*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

+ Civil Miscellaneous Appeal No.884 OF 2012

% 28.03.2024

Between:

M. Rama Murthy and four others

Appellants

Vs.

The Assistant Commissioner of Endowments,
Hyderabad and another

Respondents

! Counsel for Appellants : Sri Immaneni Rama Rao

^ Counsel for Respondents : Sri J. R. Manohar Rao
Standing Counsel for
Endowments (

<GIST:

> HEAD NOTE:

? Cases referred :

1. 2024 Live Law (SC) 17

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

Civil Miscellaneous Appeal No.884 OF 2012

JUDGMENT:

Aggrieved by the Judgment (Award) dated 31.07.2012 (hereinafter will be referred as 'impugned judgment') in O.A.No.329 of 2010 (old No.80 of 2007 of D.C., Hyderabad) passed by the learned A.P. Endowments Tribunal at Hyderabad (hereinafter will be referred as "Tribunal"), the Opposite Parties filed the present Civil Miscellaneous Appeal to set aside the impugned judgment.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned Tribunal.

3. The brief facts of the case are that the first applicant i.e., the Assistant Commissioner of Endowments, Secunderabad has forwarded the proposals under Section 83 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter will be referred to as "the Act" for brevity) in RC No.C/2495/20096 dated 13.03.2007 submitted by the second applicant i.e., Executive Officer of Sri Ganesh Temple, Station Road, Secunderabad against the sole respondent, who is alleged to have encroached house bearing No.9-3-74, 75 and 76 situated in Regimental Bazar, Secunderabad, which is alleged to

be belonging to second applicant. In the said proposal, it was submitted that the respondents are continuing in the schedule property after expiry of the lease period obtained by respondent No.1 (since died) without any right and without renewal or extension of lease. The respondent did not even consider the request for extending of lease for two more years from 01.09.1998 to 31.07.2000 with 30% enhancement of rent. The respondents are squatting there on converting the residential building into commercial shops and giving the same on sub lease despite demands to vacate and without even paying any amounts to the second applicant temple for use and occupation. The property is located in a busy locality and it will fetch huge amount if given on lease and thereby requested to take necessary action for an order removing the encroachment.

4. The respondent filed counter and mainly contended that originally the grandfather of the respondent namely Yellaiah was inducted into the petition schedule premises about 70 years back as tenant orally and he was prompt in payment of rents to the temple. The grandfather of the respondent continued as tenant till his death about 40 years back and thereafter the father of the respondent by name Gandaiah continued as tenant of the schedule premises and after his

death, the respondent came into possession and paid rents regularly to the temple authorities. The tenancy is oral and the rents were enhancing from time to time. The respondent replied to the notices issued by the second applicant in the year 2005 but he did not receive the notice dated 25.06.2006 and no notice is affixed on his house door, thus, the OA is not maintainable as no lease termination notice was given before filing the OA. The respondent with the oral permission of the then temple authorities extended the portion and he constructed mulgi on the foot path but not in the petition schedule premises. The schedule premises is situated near Masjid opposite to the temple and it is not attached to the temple. The respondent alone got repaired the premises as and when it is required with his own funds. The respondent got two physically handicapped children and he is junior artist with meager income residing in the petition schedule premises and if he is evicted, he will be put to irreparable loss and his family will be on roads and therefore, prayed to dismiss the petition.

5. During the pendency of the case, the sole respondent passed away and his legal representatives were brought on record as respondent Nos.2 to 5 vide orders dated 03.09.2010.

6. During the enquiry, PWs 1 and 2 were examined on behalf of the applicants and got marked Exs.P1 to P14 and on the other hand, the respondent No.2 was examined as RW1 and got marked Exs.R1 to R5. After considering the oral and documentary evidence, the learned Tribunal has allowed the application by directing the respondents to vacate the schedule premises within one month from the date of service of the award. Aggrieved by the same, the respondent Nos. 2 to 5 have preferred the present appeal to set aside the impugned judgment.

