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APHC010511732011

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI [3330]
(Special Original Jurisdiction)

THURSDAY, THE 8th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL MISCELLANEOUS APPEAL No. 385 OF 2011

BETWEEN:

1. P. MUNIKRISHNA REDDY, S/o. NADAMUNI REDDY AGRICULTURIST R/O. AVILALA VILLAGE, TIRUPATI RURAL MANDAL, CHITTOOR DISTRICT.

...APPELLANT

AND

1. THE ASSISTANT COMISSIONER AND ANOTHER, ENDOWMENTS DEPARTMENT, CHITTOOR DISTRICT.
2. SRI SWAMY HATHIRAMJI MUTT, REP., BY ITS CUSTODIAN, TIRUPATHI

...RESPONDENT(S):

Appeal under Section 88 of the Charitable & Hindu Religious Institutions and Endowments Act against the Judgment (award) and Decree dated 16-03-2011 in O.A. No.788 of 2010 (old No.4/1997 of D.C., Kurnool) on the file of the Endowments Tribunal at Hyderabad, on the following among other and further order or orders.

Counsel for the Appellant:

1. V ESWARAIAH CHOWDARY

Counsel for the Respondent(S):

1. T VENU GOPAL

The Court made the following:

JUDGMENT:

The parties in this appeal will be referred as appellant/respondent and the 2nd respondent referred as 2nd respondent/Mutt.

2. The present C.M.A. 385 of 2011 is filed by appellant challenging the order in O.A. No. 788 of 2010 order dated 16.03.2011 on the file of A.P. Endowment Tribunal, Hyderabad (present Pedakakani). (It appears that initially Mutt filed O.A. 4 OF 1997 before the Deputy Commissioner Endowment which was later transferred and registered as O.A. No. 788 of 2010 on the file Endowment Tribunal). The appellant is the respondent in O.A. No. 788 of 2010. The facts in nutshell are that the 2nd respondent-Swamy Hathiramji Mutt, Tirupati possess/owns an extent of Ac. 38.50 cents in Patta No. 253 in Sy.No 147/1 of Avilala Village, out of the above said extent of land the appellant herein has encroached an extent of Ac. 2.00 cents of land, the appellant neither paying any amount towards damages or paying any rent and the property generates significant income if leased. Despite service of notice the appellant has squatted on the property, therefore, prayed the Endowment Tribunal for removal of the encroachment invoking the provision under Section 83(2) of The A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short hereafter refer as Act 30/87).

3. The appellant herein filed counter denying the assertions made in the above said O.A., contending that original application before the Endowment Tribunal is not maintainable and the appellant is in lawful possession and enjoyment of the property, the appellant being the landless poor person entitled to purchase the property as he is tenant of the 2nd respondent-Mutt, neither he is having any other source of income or possess any land except this land and further asserted the mutt has sold varying extents of land to G. Gurava Reddy, M.K. Naidu, G. Dhananjeyulu Naidu, Srinivasulu Reddy, E. Guravareddy, Salamma and Gangireddy. The appellant asserted that the Mutt has not interfered with his occupation and that he has invested considerable amounts to bring the land under cultivation and has been paying the rents to the Mutt and he is not the encroacher of the property, therefore prayed to dismiss the O.A.

4. Both the appellant and respondents have presented witnesses, and the Mutt marked Exhibits A1, while the appellant marked Exhibits B1 to B15.

5. The appellant's contentions in the O.A. are twofold: (i) the first contention is that the 2nd respondent-Mutt does not own the scheduled property as the Mutt has granted Saaswatha (permanent) patta infavour Kalatturi Chengamma. The tribunal has answered that Saaswaatha patta that granted to Kalatturi Chengamma on payment of rent at Rs.24/- per year and the Mutt filed O.S.130/71 for

cancellation of the Saaswaatha Patta and the matter was compromised in the suit. (ii) According to the Chief Affidavit filed by K.V. Subrahmanyam in O.S. 51/1999 on the file of the Sub-Court of Tirupati, regarding partition between the Mutt and one Pakala Swamy Matta of Mysore indicates that the property does not belong to the Mutt. The Endowment Tribunal has answered that Ex.B3-xerox copy of affidavit in Chief of K.V. Subrahmanyam in O.S. 51 /1999 of sub-court, Tirupathi, is inadmissible in evidence of the deposition of a living person for limited confrontation purposes under Sections 145 and 155 clause-3 of the Evidence Act.

