrial workers who have through old age, illness or injuries received in the course of their employment become unfit for work and have consequently become destitute.

i) For the purpose of giving effect to the wishes of founder in connection with the aforesaid charities and to the aforesaid resolutions, the founder and the trustees have agreed to execute such declaration of trust as hereinafter appearing.

(Emphasis is brought out by me)

10. It is therefore manifestly clear that Sri C.V. Reddy Charities is a charitable institution but not a religious charitable institution.

11. Section 145 makes a provision for adoption or amalgamation of any religious institution by any other religious intuition having similar objects. Section 145 reads as under:

145. Adoption or amalgamation of institutions and Endowments:-

1) Where the Commissioner has reason to believe that any religious institution is not capable of maintaining out of its funds, he may, in the interest of proper management of administration, subject to such restrictions and conditions as he may deem fit, direct the amalgamation or as the case may be, the adoption of such religious institution by any other religious institution having similar objects and capable of managing such institution and thereupon the trustee of the institution to which it is amalgamated or by which it is adopted shall maintain and administer such institution.

2) On such amalgamation or adoption the institutions shall be deemed to comprise a single institution and administered as if they were a single institution published u/s 6.

3) Where the institution so amalgamated or as the case may be adopted under sub-section (1), subsequently found to be capable of being managed by itself, the Commissioner may in the interest of proper management of administration, revoke the orders issued under sub-section (1), and thereupon the institution shall manage its affairs independently out of its funds.

4) An appeal shall lie to the Government against the orders passed by the Commissioner under sub-section (1) or sub-section (3).

12. Sub-section (1) of Section 145 conferred power upon the Commissioner of Endowments, when he has reason to believe that a religious institution is not capable of maintaining out of its funds, he may, in the interests of proper management of such a religious institution, direct the amalgamation or its adoption by such other religious institution which is capable of managing the former institution and thereafter it is the later institution which shall maintain and administer the former one. Sub-section (2) of Section 145 made it explicitly

clear that on such amalgamation or adoption, the institution shall be deemed to comprise a single institution and administered as if they were a single institution. As is too well known, an amalgamation is a process by which two or more number of institutions or organizations are fused into one. The amalgam becomes a single product thereafter. The distinguishing features which are peculiar or available to each such institution prior to the amalgamation will cease to be visible thereafter, even though the possibility of the individual characteristic showing up even in the amalgamated product may not be completed discounted. Thus, for all external, intents and purposes one single institution emerges from the process of amalgamation. In contrast, the process of adoption does not bring forth the unification of the purposes of each of the institutions. The adoptee, gets merely guided and managed by the other for the time being. Over a period of time, or upon attaining a particular status of sustainable capacity or decision making ability, the adoptee secures the right to assert the rights of its own. Thus, like in all such type of cases, in the instant case of adoption, the identity of existence of two beings is maintained all through. Only for certain purposes, which are limited, the adoption enables the adoptee to be guided or administered for the time being, by another institution. At page 33 of the paper book filed in W.P. No. 27696 of 2011, the order passed by the Commissioner of Endowments on 03.08.2007, approving the proposals for adoption of Sri C.V. Reddy Charities, Vijayawada, Krishna District, by Sri Durga Malleswaraswamy Vari Devasthanam, Vijayawada, is placed. Thus, what the Commissioner of Endowments, in exercise of the power available to him under Sub-section 1 of Section 145 did was authorizing adoption of Sri C.V. Reddy Charities, Vijayawada by Sri Durga Malleswaraswamy Vari Devasthanam. It is only a case of adoption but not a case of amalgamation as is pleaded by the petitioners. Since, Sub-section (2) of Section 145 dealt with the cases of amalgamation and adoption also for the time being, Sri C.V. Reddy Charities, Vijayawada is liable to be administered by Sri Durga Malleswaraswamy Vari Devasthanam, Vijayawada, as if there was a single institution. What is of legal significance to be noted from the content of Sub-section (2) of Section 145 is the fiction which has been created by the statute maker therein. As was already noted supra, in cases of amalgamation, there would not arise any necessity for a notional concept about a single entity emerging from the process of amalgamation. The process of amalgamation would really produce a single component thereafter. Whereas, in the case of adoption, where, the specific identity of the entities having not vanished altogether, a fictional necessity would arise to treat them as one unit instead of two. Therefore, advisedly, the statute maker used the expression ''as if they were a single institution''. This notional concept of a single institution will persist only till such time the arrangement of adoption subsists or continues and it gives way as soon as the arrangement of adoption draws to a close or reversed.

