

(2004) 03 AP CK 0048
In the Andhra Pradesh High Court
Case No : SA. No. 91 of 2003

Tirumala Tirupathi Devasthanams

APPELLANT

Vs

K. Govindaiah (died) by LRs.

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 113, 83(1)
Powers and Functions of T.T.D. Board Rules, 1990 — Rule 145, 150

Citation : (2004) 4 ALD 540 : (2004) 4 ALD 504 : (2004) 5 ALT 86

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : M. Adinarayana Raju, for the Appellant;

Judgement

Elipe Dharma Rao, J.—Aggrieved of the judgment and decree dated 13.6.2002 passed in AS.No. 51 of 1997 by the learned in Addl. District Judge, Chittoor, confirming the judgment and decree dated 31.12.1996 passed in O.S. No. 87 of 1992 by the learned Principal District Munsif, Tirupathi, the Plaintiff-TTDevasthanams, Tirupathi, represented by its Executive Officer, preferred this second appeal.

2. The suit was filed against one K. Govindaiah, of whom the respondents 2 to 9, herein are legal representatives, for recovery of Rs. 5,540.80 towards arrears of damages for use and occupation of plaintiffs Shop Room No. 217, situated in Sannidhi Street, Tirumala. The case of the plaintiff is that it permitted Mr. K. Govindaiah "to occupy the said room and to carry on business on a monthly rent of Rs. 100/- for five years from 1.4.1983 to 31.3.1988, but even after expiry of the term, the defendant failed to surrender the suit shop and, therefore, u/s 83(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for brevity the Act), he became encroacher. Thus the suit came to be filed.

3. The case, as can be gathered from the written statement, of the defendant is

that his ancestors have been living by doing petty business in the premises belonging to private owners in the northern row of Sannidhi Street, Tirumala and the plaintiff started negotiating for acquisition of necessary site from the private owners to facilitate free movement of the pilgrims. Since the process of acquisition requires co-operation of lessees of those shops, the plaintiff authorities involved the defendant and other shop owners and induced them to believe and agree to vacate their shop rooms, by offering permanent heritable lease of shop room to be constructed in Sannidhi Street, after road widening. In that process, the plaintiff represented that the newly constructed shops would be leased out to the defendant and other shop owners permanently and with heritable right on a monthly rent of Rs. 100/-. It is also the defendant's case that the plaintiff would be providing them with temporary alternative accommodation in the premises, until the construction work is completed. Thus, on 27.8.1981 the defendant occupied temporary accommodation by executing written consent letters and on 15.10.1981 he was put in possession of the new shop with permanent and heritable lease requiring him to execute a registered lease deed as per the proceedings of the plaintiff in Roc. No. PO1/2430/RO III/81 dated 16.10.1981, but since the plaintiff had given a go-bye to the mutually agreed terms and conditions of the contract of permanent and heritable lease originally contemplated by way of the proceedings and the proforma enclosed thereto, the defendant did not agree to execute the lease deed as suggested and sent draft lease deed of his own, which the plaintiff did not advert about its acceptance and did not accept the rents sent through demand drafts and money orders. Thus the possession of the defendant is not under a licence but it is in part performance of the contract of permanent heritable lease. It is also contended that the suit is barred by limitation.

4. On these rival pleadings, the Trial Court framed the following issues:

1. Whether the defendant is an encroacher within the meaning of Section 83 of A.P. Religious and Endowments Act, if so or a tenant by means of permanent lease and heritable rights?

2. If so, whether the plaintiff is entitled for damages for use and occupation?

3. Whether the suit is barred by estoppel or acquiescence?

4. Whether the suit is barred by limitation?

5. To what relief ?

5. On behalf of the plaintiff, PW1 was examined and Exs.A-1 to A-10 were marked. Neither oral nor documentary evidence was adduced on behalf of the defendant.

