

(2013) 01 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 40115 of 2012

Uppala Suryanarayana Murthy

APPELLANT

Vs

State of Andhra Pradesh, The Regional Joint Commissioner
Multi-Zone I, The Deputy Commissioner Endowments
Department Visakhapatnam and Sri Vigneswara Swamy

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 2 ALD 736 : (2013) 3 ALT 445

Judgement

Nooty Ramamohana Rao, J.—This writ petition is instituted seeking a writ of mandamus for declaring the order passed on 7.4.2010 by the Deputy Commissioner of Endowments in OA No. 135 of 2007 as illegal and without jurisdiction. An open site of 0.74 cts of land situate in Sy No. 82, Block No. 18, Chodavaram (V & M), Visakhapatnam District belongs to the 4th respondent - temple. With the consent and approval of the 4th respondent - temple, the father of the petitioner is stated to have constructed two shop-rooms thereon at his own expense for carrying on kirana business duly paying the agreed rent to the 4th respondent - temple. On 16.4.1996, the Chairman of the Trust Board of the 4th respondent - temple has executed a Lease Deed in favour of the father of the petitioner leasing out the said immovable property in question for a period of three years. Subject to payment of increased rents, the said lease period was extended from time to time. The father of the writ petitioner is stated to have died on 17.12.1999 and thereafter the petitioner succeeded to the possession of the shop rooms in question. Sometime during 1997, proposals were mooted for the sale of eleven (11) shops belonging to the 4th respondent - temple, including the two shops with which the petitioner is concerned, in favour of the existing tenants and for that purpose, the Commissioner of Endowments has constituted a Committee comprising of the Regional Joint Commissioner of Endowments, Multi Zone-I, the Deputy Commissioner of Endowments, Kakinada and the Assistant Commissioner of Endowments, Visakhapatnam. The Committee has recommended for sale of the shop rooms at the rate of Rs. 900/- per sq yard in

favour of the sitting tenants including the father of the petitioner. It is further averred that such proposals were pending approval of the Commissioner of Endowments Department. While so, the Commissioner of Endowments has approved grant of extension of lease in favour of the petitioner for a further period of three years commencing from 1.4.2002 up to 31.3.2005 at the enhanced rent of Rs. 1150/- per month. On the premise that after the expiry of the extended lease period by 31.3.2005, the lessee is not entitled to continue in possession thereof, the 4th respondent has instituted OA No. 135 of 2007 before the Deputy Commissioner of Endowments, Visakhapatnam in terms of the provision contained u/s 83 of the Endowments Act. During the pendency of the OA, a sum of Rs. 1300/- was demanded per month as damages for use and occupation of the premises.

2. The aforesaid O.A. was allowed by the Deputy Commissioner of Endowments, Visakhapatnam by his order dated 07.04.2010 directing the petitioner herein to vacate the petition schedule property and deliver vacant possession to the fourth respondent-Temple within fifteen days. It is this order which is under challenge in this writ petition.

3. Heard Sri P. Rajasekhar, learned counsel for the petitioner, learned Government Pleader for Endowments and Sri V.T.M. Prasad on behalf of the fourth respondent-Temple.

4. It is contended by Sri P. Rajasekhar that, though the writ petitioner is a tenant of the shop rooms, he never committed any default in payment of the rents and hence he cannot be evicted from the shop rooms. Further, the proposals for alienating the shop rooms in favour of the sitting tenants was under consideration of the Commissioner of Endowments and hence seeking to evict the petitioner herein would not arise. Above all, on 18.05.2010, the State Government in the Revenue Department has taken a policy decision setting out that the existing leases of shops belonging to temples and religious institutions having assessable income of Rs. 25.00 lakhs and below, be extended for a further period of three years on payment of 33 1/3% of prevailing market rents and hence the petitioner is not liable to be evicted from the said shop rooms. Most importantly, it is contended by Sri P. Rajasekhar that, Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act has been amended and the power of adjudication of a lis is conferred on the Andhra Pradesh Endowments Tribunal and hence the Deputy Commissioner of Endowments has no power to adjudicate the lis. In terms of Section 162 of the Act, the State Government may constitute as many tribunals as it may think fit for the determination of any dispute, question or any matter relating to a charitable institution or religious institution and when once such a tribunal has been constituted by the State Government through a notification dated 20.08.2009, the Deputy Commissioner has no jurisdiction to entertain the dispute, but it is only the Andhra Pradesh Endowments Tribunal so constituted which has the power of adjudication. Hence, the orders passed by the Deputy

Commissioner of Endowments on 07.04.2010 is without any jurisdiction.

5. The various questions raised by Sri P. Rajasekhar may not merit serious consideration inasmuch as the writ petitioner is only a tenant of a shop room belonging to the fourth respondent-Temple and after the expiry of the lease period, he has no manner of any right to continue to occupy the said premises. It is not the question of any default in payment of lease amount, which brings about his eviction from the premises in question, but it is the expiry of the lease period. Admittedly, the extended lease period also expired and yet the petitioner has not delivered vacant position and hence the fourth respondent-Temple issued a notice to the petitioner on 29.11.2006 calling upon the petitioner to deliver vacant possession of the leased out premises. Therefore, the petitioner cannot have any right to continue to squat in the premises in question after the lease period has expired.

6. Even with regard to the orders passed by the State Government in their memo dated 18.05.2010, the State Government ordered that the existing leases of shops be extended for a further period of three years. Therefore, the decision of the State Government dated 18.05.2010 is only attracted to the subsisting leases of shop rooms as on 18.05.2010 whereas, the extended period of lease of the petitioner expired long back and he has been put on notice by the fourth respondent-Temple as on 29.11.2006 itself to deliver vacant possession of the shops to it. Hence, the decision dated 18.05.2010 of the State Government will not come to the rescue of the petitioner's cause.

