

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.18578 of 2007

Date: 28th September, 2007

Between :-

James Morely and another ..

Petitioners

And

The Deputy Commissioner of Endowments,
Guntur, Guntur District and another ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.18578 of 2007

ORDER:-

Heard the Counsel.

2. The Writ Petition is filed for a Writ of Mandamus declaring the impugned order of the 1st respondent dated 14-8-2007 passed in I.A.No.29/2007 in O.A.No.94/2006 as illegal, arbitrary, unconstitutional, null and void and against the principles of natural justice and set aside the same and consequently direct the 1st respondent to permit to adduce the evidence so as to dispose of the matter on merits and to pass such other suitable orders.

3. It is stated by the petitioner that *the Commissioner, Endowments Department, Hyderabad, after due process*

of law has leased out the land of Ac.1-42 cents belonging to Omkar Ashram of Tenali to the petitioner for the purpose of running school at the schedule area and as such the petitioner has to pay Rs.20,000/- every year to the respondents as per the lease deed dt.27-8-1998. It is also stated that the lease was granted for a period of 3 years for the scheduled area at Door No.305 for an extent of Ac.1-42 cents i.e., the lease stands from 1-10-1998 to 30-9-2001 and after registering the lease deed, the petitioner was given possession of the land on 13-10-1998. It is also further stated that as per condition No.3 of the lease approval order by the Commissioner of Endowments, Hyderabad, the petitioner society was permitted to construct temporary sheds for running the school and that in view of the same, the petitioner first cleaned up the land, which was full of bushes and snakes being for long for many years together and then the petitioner raised the leveling of the land by 2 ½ feet and also made courts for shuttle, a platform for children to stage Cultural Programmes, a few garden benches, a small platform around a tree and totally, for all the above said work, the petitioner spent nearly Rs.1,50,000/- in the year 1998. It is also further stated that in the year 1999 without any notice to the petitioner, the Commissioner, Endowments Department high handedly cancelled the

lease of vacant land Ac.1-42 cents, under lease deed dt.13-10-1998. It is further stated that the Commissioner also directed the petitioner to hand over the vacant site, without giving time and without any enquiry, by passing the factual reports submitted by the Assistant Commissioner and Deputy Commissioner, Endowments Department, Guntur. It is also further stated that the order of the Commissioner, Endowments in canceling the lease vide proceedings in Rc.No.14/1507/99, dt.21-5-1999 is without jurisdiction inasmuch as the cancellation is covert exercise of review of his own order not authorized by the provisions of Act 30/87 and as such as ab initio void and also the cancellation order dt.21-5-1999 suffers the principles of natural justice since the Commissioner issued the cancellation order without giving any opportunity or notice to the petitioner. It is also stated that from the perusal of the order, it is discernible that the cancellation of lease is on the alleged false representation of unknown persons and also further stated that the Commissioner having granted the lease and thereby lease deed having effected, is estopped from canceling lease without any legal basis and as such the impugned order is hit by the Doctrine of Equitable Estoppel. It is also further stated that the order also suffers from the

fundamental principle of violation of the Doctrine of Audi Aterem Partenm inasmuch as it is a severe on the alleged representations of unknown persons de horse the factual reports of the sport officers viz., the Assistant Commissioner and Deputy Commissioner of Endowments, Guntur. It is also further stated that even though the petitioner made representations dt.18-8-2003 and 21-10-2004 along with order copy of the Hon'ble High Court in W.P.No.12969/99, dt.19-6-2003, the respondents have not considered the representations but however received every year the rental amount of Rs.20,000/- till 2004-2005. It is also stated that as the respondents have not received the rent amount for the year 2005-2006 and as there is no lease extended, the respondents may at any time evict the petitioners institution from the land. It is also further stated by the petitioner that he is not interested in filing any cases against the respondents for not complying orders in W.P.No.12969/1999, dt.19-6-2003 and he is only interested in the interest of his institution and his school children and as such he is only requesting the respondents to consider the request of extending the lease for another period of 20 years on any terms and conditions in the interest of the institution and children. The petitioner also further stated that the 2nd

respondent filed O.A.No.94/2006 before the 1st respondent under Section 83(1) of the Endowments Act 1987 to evict him from the petition schedule property and the same is pending before the 1st respondent. It is also stated that during the pendency of the O.A.No.94/2006 the petitioner filed I.A.No.29/2007 for adducing evidence on his behalf and the same was dismissed on 14-8-2007 with an observation that there are no any directions from the Hon'ble High Court and if any grievances, the petitioner can contest the main O.A., by producing documentary evidence in support of his contentions on 27-1-2007 and that the petitioner failed to adduce the evidence from all the above and hence dismissed. It is also further stated that the O.A. filed by the respondent No.2 was posted on 30-6-2007 for the petitioner's evidence, on which date the petitioner was held up at Kerala to attend some important function at his native place, as such he could not adduce evidence and the 1st respondent closed his evidence and posted the same for arguments on 21-7-2007 later the matter is posted to 1-9-2007 for arguments and after coming to know, immediately, the petitioner filed I.A.No.29/2007 in the above OA.No.94/2006 on 14-8-2007 for reopening and adducing the evidence on his behalf. It is also stated that

the 1st respondent without considering the petitioner's plea, on erroneous grounds dismissed his application on 14-8-2007 itself. It is also further stated that the petitioner prepared to prefer an appeal before the Regional Joint Director of Endowments and the post is vacant, nobody is in-charge of that post and that as there is no other alternative, the petitioner approached this Hon'ble Court. It is also stated that the petitioner will suffer irreparable loss and great hardship if the evidence is closed on its behalf and the O.A.No.94/2006 will be posted to 1-9-2007 for arguments and hence it is necessary to grant interim directions from this Hon'ble Court. It is stated that in such circumstances, the petitioner approached this Court.

