

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 532 of 2007

-
-

-

Between:

E. Srinivas & another ... Appellants

And

The Commissioner of Endowments,
Hyderabad & another. ... Respondents

-
-

:: J U D G M E N T ::

Counsel for the appellant : Smt. A. Padma

-
-
June 29, 2007
-
-
-
-
-
-
-
-
-

Per G.S. Singhvi, CJ

Having failed to persuade the learned Single Judge to quash eviction notices dated 30-5-2007 issued by the Executive Officer of Sri Sangameswara Swamy Temple, Sadasivapet Town and Mandal, Medak District (respondent No.2), the appellants have preferred this appeal.

The appellants were granted lease of the premises bearing Nos.2-6-120 and 2-6-120/1 belonging to the temple. After expiry of the term of lease, respondent No.2 filed applications

under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act') for eviction of the appellants. The same were registered as O.A.Nos.12 and 13 of 1999. By an order dated 20-11-1999, the Deputy Commissioner of Endowments declared the appellants as encroachers and ordained them to hand over vacant possession to respondent No.2 within 15 days. The revision preferred by the appellants under Section 91 of the Act was dismissed by the Regional Joint Commissioner of Endowments vide his order dated 9-8-2000.

Although the appellants did not challenge the aforementioned orders by filing writ petition under Article 226 of the Constitution of India or availing other legal remedies, they successfully manipulated the authorities of the temple and continued to occupy the premises by paying specified amount equivalent to rent, sometimes on monthly basis and sometimes after few months. On 30-5-2007, respondent No.2 issued separate notices to the appellants requiring them to hand over the vacant possession of the premises within three days. Immediately thereafter, the appellants filed Writ Petition No.11356 of 2007 and claimed that they are entitled to continue in possession because application dated 24-11-2000 filed by them under Section 89 of the Act for compromise has not been decided by the Commissioner of Endowments, Andhra Pradesh.

The learned Single Judge held that an application for compromise can be filed under Section 89 only during the pendency of suit, application or appeal before a court and not otherwise. She then noted that the action initiated against the writ petitioners under Section 83 of the Act had finally ended on 9-8-2000 and held that the application filed on 24-11-2000 was not maintainable.

Learned counsel for the appellants conceded that in terms of Section 89 of the Act, an application for compromise can be filed only during the pendency of suit, application or appeal before a court and

that the action initiated by respondent No.2 for eviction of her clients under Section 83 came to a close on 9-8-2000, but argued that the learned Single Judge committed an error by refusing to nullify the eviction notices ignoring the fact that the procedure prescribed under Section 84 of the Act had not been followed.

In our opinion, there is no merit in the submission of the learned counsel. Admittedly, the appellants have been declared encroachers and the determination made in that regard by the Deputy Commissioner under Section 83(2) of the Act will be deemed to have become final because they did not question the legality of orders dated 20-11-1999 and 9-8-2000 passed by the Deputy Commissioner and the Regional Joint Commissioner respectively. Therefore, the appellants do not have the locus to question the eviction notices issued by respondent No.2 only on the ground that the application made by them under Section 89 has not been decided by the Commissioner.

Section 84 of the Act, on which reliance has been placed by the learned counsel, reads as under:

84. Mode of eviction on failure of removal of the encroachments as directed by the Deputy Commissioner:

(1) Where within the period specified in the order under sub-section (4) of Section 83, the encroacher has not removed the encroachment and has not vacated the land, building or space, the Assistant Commissioner having jurisdiction over the sub-division may remove the encroachment and obtain possession of the land, building or space, encroached upon, taking such police assistance as may be necessary. Any Police Officer whose help is required for this purpose shall be required to render the necessary help to the Assistant Commissioner.

(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Deputy Commissioner under sub-section (4) of Section 83 from instituting a suit in a Court to establish that the charitable or religious institution or endowment has no title to the land, building or space:

Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under

sub-section (4) of Section 83;

Provided further that no such suit shall be instituted by a person who is let into the possession of the land, building or space, or who is a lessee, licensee or mortgagee, of the institution or endowment.

(3) No injunction shall be granted by any court in respect of any proceedings taken or about to be taken by the Deputy Commissioner under Section 83.

A reading of the above reproduced provision makes it clear that once an order for removal of the encroachment and delivery of possession of the land or building or space encroached upon is passed and the encroacher fails to remove the encroachment and vacate the land, building or space, the jurisdictional Assistant Commissioner can remove the encroachment and obtain possession of the land etc. For this purpose, the Assistant Commissioner can take the help of police. The only remedy available to the aggrieved person is to file civil suit to establish that the charitable or religious institution or endowment does not have title over the land etc.

There is nothing in the language of Section 84 from which it can be inferred that even after finalisation of the proceedings initiated against the encroacher under Section 83 of the Act, the concerned authority is required to give opportunity of hearing to the encroachers. The rule of hearing i.e. audi alterim partem cannot be read implicit in the scheme of Section 84 because sub-sections (2), (3) and (4) of Section 83 clearly provides for giving opportunity of hearing to the alleged encroacher.

The deposit of the amounts by the appellants sometimes on monthly basis and sometimes after few months with the apparent connivance of the officials of the temple cannot enure to their advantage because the same represent the damages which could be recovered from them for unauthorised use and occupation of the premises belonging to the temple.

In the premise aforesaid, we hold that the learned Single Judge

did not commit any error by refusing to entertain the appellants' prayer for being allowed to continue in possession of the premises belonging to the temple and the appeal is liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the appeal, WAMP.No.1023 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

29th June, 2007.

C.V. NAGARJUNA REDDY, J

ARS