6. The second contention is that the Endowment Tribunal has failed to recognise the appellant herein as land less poor person based on the certificate issued by the Mandal Revenue officer vide Ex. B12 dated 05.01.1990 asserting that he is entitled to purchase the land and the part of the land was sold by the Mutt to some third parties who are similarly to the appellant herein.

7. The Endowment Tribunal has answered all the contentions raised by the appellant herein and respondent in the O.A. The relevant portion of the order is hereby extracted and reads thus:

> “In order to declare that the respondent is a landless poor, it is necessary to prove several facts. These include that the lands in question consist of both owned and leased cultivation plots, and continuing as tenant by the time the Act came into force

and he should not hold more than Ac.2.50 acres of wet land or 5.00 acres of dry land, and he must prove further that the land situate other than municipalities and corporation and he is landless poor for not less than 6 years continuously and he shall not exceed his monthly income other than from the lands, Rs.2000/- per month or Rs.12,000/- per annum and shall not have any residential property exceeding 200 sq. yards in urban area and relying on the ruling reported in 2005 ALD 734 and there is no such proof from the respondent as required by law as mere filing of Ex.B12 certificate is not suffice that too the same also nowhere shows he has no other lease cultivation even apart from he is not a tenant by Act came into force to invoke the benefit of Section.82 even going to establish other requirements.

In the further cross examination PW2 deposed that the respondent was granted lease for 6 years on rent of Rs.105/- per annum from 1977 to 1983 which is in fact the case of the petitioners including in Ex.A1 notice and PW1 & 2 evidence in Chief that is confirmed by the said cross examination which categorically discloses from no extension of lease later, to say the respondent is a tenant by sufferance after expiry of the said lease in the year 1983 and including by the time the Endowments Act 30/87 came into force, to say the respondent

is not a statutory or contractual tenant by sufferance after expiry of the said lease in the year 1983 and including by the time the Endowments Act 30/87 came into force, to say the Respondent is not a statutory or contractual tenant or even tenant holding over by the time the Act came into force even to invoke application of section 82 of the Act, even taken for argument sake from the claim by respondent including from suggestion to PW2 in the cross examination of he is having no other property except the schedule land under his occupation for his livelihood by cultivation by placing reliance upon the Ex.B12-Certificate dt.5.1.1990 of MRO, Tirupathi of the respondent is landless poor, apart from the facts required to be proved are the land to be taken together is both own and lease cultivation lands and continuing as tenant by the time the Act came into force and to show the extent is Ac.2-50 cts. Wet or Ac.5.00 cts. Dry and he must prove further that the land situate other than municipalities and corporation and he is landless poor for not less than 6 years continuously and he shall not exceed his monthly income other than from the lands, Rs.2000/- per month or Rs.12,000/- per annum and shall not have any residential property exceeding 200 sq. yards in urban area and the same is also laid down in 2005 ALD 734 and there is no such proof from the respondent as required by law as

mere filing of Ex.B12 certificate is not suffice that too the same also nowhere shows he has no other lease cultivation even apart from he is not a tenant by Act came into force to invoke the benefit of Section.82 even going to establish other requirements. Thus, his Ex.B 6-8 letters dated 20.06.1991, 31.12.1996 and 22.03.1997 stating that he was going to purchase the land with a request to sell when not considered cannot by placing reliance on it make any claim much less any right to purchase or any right to continue in possession of the property that too after the Ex.B-9 lease recommendation by Mutt in-charge for 5 years from 1999-2004 to the Respondent was not at all considered and granted even. By placing the reliance of the Hon'ble Apex Court and this High Court, the Supreme Court held in **Shanti Devi Vs Amal Kumar** AIR 1981 SC 1550 that in case lease is for a definite term and expired by afflux of time by reason of Section 111(a) of the Transfer of Property Act; service of notice U/s 106 of the Transfer of Property Act is not necessary. The same position of a tenant by sufferance is nothing better to trespasser and unauthorized occupant and no quit notice is necessary and he cannot say to pay only rent or not liable for damages for use and occupation was also held in **Hindustan Petroleum Corporation Limited Vs. Khwaja Asadullah** reported in 1996 (2) ALD-