7. Heard both sides and perused the record including the grounds of appeal.

8. The first and foremost contention of the learned counsel for the appellant is that the provisions of the Act and other allied provisions much less amended Section 83 of the Act are not applicable to the appellants in lieu of their longstanding possession. From this contention, it is clear that the respondents are claiming adverse possession over the suit schedule property. It is an admitted fact that the respondents are not disputing the ownership of the second applicant over the suit schedule property. Even as per the contention of the respondents, they are paying rent of Rs.650/- to the landlord

i.e., the second applicant regularly. Hence, the respondents cannot claim adverse possession. **In Brij Narayan Shukla (died) through LRs v. Sudhesh Kumar alias Suresh Kumar (died) through LRs and others**[1], wherein the Honourable Supreme Court held as under:

> *"In our considered view, the plaintiff appellants got their ownership/title under the registered sale deed on 21.01.1966. The dispute for possession vis-à-vis the defendant respondents would arise only after the said date and not on any date prior to it. Admittedly from the date of the sale deed, the suit was filed within the period of 12 years in May, 1975. Even if it is assumed that the defendant respondents were in possession from prior to 1944, their possession could not have been adverse even to the Zamindars as they were tenants and their tenancy would be permissible in nature and not adverse. There were no proceedings for possession prior to 1966."*

9. Thus, in view of the principle laid down in the above said decision, the respondents being tenants cannot claim long standing possession in respect of the petition schedule premises, which was obtained by the respondents from the second applicant on lease. Hence, the above contention of the respondents does not hold water.

10. Though the respondents admitted that they are paying rents to the second applicant regularly, they gone to the extent of contending that the respondent No.1 was never a new tenant under the second applicant and never executed any lease deed much less in the year 1998. Since the respondents are

[1] 2024 Live Law (SC) 17

admitting about the tenancy, it is immaterial as to whether the tenant is of oral one or written lease.

11. It is further contention of the respondents that they did not commit any default in payment of rents to second applicant and thus, they are not liable for eviction from the petition schedule premises and that the OA is not maintainable as they have not received termination notice immediately prior to the filing of the OA, much less notice dated 25.06.2006. However, it is to be noted that admittedly the respondents received notice of eviction in the year 2005. As seen from the impugned order coupled with Exs.A1 and A2 dated 01.06.1998 and 01.08.1998 respectively, the second applicant has been demanding the father of respondents i.e., respondent No.1 and his family members to vacate the premises since 1998. Exs.A3, A4, A11 are the notices, dated 06.07.2005, 23.06.2006, 28.07.2006 issued by the second applicant to the respondents to evict the premises and Exs.A4, A6 and A9 are the reply notices received by the second applicant from the respondents. Thus, the terminations notices have been issued by the second applicant to the respondents for the past several years but the respondents have been successful in dragging the matter over a period of more than two decades. Though it is contended by the

respondents that the termination notice was not served on them, as evident from the pleadings, Ex.A13 notice was affixed on the door of the premises and Ex.A14 discloses that the respondents are not residing in the premises.

12. Thus, the applicants have tried their level best to serve the notice on respondents but as the respondents were not available, they were constrained to affix the notice on the door of the premises, which is deemed to be a proper service. Even otherwise, as stated supra, the applicants have been sending correspondence in the form of quit notices to the respondents for the past several years and despite receiving the termination notice, the respondents were reluctant to vacate the schedule premises and on the other hand, giving replies to the termination notice. Apart from that the respondents instead of vacating the premises, have been addressing representations to the Executive Officer of the temple and Government to renew the lease on sympathetic grounds that the respondent is having children, who are physically and visually challenged. Merely because the children of the respondents are physically challenged and visually challenged, the respondents cannot be permitted to stay even after issuance of termination notice. A tenant, who continued even after termination of lease or

tenancy, is declared as tenant by sufferance. At this juncture, it is appropriate to extract the explanation to Section 83 of the Act, which is as under:

> *"Explanation:— For the purpose of this Chapter the expression _encroacher' shall mean any person who unauthorizedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or license and also a person who continues to remain in the land or building or space after the expiry or termination or cancellation of the lease, mortgage or license in respect thereof granted to him or it."*

13. Therefore, from the above said explanation it is amply clear that a person, who continues to remain in the premises after the expiry or termination or cancellation of the lease, is deemed to be a encroacher. Since the respondents have been refusing to evict the premises even after issuance of termination notice, they are to be considered as encroachers.