13. It will be appropriate to notice the contention canvassed by Sri Ramachandra Reddy that the C.V. Reddy Charities could not have been adopted by Sri Durga Malleswaraswamy Vari Devasthanam, as Sri C.V. Reddy Charities is a non-

religious charitable institution. In this context, it is most appropriate to notice the definition ''Specific Endowment'', as it is defined in Sub-section 25 of Section 2 of the Act. While maintaining the distinction between a charitable institution in juxtaposition to a religious charitable institution, both of them are covered by the sweep of the expression ''Specific Endowment''. This position becomes abundantly clear by usage of the expressions ''Religious or otherwise'' used in Sub-section 25 of Section 2. Further, the definition of ''Religious Institution'' u/s 2(23) is of wider amplitude. It takes into its fold a Temple, a Mutt, a Brindavan, a Samadhi or any other institution established or maintained for a religious purpose and it also includes a specific endowment. Therefore, the expression ''Religious Institution'' takes within its seep even specific endowment created for purpose of any charity whether it is religious or otherwise. As was notices supra from the objectives settled by Sri C.V. Reddy, it is a charitable institution established for performing certain specific charitable objectives and purposes. Some of them could be considered, at best as religious but most of the objectives are intended for achieving the purpose of charity. The expression ''Charity'' is defined in Webster English Dictionary and Oxford English Dictionary in the following manner:

Webster dictionary definition:

1) A voluntary giving of money or other help to those in need.

2) Money or help so given

3) An institution or other recipient of such help

4) A welfare institution, organization or fund

Oxford dictionary definition:

1) an organization set up to provide help and raise money for those in need.

2) the voluntary giving of help, typically in the form of money, to those in need

3) kindness and tolerance in judging others

14. Therefore, C.V. Reddy Charities being a specific endowment, falls within the sweep of the expression ''Religious Institution'', which expression is used in Section 145 and hence the contention that C.V. Reddy Charities could not have been amalgamated or adopted by Sri Durga Malleswaraswamy Vari Devasthanam is ill-founded.

15. This apart, if the petitioner has any subsisting interest in C.V. Reddy Charities, he should have questioned the validity of the orders passed by the Commissioner of Endowments on 03.08.2007 authorising it''s adoption. It was never the case of the petitioner that he was not in the know of this fact, but however, he has not so far challenged the orders passed by the Commissioner of Endowments on 03.08.2007 and hence by a side wind, he cannot seek to agitate about the correctness or otherwise of these orders passed by the Commissioner

under Sub-section 1 of Section 145 of the Act. What is liable to be questioned in a proceeding entirely on its own, cannot be called in question collaterally in another proceeding. Hence, I reject the contention canvassed by the petitioner in this behalf.

16. Sri Sasidhar has also pointed incidentally that the orders of rejection of adoption passed by the Commissioner of Endowments on 13.12.2010 are subject mater of appeal under Sub-section 4 of Section 145 of the Act and the said appeal has been allowed by the State Government duly setting aside the orders passed on 13.12.2010 by the Commissioner. There was no denying or dispute raised by the petitioners, in this regard.