6. Dwelling on the issue as to whether the defendant is a licensee or a not, the Trial Court adverting to the evidence of PW-1, Senior Assistant of the plaintiff and Ex.A-6 proceedings dated 16.10.1981, held that as per the proceedings, the shop was allotted to the defendant on a monthly rent of Rs. 100/- on a permanent

lease basis for the life period of the tenant which may be extended for life period of his immediate successor and thus, this belie the contention of the plaintiff - appellant herein that the defendant was inducted as a licensee and proves that he was inducted into possession as tenant from 15.10.1981. It is also the finding of the Trial Court that it is the burden of the plaintiff to prove that the defendant is only a licensee and with the termination of lease period, he became an encroacher within the meaning of Section 83 of the Act and, therefore, ultimately held that the plaintiff failed to establish that the defendant is an encroacher and, consequently, it is not entitled for damages as claimed and dismissed the suit.

7. The appellate Court, advertent to Ex.A-6 proceedings dated 16.10.1981, observed that it stipulated that the lease will be permanent for the life period of the present tenant and may be extended for the life period of his immediate successor, subject to usual terms and conditions of the lease deed to be executed. It is his further observation that the lease will come into effect from 15.10.1981 and thus, the documents filed by the plaintiff itself falsify the contention that the defendant is only a licensee. The learned lower Appellate Court further observed that though the lease deed enclosed with Ex.A-6 proceedings was not executed by the defendant, mere non-execution of the lease deed in the enclosed proforma, does not reduce the status of the defendant to licensee, inasmuch as Ex. A-6 show that the shop rooms were intended to be leased out to the defendant and others with permanent lease for the life time and the appellant cannot turn round and say that the defendant is only a licensee for five years from 1.4.1983 to 31.3.1988. The learned Lower Appellate Court, on a conjunctive reading of the Rules 184 to 186, 188 and 189, came to the conclusion that the Committee shall have the power to lease the buildings, land and any other property belonging to the T.T.D. on nomination for any number of years and if it is in favour of public institution or for public purpose, it shall not exceed 99 years. Thus the Lower Appellate Court came to the conclusion that the plaintiff -appellant herein failed to establish that the defendant was only a licensee for a fixed period and later he became an encroacher within the meaning of Section 83 of the Act. Consequently, the Lower Appellate Court negated the claim for damages and dismissed the appeal.

8. Aggrieved of the same, the present Second Appeal is filed, contending inter alia that the Courts below have failed to consider that the burden is on the defendant to prove that he is a permanent tenant in respect of the shop and erred in fixing the initial burden on the plaintiff to establish its case. It is also contended that in view of Ex.A-6 proceedings, the plaintiff is estopped from contending that the defendant is only a licensee for five years from 1.4.1983 to 31.3.1988. Raising the contention as to whether the defendant can set up permanent rights of occupancy on the shop in the absence of registered lease deed and whether the defendant can claim to be a tenant after expiry of the period of five years by 31.3.1988 and whether as per the Rules 1989 framed under the T.T.D. Act 20 of 1979, permitting the defendant to occupy the shop for a limited period, can be said to be in favour of the public institution, as

substantial question of law, prayed to allow the appeal.

9. Though notices were served on the Respondents 2 to 9 in this appeal, being the legal representatives of the sole defendant K. Govindaiah, they did not chose to enter appearance. Therefore, having regard to the facts and circumstances, this Court decided to proceed with the matter basing on the material available on record.

10. Mr. M. Adinarayana Raju, the learned Standing Counsel for the T.T.D., appellant herein drawing my attention to the definition of Encroacher under the Explanation to Section 83 of the Act to mean any person who unauthorisedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building or space after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it, contends that the defendant who was granted licence only upto 31.3.1988 and after the expiry of lease, he is an encroacher and since by virtue of Section 95 of the Act, the provisions of Chapter XIV of the Act are applicable to T.T.D, the Commissioner of T.T.D. is competent to remove the encroachments, in view of Section 118 of the Act.