2589(D.B.) In the case of unlawful possession of a tenant at sufferance, the liability arises ex *delicto* and he will be liable for damages in the form of mesne profits. Therefore, in ultimate analysis, whether the position of the occupant is that of a trespasser or a tenant at sufferance, it hardly makes any difference as far as the liability of the occupant to compensate". In the case of Joint Commissioner Endowments Department A.P. Hearings Vs Shaik Meera Saheb reported in AIR 1977 AP 100(D.B.) also, it was held that "From a reading of the provisions of T.P. Act and A.P. Endowments Act, 1966; the tenants of Religious or Charitable Temples who continue to be in possession, after the expiry of lease, or after the cancellation of lease are termed as "encroachers". When he is a tenant by sufferance and his possession is no better to a trespasser, he is an encroacher with inthe definition of Sec.83 of the Act, 30/1987. In GussidiSankara Rao Vs. Commissioner, Endowments, 1998(2) aNwr-381 IT was held under the Act , 30/87 from explanation to Section 83 of the Act on the meaning of encroacher that, any person who unauthorisedly occupies any property of the institution under the Act and includes persons in occupation without approval of competency authority by lease, license or mortgage etc. and even for such persons after expiry of the lease period they are encroachers for no right

to hold over. From this analogy also, the position of Respondent is a sheer unauthorized occupant and declared as encroacher."

8. The O.A., was eventually allowed, by the Endowment Tribunal, observing *interalia* that appellant / respondent simultaneously claimed to be a lessee while asserting title over the property, as if he got title over the property and thereby denying the title of the Mutt. Since there is no dispute on the existence, location, nature and identity of the property and the appellant / respondent was declared as an encroacher under Section.83 of the Act, it is just to order that appellant / respondent to vacate and handover the property within one month by upon receiving written intimation to the appellant / respondent or else to evict by the First Petitioner (Assistant Commissioner) with police aid.

9. Heard Sri V. Eswaraiah Chowdary, learned counsel for the Appellant and Sri T. Venugopal, learned counsel for the respondent Mutt and learned Assistant Government Pleader, for the 1st respondent.

10. The sole argument advanced by the counsel for the petitioner is that the Endowment Tribunal erred and failed to consider the Ex B 12 report of the M.R.O., certifying that the appellant as a land less poor person. On this ground the partitioner's counsel prayed to set aside

the impugned order. In response, the learned counsel for the respondent supported the Tribunal's findings.

11. After considering the arguments of the appellant counsel and after going through the judgment of the Endowment Tribunal, the point for consideration is that the appellant is lessee of the 2nd respondent-Mutt and the order of the Tribunal is sustainable under law.

12. In ***Dega Babi Reddy and Ors. vs Government Of A.P.*** reported in 2006 (6) ALD 214, a learned Judge of the common High Court at Hyderabad at Paras 2, 3 and 4 observed as hereunder:

> The petitioners claim to have been in possession of these lands, to be cultivating it, to be raising paddy crop and paying annual Maktha regularly to the Charitable Institution, since long the leases are stated to have been orally granted in 1980. The petitioners do not plead, establish or demonstrate that they are the lawful cultivating tenants of the 3rd respondent institution's lands, on the basis of duly executed lease deeds.

13. In another judgment in ***Ganapathi Ramakrishna v. The Regional Joint Commissioner, Multi Zone-I, Endowments Department, Kakinada, A.P. and Ors.*** in W.P. No. 17281/2003 dated 21.8.2006, the learned Judge observed that "that the benefits under Section 82 of the Act are available only if a person is lawful cultivating tenant having obtained lease after a process of public

auction as stipulated under the relevant statutory rules governing grant of leases of agricultural lands belonging to the religious and endowment institutions and if such person owns or is in cultivation of lands in accordance with the limit specified in Section 82 of the Act. A person does not become a lawfully cultivating tenant by merely depositing Makthas which are received either by the Manager of a Trustee of the Institution or even by the officials of the Endowments Department. Defendants facto occupation or cultivation of lands due to the negligence or connivance of the Endowments Department Officers does not elevate the status of such occupier to a lawful cultivating tenant and such unlawful occupier or cultivator is neither entitled to the benefits under Section 82 of the Act nor to a declaration that he/she is landless poor person within the expression under Section 82 of the Act.

14. Another learned single judge following the above judgment in ***Adabala Raju And Ors. vs State Of A.P. And Ors.,*** reported in 2008 (1) ALD 145 observed that :

> The unauthorized occupation of the Endowment lands by the petitioners without a lease deed executed in their favour by or on behalf of the Endowment after following the due process or law; substantive and procedural, would not elevate occupation of the petitioners to the status of cultivating tenants as understood by the provisions of the New Act. Cultivating Tenant in Section 82 of the New Act must be understood to denote

cultivating tenant under a lawful duly executed lease and not one that is the product of ultra vires conduct of the State actors in defiance of the legislative mandate. There is no exclusion in this principle by the mere fact that the petitioners are in such an unauthorized occupation since 1980 or times immemorial. The petitioners do not claim any prescriptive title or ownership to the lands in question.

