

THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

APPEAL SUIT No.1019 OF 2010

JUDGMENT:

1. Aggrieved by the Order dated 12.04.2010 in O.A.No.3 of 2009 passed by the Deputy Commissioner, Endowments Department, Visakhapatnam, the appellant/respondent preferred this Appeal questioning the correctness of the Order passed by the Deputy Commissioner. The respondent is the petitioner, who filed the O.A.No.3 of 2009 to initiate enquiry under section 83(2) of the Act 30/87 against the appellant for eviction from the petition schedule property.
2. The parties are referred to as per their array before the Deputy Commissioner "for brevity".
3. The petitioner's case is that the respondent is in occupation of the agricultural land i.e., petition mentioned property to an extent of Ac.0.96 cents situated in Sy.No.112/2, Maruvada Village, Tuni Mandal, East Godavari District belonging to the temple, without any approval from the competent Authority under the Endowments Act. The respondent is not vacating the petition schedule property in spite of several demands made by the petitioner. The

respondent's actions are detrimental to the interests of the temple.

4. In spite of issuance of notice to the respondent, she failed to file counter though several opportunities were given. As such, filing of counter of respondent was forfeited.
5. Based on the pleadings before the Deputy Commissioner, the Deputy Commissioner framed appropriate points for consideration. On behalf of the petitioner, Ex.A.1 to Ex.A.3 documents got marked. On behalf of the respondent, no documents got marked.
6. After considering the oral and documentary evidence on record, the Deputy Commissioner held that the respondent is the encroacher of the petition schedule property within the meaning of section 83 of Act 30/87 and directed the respondent to be evicted from the scheduled property.
7. I have heard the arguments of the learned counsel representing both sides.
8. Learned counsel for the appellant/respondent contends that the Order passed by the Deputy Commissioner is the routine

cyclostyle order without appreciating the contentions raised by the respondent in its proper perspective. The Order is without jurisdiction and is passed after the constitution of the Tribunal.

9. Per *contra*, the learned counsel for the respondent/petitioner supported the findings and observations of the Deputy Commissioner.

10. Now, the point for determination is:

Whether the Order passed by the Deputy Commissioner is without jurisdiction?

11. The Deputy Commissioner initiated enquiry under Section 83(2) of the Act 30/87 against the respondent for eviction from the scheduled property based on the proposal made by Assistant Commissioner, Endowments Department, Visakhapatnam, informing that the respondent has been in unauthorized occupation of the petition schedule property and recommended to initiate proceedings under section 83 of Act 30/87. The Deputy Commissioner passed an order dated 12.04.2010 holding that the respondent is an encroacher of the scheduled property within the meaning of Section 83 of

Act 30/ 87. The respondent is directed to be evicted from the scheduled property and vacate the scheduled property, and hand over the vacant possession to the petitioner/institution within 15 days from receipt of the Order.

12. The main grievance of the appellant against the Order passed by the Deputy Commissioner is that the Order dated 12.04.2010 was passed after the constitution of the Tribunal without jurisdiction. For better appreciation, I reproduce the G.O.Ms.837, dated 13.08.2009.

13. G.O.Ms.No.837 dated 13.08.2009 issued by Revenue (Endowments Department), reads as under:

“In exercise of the powers conferred under section 162(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) the Government of Andhra Pradesh hereby constitute the A.P. Endowment Tribunal sitting at Hyderabad. The Tribunal shall have jurisdiction for the entire State of Andhra Pradesh for the determination of any disputes, question or the matter relating to a Charitable Institution, Dharmadayam, Religious Charity, Religious Endowments, Religious Institution or any Institution etc., as defined in the Act”.