17. Most significantly, the proceedings on the file of the Tribunal have been initiated u/s 83 of the Act. Sub-section 1 of Section 83 empowered the Assistant Commissioner, either suo motu or upon a complaint made by the trustee, if, he has reason to believe that any person has encroached upon any land or building or tank or any space belonging to any institution or endowment, shall report the said fact together with all particulars to the Endowments Tribunal having jurisdiction and thus put in motion the process which would enable the Tribunal, if satisfied, that there has been an encroachment, it may order for removal of such an encroachment. In the instant case, the proceedings have been rightly initiated by the Assistant Commissioner of Endowments, Vijayawada, the third respondent herein against the petitioners. By way of an abundant caution only Sri C.V. Reddy Charities, Vijayawada is arrayed as an additional applicant. Sub-section 1 of Section 83 never required the institution or endowment, whose land or building or tank which suffered encroachment also to be added as an applicant before any such proceeding initiated by the Assistant Commissioner of Endowments. Therefore, it is perfectly legitimate of the Assistant Commissioner of Endowment, Vijayawada to maintain the proceedings under Sub-section 1 of Section 83 against the writ petitioner herein, regardless of the orders passed by the Commissioner of Endowments under Sub-section 1 of Section 145.

18. Even otherwise, Sri C.V. Reddy Charities, Vijayawada is shown as the second applicant before the Endowment Tribunal. It was only shown as represented by the Executive Officer of Sri Durga Malleswaraswamy Vari Devasthanam. Who should represent Sri C.V. Reddy Charities - the Managing Trustee of the Endowment or the Executive Officer of the institution which took the endowment in adoption - is a totally irrelevant aspect. The petitioner has no legitimate concern in that regard. Hence the proceedings before the Endowments Tribunal are not vitiated.

19. The petitioner cannot also make any grievance out of the above issue, in this writ petition, for, he has not chosen to make Sri C.V. Reddy Charities, Vijayawada as a party respondent to this writ petition. Hence, for this additional reason also the petitioner cannot be permitted to rake up any such issue.

20. Further, if at all one can raise an issue in this respect it is the Trustees or

Managing Trustee of Sri C.V. Reddy Charities who should raise any such issue, but not the petitioners. In this context, I should record the submission of Sri Sasidhar. That is, Sri Durga Malleswara Swamy Vari Devasthanam will utilize the monies realized from usage of the assets of Sri C.V. Reddy Charities, towards meeting the objectives of the Trust.

21. On the factual score, there is no dispute or controversy that the period of extended lease granted to the writ petitioner came to an end on 31.03.2008 itself. Without there being any extension of lease granted, the petitioner was continuously occupying the land belonging to Sri C.V. Reddy Charities. If one were to spare a look for the explanation contained under Sub-section 1 of Section 83, it becomes imminently clear that a person who continues to remain in the land or building or space after the expiry or termination or cancellation of the lease or license in respect thereof falls within the sweep of the expression ''Encroacher''. Therefore, going by the context and the content of the explanation incorporated under Sub-section 1 of Section 83, the writ petitioner is to be treated as an encroacher and hence he is liable to be proceeded against u/s 83.

22. The petitioner was granted the right to occupy the land in question for a considerably long period. His individual interest must necessarily be subservient to the dominant interests of the institution. After the lease has expired in March 2008 more than 5 1/2 years time has elapsed. Therefore, he cannot plead for even any special equities for enabling him to continue to occupy the land in question for any further period. Therefore, I do not find any such special equities, to be worked out in favour of the writ petitioner.

23. Even otherwise, the petitioner has not filed any affidavit into the Court for any such consideration to be shown, inspite of an offer made during the course of hearing. It is therefore inferable that the writ petitioner is not willing to commit himself to any reasonable time schedule within which he would quietly vacate and deliver vacant possession to the charitable institution. I, therefore, do not find any material before me to grant any time to the petitioner to vacate and deliver vacant possession of the site in question. I, therefore, do not find any merit in these batch of writ petitions and they are accordingly dismissed but however without costs.