11. Section 96 of the Act deals with constitution of the Board, which says that there shall be a Board constituted by the Government for the Tirumala Tirupathi Devasthanams called the Tirumala Tirupathi Devasthanams Board consisting of not more than thirteen members including the Chairman, to be appointed by the Government and the Commissioner shall be a member ex-officio. Section 118 of the Act specifies that the provisions of Sections 83, 84, 85 and 86 of the Act shall apply to Tirumala Tirupathi Devasthanams, subject to the condition that the powers of the Deputy Commissioner therein shall be exercised by the Commissioner. Section 84 of the Act deals with the mode of eviction on failure to remove the encroachment as directed by the Commissioner and Section 85 empowers the Commissioner to get the land belonging to the Charitable and Religious Institutions evicted taking such assistance of the police as may be necessary.

12. Learned Standing Counsel further drew my attention to the Rules, made by His Excellency, the Governor of Andhra Pradesh, in exercise of the powers conferred by Section 97 read with Section 153 of the Act, which deal with the powers and functions of the T.T.D. Board, published under G.O. Ms. No. 311 Revenue (Endowments-I), dated 9.4.1990. Rule 138 of the Rules stipulates that all the leases of lands, buildings, sites and other immovable properties and rights belonging to the Tirumala Tirupathi Devasthanams shall be given by public auction held at the places in which the properties are situated or the rights exists, but if the Executive Officer, is satisfied that in any case the holding of an auction at a place other than the one in which the properties proposed to be leased are situated will be detrimental to securing a proper bid, permit such

auction to be held at other place, but no auction shall be held in a village situated in a district other than the one in which the property is situated. Reliance is also sought to be placed on Rule 143 which mandates that the leases shall ordinarily be given to the highest bidder, where it is proposed to accept a bid, other than the highest bid, the reasons for not accepting the highest or other bids higher than the one accepted, shall be recorded in writing. Rule 144 says that in the case of all leases, security to the satisfaction of the Executive Officer, who will take the advice of the Financial Advisor and Chief Accounts Officer, shall be taken, such security shall, in the case of leases for more than one year, be a sum equal to at least one year's rental or rental for half the total period of lease whichever is lower.

13. Rule 145, which is more relevant for the purpose of this case, says that written lease deeds shall be taken for all leases, registered deeds being taken wherever so required by law and no person shall be allowed to exercise his rights under the lease until he has executed the lease deed.

14. Rule 146 which is exception of the Rules, says that notwithstanding anything contained in the foregoing Rules, leases otherwise, than by public auction may be resorted to by the Executive Officer in special cases for the reasons to be recorded in writing and in such cases, the Executive Officer shall also fix fair rent to be paid, security to be taken etc. Rule 147 stipulated that the period of lease in every case falling under Rule 146 shall not ordinarily exceed one year, but the lease may be renewed from year to year on the same terms and conditions but in no case shall the total period exceed three years. Rule 149 excludes those buildings, situate in localities to which the provisions of the Andhra Pradesh Buildings (Lease and Rent Control) Act apply, from the purview of these Rules. Rule 150 of the Rules empowers the Board of Trustees, notwithstanding anything contained in the Rules, to lease the building, lands and any other property belonging to the T.T.D. on nomination for any number of years not exceeding 99 years in favour of public institution or public purposes only after duly recording the reasons in writing and subject to the ratification by the Government.

15. At the outset, it has to be observed that the entire Lower Appellate Court judgment proceeded under the Rules, 1979, which is evident from paragraph 15 of the Lower Appellate Court judgment. The learned Lower Appellate Court seems to have lost sight of the fact that the Rules, 1979 were superseded by G.O. Ms. No. 311 Revenue (Endowments-I), dated 9.4.1990 which were gazetted on 11.4.1990 in Part I Extraordinary to A.P. Gazette.