15. The Division Bench of this Court in ***Katta Naga Malleswararao and Anr. v. Government of Andhra Pradesh,*** rep. by its Secretary, Revenue (Endowments) Department, Secretariat, Hyderabad and Ors., W.A. No. 1302/2003, observed that "as a matter of fact, direction of learned Single Judge is very clear that for the purpose of deciding the question as regards status of the landless poor, it is the status of the actual lessee of the land which has to be taken into account and not of any other person. The inter se family partition effected between the members of the family will be of no consequence. It is the relationship between the lesson and lessee, which is the sine qua non. Therefore, only the status of the actual lessee will be taken into consideration and the words used in Sub-rule (2) of Rule 3 of the above Rules i.e., 'cultivating tenant' would confine only to actual lessee and not all persons, who might be cultivating the land by private negotiations." Reliance also was placed on ***Ganapathi Ramakrishna v. The Regional Joint Commissioner, Multi Zone-I, Endowments Department, Kakinada, A.P. and Ors.*** W.P. No.

17281/2003 dated 21.8.2006, wherein the learned Judge observed that "the 2nd respondent should bear in mind that the benefits under Section 82 of the Act are available only if a person is lawful cultivating tenant having obtained lease after a process of public auction as stipulated under the relevant statutory rules governing grant of leases of agricultural lands belonging to the religious and endowment institutions and if such person owns or is in cultivation of lands in accordance with the limit specified in Section 82 of the Act. A person does not become a lawfully cultivating tenant by merely depositing Makthas which are received either by the Manager of a Trustee of the Institution or even by the officials of the Endowments Department. Defendants facto occupation or cultivation of lands due to the negligence or connivance of the Endowments Department Officers does not elevate the status of such occupier to a lawful cultivating tenant and such unlawful occupier or cultivator is neither entitled to the benefits under Section 82 of the Act nor to a declaration that he/she is landless poor person within the expression under Section 82 of the Act."

16. In the case of ***S.V.K. Durga Rao*** *Vs* ***State of Andhra Pradesh*** **reported in 2019 SCC OnLine AP 196,** it is held that in view of the conflicting decisions, it is highly difficult to follow general principles laid down in any of the judgments, more particularly, when the special law i.e. the Endowments Act and the 2003 Rules prescribes certain

procedure. According to the provisions of the Endowments Act, after expiry of lease period, the tenant in occupation is deemed to be an encroacher and for eviction of an encroacher, specific procedure is prescribed under Section 83 of the Endowments Act. But, the procedure contemplated for taking possession under Rule 15 of the 2003 Rules as amended by G.O.Ms.No.426 Revenue (Endowments-I) Department, dated 09.11.2015, the Division Bench of the High Court of Judicature at Hyderabad, struck down the rule in W.P.Nos.34361, 39013 and 39151 of 2016 dated 04.07.2018, and no other procedure is available to evict the persons in wrongful possession except the procedure prescribed under Section 83 of the Endowments Act. The Deity, in all the temples, is a perpetual minor and the interest of Deity is being protected by the persons who are representing the temple or endowment institution.

17. In W.P.No.18210 of 2009 & batch, and in W.P.No.14190 of 2010 filed by one Nukala Satyanarayana, this Court, by orders, dated 24.06.2015, while dismissing the said writ petitions, observed that there is no error in the orders passed by the 1st respondent therein on the petitions filed under Section 83 of the Act 30 of 1987, when admittedly, the leases of the petitioners therein are not in existence.

18. As there is no valid lease existence in between the appellant and the respondents though the observation of the Endowment

Tribunal in allowing on different grounds this Court does not see any merit in the Civil Miscellaneous Appeal.

19. Accordingly, the Civil Miscellaneous Appeal is dismissed. However, both parties do bear their own costs. Interim orders if any stand vacated.

As a sequel, interlocutory applications, if any pending in this Civil Miscellaneous Appeal shall stand closed.

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JUSTICE TARLADA RAJASEKHAR RAO

Date: 08.10.2026

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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

C.M.A.No. 385 OF 2011

Date: 08-10-2026

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