14. On the other hand, it is the contention of the applicants that the premises was constructed more than 50 to 60 years back and it is in dilapidated condition, lacks structural stability and thus, endangering the lives of the inhabitants and also the passersby, as such, the building has to be demolished so as to avoid untoward incidents in the interest and safety of public. In support of the said contention, the applicants have filed copy of notice dated 26.06.2023 issued by the Greater Hyderabad Municipal Corporation to the respondents vide File

No.9/DCP/TPS/C30/SZ/GHMC/2023, wherein the respondents were directed to vacate the premises immediately. Apart from the above said notice, the applicants have relied upon photographs to substantiate their contentions. As seen from the photographs, the premises, is not at all in a good condition.

15. Even as per the contention of the respondents, the grandfather of the respondents was given the premises on lease about 80 years back. It is not the case of the respondents that they have renovated the premises from avoiding from collapse of the building all of a sudden causing harm not only to the inhabitants but also to the passersby as the premises is very close and nearer to the public road.

16. Furthermore, the applicants contended that the respondents without any authorization or permission of the concerned authorities under the Act, have converted the residential building into a hotel on commercial basis without paying any rents. As seen from the photographs, it is evident that the premises is being used for other than residential purpose i.e., commercial purpose in running a hotel. Thus, it is a clear violation of terms and conditions of lease and on this grounds also the respondents are liable to vacate the schedule

premises. Admittedly the lease of the premises to the respondents is based on oral agreement. Even as per the version of respondents, after the death of first respondent, his wife i.e., respondent No.2 made several representations to the authorities for extension of lease but the applicants were refusing the said request and the applicants received rents till 2010 and thereafter the applicants are trying to evict the respondents from the lease premises showing them as encroachers. When the respondents being tenants have been violating the terms of tenancy by making constructions without proper authorization or permission from the concerned, certainly they are not permitted to continue in the premises. It is further contention of the respondents that the premises consist of approximately 60 to 70 square yards but not 125 square yards as stated by the applicants. Thus, the respondents gone to the extent of disputing even the extent of land. Even as per the version of the respondents, they constructed mulgi on the foot path but not in the petition schedule premises. As seen from the photographs under Exs.A12 and A12A, constructions were raised over the schedule premises. Even otherwise, if at all the respondents have made constructions over the petition premises or over the footpath, they need to obtain necessary permission from the concerned

authorities. Moreover, raising constructions over the footpath, which is meant for public use, is illegal. It is settled law that one who seeks equity must do equity to claim equitable relief. Furthermore, as stated supra, the premises, is not in a fit condition to live even as per the notice dated 26.6.2023 issued under Section 459 of the HMC Act, 1955. Thus, viewed from any angle, the respondents are liable to be evicted from the petition schedule premises.

17. In view of the above discussion, this Court is of the considered opinion that by considering all the aspects the learned Tribunal has arrived to an appropriate conclusion in passing the impugned order and there is no illegality or irregularity in the impugned order passed by the learned Tribunal. Thus, there are no merits in the appeal, which is liable to be dismissed.

18. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. The respondents are directed to vacate and hand over the schedule premises within one month from the date of receipt of copy of this judgment and the on the failure of respondents in vacating the premises, the applicant No.1/Assistant Commissioner of Endowments, Hyderabad shall initiate necessary steps in evicting the

respondents from the premises with the police aid and deliver possession of the premises to the applicant No.2/temple. The concerned Station House Officer shall provide necessary assistance to the Assistant Commissioner of Endowments, Hyderabad in implementation of this judgment.

Pending Miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

Date: 28.03.2024
AS