16. The learned Counsel for the appellant herein contends that in view of Ex.A-6, it is the admitted case of the defendant that due to change in the terms and conditions of lease enclosed with the proforma which reduces his status to that of a monthly tenant, he did not execute the registered lease deed; but whereas Rule 145 mandates that written lease deed shall be taken for all leases, registered deeds being taken wherever required by law and no person shall be allowed to exercise his rights under the lease until he has executed the lease

deed and, therefore, there is no authority for the defendant to continue in the shop and the plaintiff is perfectly justified in forfeiting four months advance paid by the defendant since the lease deed with the incorporated terms and conditions was not executed. Therefore, the defendant squarely falls within the definition of encroacher, in terms of explanation to Section 83 of the Act and consequently, in exercise of the powers u/s 118, the Commissioner is empowered to exercise all the powers under Sections 83, 84, 85 and 96 to collect damages as claimed in the suit and to evict the respondent by removing the encroachment. Insofar as the issue of grant of lease is concerned, the learned Standing Counsel argues that all leases of lands, buildings, sites and other immovable properties and rights belonging to the Tirumala Tirupathi Devasthanams shall be given by public auction at the place where the properties are situated or the rights exist and where, in the opinion of the Executive Officer, it is detrimental to secure a proper bid, the auction shall be held in a village situated in a district other than the one in which the property is situated. He also contends that the lease shall be hammered down in favour of the highest bidder, but where it is proposed to accept the bid other than the highest bid, recording reasons such bid other than highest bid, can be accepted.

17. The learned Counsel for the appellant heavily placed reliance on Rule 150 and contended that it is the Board of Trustees, Chairman of which is appointed by the Government, which alone shall have the power to lease the building, lands and any other property belonging to the Tirumala Tirupathi Devasthanams on nomination for any number of years, not exceeding 99 years in favour of public institutions or public purposes only after duly recording reasons in writing and subject to the ratification by the Government and, therefore, the claim of the defendant as a tenant on a monthly rent of Rs. 100/- on a permanent lease basis for the life period of the tenant which may be extended for life period of his immediate successor, is unfounded, inasmuch as for public purposes and for public institutions also, the Board of Trustees shall have the power to lease out only for 99 years and that too subject to ratification by the Government. That being the case, the claim of the defendant, as can be gathered from the written statement; that the lease was given to him in pursuance of the understanding arrived at between the plaintiff and the defendants, lease is given to him permanently and with heritable right on a monthly rent of Rs. 100/- is untenable. Had this understanding arrived at between the plaintiff and the defendant been true, as contended by the defendant, certainly there would have been ratification by the Government, in compliance of Rule 150, but there is nothing on record that suggest that there was such an understanding.

18. I shall now proceed to examine Ex.A-6, on which much reliance is placed by the defendant to say that the shop was leased on permanent basis for his life period and may be extended for the life period of his immediate successor. It is no doubt true that the proceedings Ex.A-6 entitles the defendant K. Govindaiah, to be in lease of the shop room as permanent lessee and the lease may be extended for the life period of his immediate successor, but this privilege

conferred on him by Ex.A6 cannot be read in isolation of the condition imposed on him to deposit four months rent as advance and to execute a duly registered lease deed on or before 31.12.1981 as per the terms and conditions stipulated by the T.T.D. in the proforma prescribed. The defendant cannot just ignore the default clause which mandates that in the event of failing to execute such a registered lease deed, the lease stands cancelled and the advance amount so deposited shall be forfeited without any further notice, to his advantage. Admittedly, the defendant did not execute such a registered lease deed. The contention of the defendant that if the terms and conditions incorporated in the lease deed, enclosed with the proforma, are accepted, his status would be reduced to a monthly tenant, cannot be countenanced, for the simple reason that the defendant having admitted that the tenancy is permanent for his life period and may extend for the life period of his immediate successor, is estopped from assailing the correctness of execution of the lease deed. He cannot blow hot and cold at a time. Had the terms and conditions incorporated in the lease deed enclosed with the proforma, been capricious, as contended by him, he ought to have assailed the same, rather than submitting draft lease deed with the terms and conditions of his own. Thus there is no concluded contract between the plaintiff and the defendant. As stated earlier, the defendant is estopped from selecting certain recitals of document, which are to his advantage and discarding the other, which are to his disadvantage.

