

THE HON'BLE SRI JUSTICE BATTU DEVANAND**Civil Miscellaneous Appeal No.51 of 2023****JUDGMENT:**

This appeal has been filed under Section 84 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987 (for short 'Act 30 of 1987'), against the decree and order dated 28.11.2022 passed by the Andhra Pradesh Endowments Tribunal, Amaravati at Pedakakani, Guntur District (for short 'the Tribunal') in OA No.235 of 2014.

2. The appellant herein is the respondent and the respondents herein are the petitioners before the Tribunal. For the sake of convenience, the parties to this appeal hereinafter referred to as petitioners and respondent as they arrayed before the Tribunal.

3. Brief facts of the case are that the 2nd petitioner i.e., Sri Kota Anjaneya Swamy Temple, Fort Road, Kurnool Town & District, is a temple governed under Section 1 of the Act 30 of 1987. The 2nd petitioner-temple is the absolute owner of residential vacant land situated around the temple in Sy.No.35/5/C1A1, in which some small extent of 'kutcha houses' were constructed as detailed in the schedule for maintenance of the temple i.e., through the income derived there from. Public auction was conducted by the temple on 02.01.2011 for a period of two years and

the respondent also participated in the auction and became the highest bidder. In pursuance of the bid, the respondent took possession of the property and paid the rents. The said lease was expired by 31.12.2013 and the said lease is not extended further. In spite of lapse of lease period, the respondent has been continuing in the schedule premises and she is not vacating the same even after repeated requests and demand made by the 2nd petitioner. Hence, the 2nd petitioner constrained to file application for eviction of the respondent.

4. The respondent filed counter-affidavit contending that, initially the schedule premises is a vacant site and it was allotted to her husband, namely, S.Subrahmanyam, on 01.02.1998 and subsequently, she succeeded to the same. They raised constructions by spending huge amounts and she has been continuing till today with her family by paying the rents regularly. The respondent has no other source of income for her livelihood. The 2nd petitioner, under the guise of development, requesting the respondent to vacate the premises, having allowed her to enjoy the property for more than seven decades and as such, she contends that requirement of the schedule property itself is illegal. It is further stated that without issuing any notice, straightaway filed the application before the Tribunal by the 2nd petitioner, which is illegal and prays to dismiss the petition.

5. To substantiate their contentions, on behalf of the petitioners, the single trustee of the temple, was examined as PW.1 and got marked Exs.P.1 to P.14. On behalf of the respondent, she herself examined as RW.1, but no documents were marked on her behalf.

6. The Tribunal after hearing both parties in detail and on careful perusal of oral and documentary evidence available on record, allowed the application on 28.11.2022, directing the respondent to vacate and deliver the vacant possession of the petition schedule property to the 2nd petitioner-temple within one month and further directed to pay an amount of Rs.500/- per month towards damages for use and occupation of the temple property from the date of decree, till the date of delivery of the property, to the 2nd petitioner-temple. The Tribunal also directed the Station House Officer concern, to provide necessary police assistance to implement the order, on request of the petitioners, in the event of failure of respondent in complying with the order and decree.

7. Aggrieved by the said order and decree of the Tribunal, the respondent filed the present appeal.

8. Heard Sri T. Ramakoteswara Rao, learned counsel for the appellant, who is the respondent before the Tribunal, and Sri G. Ramana Rao, learned standing counsel for Endowments representing the

respondents, who are the petitioners before the Tribunal and perused the material available on record.

9. Learned counsel for the appellant-respondent contends that the Tribunal erred in determining the respondent as an encroacher, as she has not vacated the schedule premises and there was no dispute with regard to possession and enjoyment by the respondent from the time of her husband i.e., from 01.02.1998. He further submits that the Tribunal ought to have seen that the respondent's family raised constructions by spending huge amounts and having been enjoying the same by paying the lease amounts and the same was suppressed by the petitioners. He further contends that the respondent specifically denied the claim of the Temple over the schedule property as an encroacher in the schedule property and not liable to pay any damages, as she has been paying the rents regularly to the Temple. He further contends that the Tribunal erred in ordering eviction without giving any preferential rights over the shop's possession and enjoyment, for their plea of development by simply following the decisions, which are not applicable to the facts of the case. He further contends that the Tribunal erred in allowing the OA without consideration of the possession and enjoyment, which is the main issue and unimpeachable record for more than two decades over the property. He further contends that the petitioners, without issuing any notice for eviction immediately after the lease period, filed the OA and the Tribunal

failed to consider the same. The sum and substance of the contention of the respondent is that right from the ancestors of the respondent, having been residing in the schedule premises by constructing the houses by themselves in the site belongs to the Temple and she has been paying the rents without any default and that they are poor persons and they have no other source of livelihood and hence, the petition filed for their eviction is not maintainable.

10. Learned standing counsel for the Temple contends that the 2nd petitioner-temple is the absolute owner of the petition schedule property, which is part of residential vacant land around the temple premises and the temple had constructed independent *kutcha* houses in small extents as detailed in the schedule of corresponding batch matters for the sake of getting maintenance of the Temple. He further contends that public auction was conducted by the Temple on 02.01.2011 for lease of the schedule houses for a period of two years and the respondent became the highest bidder and she paid rent till 31.12.2013. He further contends that even after expiry of the lease period, in spite of several requests and demands, the respondent did not vacate the premises and as such, she has to be constructed as an encroacher as defined under Section 83 of the Act 30 of 1987 and accordingly, seeking eviction of the respondent. He further contends that the Tribunal has rightly allowed the application filed by the Temple, after considering the contentions of both

the parties and on perusal of the material available on record and as such, the decree and order of the Tribunal is in accordance with law, needs no interference by this Court.