7. It is true that, in accordance with Section 162(1) of the Act, the State Government constituted the Andhra Pradesh Endowments Tribunal at Hyderabad through its notification dated 20.08.2009, but the Presiding Officer came to be appointed only on 21.05.2010. Thus, between 20.08.2009 and 21.05.2010, the Andhra Pradesh Endowments Tribunal was not functioning and hence could not decide any dispute.

8. It is most significant to note that, by Amending Act No. 33/2007, which was brought into force with effect from 03.01.2008, Sub-section (5) of Section 87 has been inserted in the Act, which is to the following effect:

Notwithstanding anything contained in the above sub-sections the Deputy Commissioner having jurisdiction shall continue to enquire into and decide the disputes referred to in sub-section (1) until the constitution of the Endowments Tribunal.

9. Sri P. Rajasekhar, learned counsel for the petitioner would urge that, even this provision would be of no avail to the respondents, inasmuch as, by 20.08.2009, the Andhra Pradesh Endowments Tribunal has been constituted and hence the Deputy Commissioner of Endowments could not have decided any lis any day subsequent to 20.08.2009. Hence the impugned order passed on 07.04.2010 is manifestly without any jurisdiction.

10. Learned counsel for the petitioner has relied upon the Judgments rendered by the Supreme Court in *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, *Kiran Singh and Others Vs. Chaman Paswan and Others*, *Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs.*, *State of Rajasthan Vs. Mangilal Pindwal*, *Competent Authority Vs. Barangore Jute Factory and Others*, in support of his plea that, once a new provision is instituted duly repealing the previous provision, from the date the new provision has been brought into force it must be construed that no action can be taken in accordance with the old/previous provision.

11. The proposition of law propounded by Sri P. Rajasekhar does not require a serious debate to be generated for, when once a new provision is introduced in a subsisting enactment duly repealing an existing provision, all subsequent actions must be taken in accordance with the substituted provision but not in accordance with the old provision. The only feature that would be saved in the process is any action taken under the old provision and completed. Since the O.A. which was instituted before the Deputy Commissioner of Endowments, Visakhapatnam was pending as on the date when the new provision is made, all subsequent actions in the said O.A. should have been taken in accordance with the new provision of law.

12. However, I am required to decipher the intended meaning of the expression "constitution of the endowments tribunal" found mentioned in Sub-section (5) of Section 87. If the contention canvassed by Sri P. Rajasekhar is to be agreed, by notification dated 20.08.2009, the Andhra Pradesh Endowments Tribunal has been constituted and hence post 20.08.2009, no O.A. could have been decided by the Deputy Commissioner, whereas, the Andhra Pradesh Endowments Tribunal started functioning only with effect from 21.05.2010. Between 20.08.2009 up to 21.05.2010, the Andhra Pradesh Endowments Tribunal could not function as no Presiding Officer has been appointed thereto. In such circumstances, could it mean that during this period there was no remedy available for redressal of any of the grievances for any of the endowment institutions or religious institutions or for that matter to the parties against such institutions?

13. No legislature would have intended to create a situation where parties would be left high and dry without any remedy for securing redressal of their grievances. The legislature, by amending the Act, intended to create a separate Tribunal and confer upon it the jurisdiction for adjudicating the disputes between the parties. The composition of the Tribunal, as can be made out from Sub-sections 3 & 4 of Section 162, shall comprise of a Chairman and one member to be appointed by the Government and the Chairman shall be a person who is or has been a judicial officer not below the rank of a District Judge and a member shall be a person who holds or has held a post not below the rank of a Additional Commissioner of Endowments. Therefore, till such appointments are made by the State Government, the constitution of the Tribunal would not be complete. Till such proper constitution of the Tribunal is accomplished, a transitory

provision is needed. Hence, Sub-section (5) of Section 87 preserved and retained the power to adjudicate the disputes upon the Deputy Commissioner of Endowments. It is, therefore, clear that the legislature has preserved the power in the hands of the Deputy Commissioners to resolve all such disputes which were pending before them till the complete constitution of the Endowment Tribunal. As was noticed supra, the Presiding Chairman of the Endowments Tribunal came to be appointed by the State Government only on 21.05.2010. Thus, till 20.05.2010, it is the Deputy Commissioner of Endowments who has been retained the necessary power to adjudicate the disputes. It is plain to my mind that the statute has never intended to leave aggrieved parties remediless and also create a vacuum in the process, immediately on 20.08.2009. That is the true purpose and objective sought to be achieved by introducing Sub-section (5) of Section 87. Otherwise, absurd results would follow and the Courts should always avoid in construing any provision of law in such a way.

14. I, therefore, do not find the contention canvassed by Sri P. Rajasekhar that the order passed by the Deputy Commissioner on 07.04.2010 as without jurisdiction as acceptable and hence it is rejected.

15. Since there are no merits in the case, this writ petition deserves to be dismissed.

16. Above all, the order was passed by the Deputy Commissioner of Endowments, Visakhapatnam as on 07.04.2010, whereas, the present writ petition came to be instituted long subsequent thereto on 26.12.2012. The only reason offered for this delay is that the writ petitioner has preferred an appeal against the orders of the Deputy Commissioner of Endowments, Visakhapatnam, before the Regional Joint Commissioner of Endowments, Kakinada and the said appeal was pending from 03.05.2010 onwards.

17. When I have found no substance and merit in the case, and no apparent injustice is caused to the writ petitioner, the decision implicit in the extraordinary writ jurisdiction shall not be exercised in such cases. Therefore, for all the aforesaid reasons, this writ petition is dismissed, but however without costs. Miscellaneous applications if any, shall stand dismissed.