4. In the elaborate counter affidavit filed by the 2nd respondent several facts had been denied. *In reply to paras 2, 3, 4 and 5 it is stated that the schedule property belongs to the 2nd respondent –Ashram. It is also stated that the Commissioner of Endowments Department, A.P., Hyderabad approved the lease in favour of the petitioner for a period of 3 years from 1-10-1998 to 30-9-2001 in his proceedings D.Dis.No.14/33238/1998, dt.27-8-1998, on yearly lease amount of Rs.20,000/- and in the said lease approval the Commissioner, Endowments, A.P., Hyderabad, mentioned certain conditions to the effect that*

(1) he should not disturb the pathways of the Ashram and Ashram buildings located in the said land, (2) the lease of land of Ac.1-42 cents is exclusive of the Ashram buildings and up to foundation stones on northern side and southern sides and (3) that he should raise construction of sheds etc., at his own cost and surrender the possession of the same as it is to the 2nd respondent Institution after expiry of the lease period without claiming any right. Further it is stated that subsequently, in the year 1999, on some complaints the lease granted in favour of the writ petitioner was cancelled by the Commissioner, Endowments Department, Hyderabad, in Rc.No.14/1507/99, dt.21-5-1999 who directed the Executive Officer of the 2nd respondent Ashramam to stop the construction work and take possession of the said site and aggrieved by the said cancellation orders, the petitioner got filed a Writ Petition in W.P.No.11969/1999 before the Hon'ble Court of Andhra Pradesh, Hyderabad seeking a direction to suspend the cancellation of lease proceedings of the Commissioner, dt.21-5-1999, and got interim stay orders in W.P.M.P.No.15842/1999, dt.2-7-1999 and continued his occupation in the land, while using the land of the 2nd respondent for his school purposes by raising some temporary shed therein and the

said Writ Petition was disposed of by the High Court on 19-6-2003, by which date the earlier lease approval orders granted in his favour had already lapsed, and as such the Writ Petition became infructuous, with a direction to the respondents to consider the application of the petitioner for renewal of lease in accordance with law. In reply to paras 6, 7 and 8 of the writ affidavit, it is stated that thereafter the petitioner put a representation dt.19-10-2005 and 15-12-2005 seeking to grant lease and the petitioner again got filed W.P.No.25742/2005 and obtained interim direction in W.P.M.P.No.33110/2005 to dispose of his representation and representation of the writ petitioner was examined and rejected by the 2nd respondent on 15-12-2005 by virtue of lease rules framed in G.O.Ms.No.866, dt.8-8-2003 under Section 82 of the Endowments Act 30/87, since as per the said rules every lease has to be given by way of public auction only. It is also stated that the intention of the writ petitioner to regularize the alleged lease by way of extension cannot be permitted as it is against the public policy and the statutory rules, which was informed to him by way of notice dt.29-12-2005 by the 2nd respondent herein and this respondent also requested the petitioner to vacate and handover possession, but respondent failed to

handover the same. It is also stated that this respondent Ashramam does not have any land except the land in question and it has a building which is fetching on Rs.3,000/- per month and the cost of the land in question is about Rs.20 lakhs to Rs.25 lakhs. In reply to paras 9, 10, 11 and 12 of the writ affidavit, it is stated that it is a fact that the 2nd respondent has filed OA.No.94/2006 before the Deputy Commissioner against the Writ Petitioner seeking eviction orders under Section 83 of the Endowments Act 30/87 stating that the writ petitioner has no lease approval orders in their favour and he became an encroacher as per the provisions of Section 83 of the Endowments Act 30/87 and liable to be evicted as an encroacher. It is also stated that during the course of enquiry the writ petitioner who is the respondent in O.A.No.94/2006 had taken 7 adjournments i.e., 3 months and 10 days for filing counter affidavit and the 2nd respondent had filed Chief Examination affidavit on 31-3-2007 and cross-examined by the Counsel of the writ petitioner on 26-5-2007 and posted for respondent evidence and inspite of 4 further adjournments given, the writ petitioner being the respondent did not choose to adduce his evidence and hence, the respondent evidence was treated as NIL in O.A. and posted to 21-7-

2007 for arguments. Further it is stated that on 14-8-2007 the writ petitioner filed I.A.No.29/07 in O.A.No.94/06 praying to reopen the respondent evidence so as to enable him to adduce his evidence, but he did not report ready even on that day to adduce his evidence and hence the I.A. was dismissed. It is also stated that the proceedings under Section 83 are summary in nature and the petitioner had been dragging the matter for the last more than 21 adjournments under one plea or other and successfully achieving his goal of getting adjournment, without reaching the finality of the proceedings and hence the Writ Petition is not maintainable. It is further stated that there is an alternative remedy provided under Section 92 of the Endowments Act 30/87 and the writ petitioner is to file revision before the Joint Commissioner, Endowments Department, Tirupati, who is the appellate authority against the orders of the Deputy Commissioner. Without availing the said alternative remedy provided under the special Enactment, the writ petitioner straight away approached this Court.

5. In the light of the respective stands taken by the parties, this Court is of the considered opinion that the writ petitioners may have put blame themselves for the lapses if any and hence there is no justification to grant the relief prayed for in the present Writ Petition. Even otherwise,

the petitioners are having a remedy by way of revision and without exhausting the said alternative remedy, the petitioners approached this Court by invoking the jurisdiction of this Court under Article 226 of the Constitution of India. Viewed from any angle, the Writ Petition being devoid of merit, the same shall stand dismissed. No order as to costs.

Justice P.S.Narayana

28th September, 2007

smr