11. Having heard the submissions of the respective counsel and on perusal of the material available on record, it appears, the petition schedule property is a small *kutcha* house situated in Sy.No.35/5C1A1 to an extent of 23 x 22.20 in total 511 sq. ft. situated at Sri Anjaneya Swamy temple premises, Chidambara Rao Street, Fort Road, Kurnool Town & District. The 2nd petitioner-temple is governed under Section 1 of the Act 30 of 1987 and the temple is the absolute owner of the residential vacant land situated around the temple in which some small extent of *kutcha* houses were constructed for maintenance of the temple. The temple conducted public auction for a period of two years and the respondent who participated in the auction, became highest bidder and in pursuance of the same, she took possession of the property and paid rents during lease period. The lease was expired by 31.12.2013. It is also appears that after the expiry of the lease period, the respondent is continuing in the premises without vacating the same in spite of several requests and demands made by the Temple.

12. Admittedly, the ownership of the Temple over the schedule land was never denied and disputed by the respondent. The respondent,

who was examined as RW.1, categorically admitted during the course of cross examination that she had participated in the auction conducted by the Temple and became the highest bidder and also continued to pay rents even after expiry of the lease. RW.1 also admitted during cross-examination that even after expiry of the lease under Ex.P.1, she has been continuing as a tenant and paying the rents. Ex.P.6, which is undertaking letter given by RW.1 along with other lease holders of the temple, proves that she along with others are continuing in their respective schedule premises, which is a part and parcel in the total extent of land in Sy.No.35/5C1A1, belongs to the Temple.

13. The another contention raised by the respondent is that no notice was issued by the Temple before filing of the application before the Tribunal. But during the cross-examination, RW.1 admitted about the issuance of notice under Ex.P.13 prior to filing of OA before the Tribunal.

14. In view of the above facts, now it has to be considered, whether the findings of the Tribunal that the respondent is an encroacher in the schedule land or not?

15. The Tribunal below relying on the judgment of this Court in '*Joint Commissioner of Endowments Department, A.P., Hyderabad vs. Shaik Meera Saheb*' [AIR 1977 AP 100 (DB)] and the decision of the Hon'ble Supreme Court in '*Hindustan Petroleum Corporation Ltd., vs Khwaja*

Asadullah Baig' [1996(2) ALD (SC) 2589], held that the respondent comes under the ambit of tenant at sufferance alone and thereby an encroacher as contemplated under Section 83 of the Act 30 of 1987. This Court could find any infirmity or illegality in the findings of the Tribunal on this aspect. As and when the respondent entered into an agreement of lease for a period of two years and after completion of the lease period, when the lease was not extended, it is their obligation to vacate the schedule property, but without vacating the same, the respondent continued there without any authority.

16. Though, the petitioners filed OA in the year 2014 before the Tribunal, the same was disposed of only in the year 2022 and as on date, the respondent is continuing in the schedule property. Mere payment of rent as fixed in the year 2011 at the rate of Rs.500/- per month, it would not confer any right to continue further in the schedule property. Moreover, the petitioners by marking Exs.P.7 and P.8 to substantiate their contention that to renovate the temple and to make new constructions for the development of the temple, they got approved the plan from the municipal authorities and the Committee of C.G.F. have granted funds from the C.G.F. to make construction of the temple. Though the respondent is paying the rents even after expiry of the lease period and the 2nd petitioner is receiving the same, the respondent shall be

construed as an encroacher as contemplated under Section 83 of the Act 30 of 1987.

17. Further, as the petitioners are no more interested to continue the respondent in the schedule premises in view of the fact of proposed development for which approved plan was already obtained and C.G.F. funds are granted for that purpose, in the considered opinion of this Court, the decree and order passed by the Tribunal is in accordance with law. As the respondent continued even after expiry of the lease period, the Tribunal awarded a sum of Rs.500/- per month towards damages for use and occupation of the schedule property and directed the respondent to pay the same from the date of decree till the date of delivery of the property to the 2nd petitioner and the said finding is also needs no interference by this Court, in view of the fact that the respondent is continuing in the schedule premises even after expiry of the lease period.

18. In view of the above, in the considered opinion of this Court, the Tribunal has considered all the factual and legal aspects and passed the reasoned order and interference of this Court in the said decree and the civil miscellaneous appeal is liable to be dismissed.

19. Accordingly, the civil miscellaneous appeal is dismissed confirming the decree and order of the Tribunal passed in OA No.235 of 2014 dated 28.11.2022. However, it is made it clear that the

appellant/respondent shall vacate and deliver the petition schedule property to the 2nd petitioner-temple, within one month from the date of receipt of a copy of this judgment.

20. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand closed.

JUSTICE BATTU DEVANAND

Date: 15.03.2023.

Note: Furnish CC in two days.
(BO)
bss

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CMA No.51 of 2023

Date: 15.03.2023

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