19. That apart, having contended so, the defendant ought not to have kept himself at bay from entering into the witness box and substantiate his contention. It is unfortunate, the defendant did not get himself examined, and in derogation of the default clause that in the event of failure to execute the lease deed, as enclosed with the prescribed proforma, has continued in possession. In such circumstances, the defendant clearly falls within the definition of encroacher, defined under the explanation appended to Section 83 of the Act, and therefore, he is liable to be dealt with under Sections 84, 85 and 86 of the Act by the Commissioner of Tirumala Tirupathi Devasthanams for eviction and removal of encroachment inasmuch as the powers of Deputy Commissioner under those provisions of the Act shall be exercised by the Commissioner of TTD. It is not known under what circumstances, Ex.A-6 proceedings came to be passed, inasmuch as it is contrary to Rule 150 of the Rules, authorizing the Board of Trustees to lease the buildings, lands and any other property belonging to the TTD on nomination for any number of years, not exceeding 99, in favour of public institutions or public purpose only after recording reasons in writing and subject to ratification by the Government. Admittedly, neither the defendant runs any public institution nor the shop which the defendant is in occupation is leased out for a public purpose.

20. From the above discussion, I hold that all the leases of lands, buildings, sites and other immovable properties and rights belonging to Tirumala Tirupathi Devasthanams shall be given by public auction, as contemplated under Rule 138, that the leases shall ordinarily be given to the highest bidder, but where it is

proposed to accept the bid other than the highest bid, the reasons for not accepting the highest bid or other bids higher than the one accepted shall be recorded in writing and written leases deeds shall be taken for all leases, registered deeds being taken wherever so required by law and no person shall be allowed to exercise his rights under the lease until he has executed the lease deed, that the period of lease in every case shall not ordinarily be more than one year, but it may be renewed from year to year on the same terms and conditions, but in no case shall the total period exceed three years as prescribed under Rule 147 of the Rules. I further hold that the Board of Trustees shall have the power to lease out the buildings, lands and any other property belonging to the T.T.D. on nomination for any number of years, not exceeding 99 years, in favour of public institutions or public purposes only after duly recording the reasons in writing and subject to the ratification by the Government.

21. Therefore, I hold that since there is no concluded contract between the plaintiff and the defendant as contemplated under Rule 145, there is no registered lease deed or ratification by the Government as required under Rule 150 of the Rules, the possession of the defendant is unauthorized and therefore, he is an encroacher, within the meaning of Section 83 of the Act and the Commissioner of T.T.D. is empowered to evict him as per Section 118 of the Act.

22. For the foregoing discussion, I hold that there is no lease granted in favour of the defendant by the plaintiff and his continuance in the shop room is unauthorized occupation of the building without the approval of competent authority to grant lease. Under the premise of this discussion, I have no hesitation in holding that both the Courts below went wrong in appreciating the evidence and scrutinizing the documents in relation to the legal position as discussed above, in correct perspective.

23. The defendant cannot seek shelter under Ex.A-5 under which consent letters were taken from certain tenants in respect of shop rooms 206 and 208, for the simple reason that they were leased out as per the directions of the High Court passed in CMP No. 4686 of 1981 and AAO No. 900 of 1981 on 17.12.1981. Ex.A5 further ordains that the vacant possession of the two shops shall be re-delivered to the TTD, if his suit OS No. 157 of 1981 on the file of the Subordinate Court, Tirupathi, is dismissed.

24. For the aforesaid discussion, I am of the considered view that the substantive question of law raised by the appellant herein is well merited and deserves consideration, in the second appeal. Consequently, the second appeal is allowed setting aside the judgments and decrees of both the Courts below and the suit is decreed. The parties shall bear their own costs in this appeal.