14. The said G.O. specifies the Notification shall be published in the Extraordinary issue of the Andhra Pradesh Gazette,

dated 20.08.2009. As seen from Section 87 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 is substituted by Act No.33 of 2007 w.e.f. 03.01.2008. Before the amendment to Section 87 of the Act, it reads as under:

87. (1) *The Deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question-*

- a) whether an institution or endowment is a charitable institution or endowment;*
- b) whether an institution or endowment is a religious institution or endowment;*
- c) whether any property is an endowment, and if so, whether it is a charitable endowment or a religious endowment;*
- d) whether any property is a specific endowment;*
- e) whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;*
- f) whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or*
- g) where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of religious character or the performance of any service or charity connected*

with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses.

(2) The Deputy Commissioner may, pending his decision under sub-section (1), pass such Order as he deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) Every decision or Order of the Deputy Commissioner on confirmation by the Commissioner under this section shall be published in the prescribed manner.

(4) The Deputy Commissioner may while recording his decision under sub-section (1) and pending implementation of such decision, pass such interim order as he may deems fit for safeguarding the interests of the institution or endowment and for preventing damage to or loss of or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment.

(5) Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner.

(6) The presumption in respect of matters covered by clauses (a), (b), (c), (d) and (e) in sub-section (f) is that the institution or the endowment is public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money

to be other than that of a religious endowment or specific endowment as the case may be.

15. Section 87 of the Act is substituted by Act 33 of 2007, which reads as follows:

“87. Power of Endowments Tribunal to decide certain disputes and matters. - (1) *The Endowments Tribunal having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question__*

(a) whether an institution or endowment is a charitable institution or endowment;

(b) whether an institution or endowment is a religious institution or endowment;

(c) whether any property is an endowment, and if so, whether it is a charitable endowment or a religious endowment;

(d) whether any property is a specific endowment;

(e) whether any person is entitled by custom or otherwise to any honor, 'emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;

(f) whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or

(g) where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of a religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses;

(h) Whether a person is a founder or a member of the family of the founder of an Institution or Endowment.

(2) The Endowments Tribunal may, pending its decision under subsection (1), pass such Order as it deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) The Endowments Tribunal may while recording its decision under subsection (1) and pending implementation of such decision, pass such interim Order as it may deem fit for safeguarding the interest of the institution or endowment and for preventing damage to or loss or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment.

(4) The presumption in respect of matters covered by Clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is a public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment, as the case may be.

(5) Notwithstanding anything contained in the above sub-sections, the Deputy Commissioner having jurisdiction shall continue to enquire into and decide the disputes referred to in sub-section (1) until the constitution of the Endowments Tribunal.”

16. From the reading of the above provisions, it is explicit that by virtue of the amendment to Section 87 of the Act, the Deputy Commissioner is empowered to decide certain disputes and matters, whereas, after the amendment to Section 87 of the Act, the Endowment Tribunal is constituted. Section 87(5) amendment shows that the Deputy Commissioner having jurisdiction shall continue to enquire into and decide the disputes referred to in Sub Section (1) until the constitution of the Endowments Tribunal. When the Endowments Tribunal is constituted, the Deputy Commissioner is not supposed to decide the disputes. The impugned Order passed by the Deputy Commissioner shows that the impugned Order was passed after the constitution of the Endowments Tribunal. A reading of the impugned Order does not indicate the reasons for passing the Order after the constitution of the Endowments Tribunal. During the course of the hearing, learned counsel appearing for the Endowments has not

given justifiable reasons to pass the impugned Order by the Deputy Commissioner after the constitution of the Endowments Tribunal. This Court views that the Deputy Commissioner is not empowered with the jurisdiction to decide the disputes after the constitution of the Endowments Tribunal. As such, without going into the merits of other contentions, the Order passed by the Deputy Commissioner is liable to be *set aside*.

17. For the reasons stated above, the Appeal is ***allowed*** by setting aside the impugned Order passed in O.A.No.03 of 2009 dated 12.04.2010 by the Deputy Commissioner, Endowments Department, Visakhapatnam. However, leaving it open to the authorities concerned to work out their remedies, if any, in accordance with the provisions of the Act. There shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.MALLIKARJUNA RAO

Date:14.06.2023
SAK/MS

THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

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MS