

***HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

+WRIT PETITION No.16886 of 2016

Between:

#Althi China Maraiah,

...PETITIONER

AND

\$The State Of Andhra Pradesh and Others

...RESPONDENT(S)

JUDGMENT PRONOUNCED ON **28.03.2025**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to Law
Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment? - Yes -

DR.JUSTICE K. MANMADHA RAO

* THE HON'BLE DR.JUSTICE K. MANMADHA RAO

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! Counsel for the Petitioner : Sri B. Rama Sankar Rao

! Counsel for Respondents: GP for Endowments

<Gist :

>Head Note:

? Cases referred:

APHC010606772016



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3310]

FRIDAY ,THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 16886/2016

Between:

Althi China Maraiah,

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.BONU RAMA SHANKAR RAO

Counsel for the Respondent(S):

1.GP FOR ENDOWMENTS (AP)

2.T V S KUMAR

The Court made the following :

ORDER :

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“...to issue a writ or order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondents in conducting public auction for the land in Sy.No.261 to an extent of Ac.-186 cents situated at Jammunarayapuram Village, Vizianagaram Mandal and District, is illegal, arbitrary, violation of the principles of the natural justice and contrary to the provisions of the A.P.Charitable Hindu Religious Institutions and Endowments Act, 1987 and consequently direct the respondent not to conduct auction / dispossess the petitioner from the above said land and pass...”

2. Brief facts of the case are that the Petitioner claims to be in possession of the land in Sy.No.22/1 to an extent of Ac.1.86cents and the land originally belonged to one Sri. Krishna Shastri, who purchased the land in the year 1910 from one Latchamma. The said Krishna Shastri is pujari of the Respondent No.5 temple and who in turn granted a Budhan Patta in favour of the petitioner on 24.02.1970. Since then, the Petitioner claims to have been in possession of the above said land, paying rents to Respondent No.5 for the past 30 years, cultivating the land by raising mango thopes and eking out his livelihood from doing agriculture in the above said land. It is stated that the aforementioned temple is a private temple and there was a dispute among its trustees. The Petitioner alleges that Respondent No.5, after being appointed as Executive Officer, announced a public auction for the above said land by a tom tom on 24.05.2016, to be held on 30.05.2016. The action of the Respondent No.5 conducting public auction without any enquiry, without issuing notice, and without following the procedure contemplated under the Andhra Pradesh Charitable & Hindu Religious Institutions and Endowments Act, 1987, is illegal and arbitrary. Questioning the action of the respondents, the petitioner preferred the present writ petition.

3. This Court, vide order dated, has granted interim direction as under:

“....Post on 6.6.2016.

Meanwhile, there shall be status quo with regard to the possession of the land in Sy No.26-1 to an extent of Ac 1.86 cents situated at Jammu Narayanapuram Village, Vizianagaram Mandal and District.”

4. The counter-affidavit has been filed by Respondent No. 5. While denying the allegations made in the petition, inter alia, stated that the temple has the ownership of mango thope measuring Ac. 2.00 cts in Sy.No.22/3D(old) citing U/Sec. 25 of Act, 1955 and the same was approved by the Deputy Commissioner, Endowments Department 14.03.1957. As per Sec. 46(3) of Act 30/87 all entries made in the statutory register are genuine unless contrary is proved. Further the temple was registered U/Sec. 43 of Act 30/87 and the same was approved by the Assistant Commissioner, Endowments Department vide Registration No.89, dated: 17.05.1996. This mango garden was put to public auction and the income derived from the produce is utilized for the daily rituals of the deity. It is further stated that the mango garden was given to the Petitioner by a bhoodanpatta dated 24.02.1970 is false, concocted and made for the sake of the writ petition. It is further stated that initially the temple was managed by the managing trustees and the present single trustee is appointed in the year 2016. Respondent No.5 further stated upon taking the charge and verifying the records, the single trustee has derived that the income from mango garden's produce, which was to be utilized for the daily rituals through public auction, was not done all these years. As such, the single trustee after obtaining the permission from Assistant Commissioner, Endowments Department, Vizianagaram on 19.05.2016 has issued auction notification dated 19.05.2016 for conducting public auction of the produce of the mango thope on 30.05.2016 for a period of three years from 01.07.2016 to 30.06.2019. While the matter stood thus,

the Petitioner herein has filed the present writ petition by creating receipts as he was there in possession from 1971 to till date which is evident from the receipt Nos.1 to 14 filed by him dated 19.10.2012 and 12.07.2014 in which he has paid maktha for the period 1971 to 1974, 1974-77, 1977-80, 1980-83, 1983-86, 1986-90, 1990-95, 1995-98, 1998-2001, 2001-04, 2004-07, 2007-10, 2010-13 and 2013-16. It is further stated that the receipts dated: 19.10.2012 issued for above years itself shows that the then managing trustee and the Petitioner herein hand in glove have created these receipts for the sake of the writ petition and to show that the Petitioner is in possession of the land. It is also stated that the 1(b) registrar in the adangal obtained as on 29.05.2016 reflects the name of Sri Anjaneya Swamy Devasthanam as the pattedar and possessor which itself shows that the petitioner is not in the possession of the land. It is denied that the Petitioner's claims of having developed the land by spending significant amounts, stating that according to the records in the Section 25 register, the mango garden existed as far back in the year 1957. Further the adangal filed by the petitioner are of the year 2010 and the present adangals show that the temple is the owner and possessor of the mango garden. In these circumstances, Respondent No.5 contends that unless the interim orders are vacated, the temple will suffer irreparable loss and injury that cannot be compensated.

5. Heard Sri B. Rama Sankar Rao, learned counsel appearing for the petitioner and learned Government Pleader for Endowments appearing for the respondents.

6. On hearing, learned counsel for the petitioner while reiterating the contents made in the petition, requests this Court to allow the present writ petition while declaring the action of the respondents.

7. Whereas, learned Government Pleader for the respondents also reiterated the contents made in the counter and opposed for allowing the writ petition and prayed to dismiss the same.

8. Perused the material on record.

9. It is the contention of the learned counsel for the petitioner that without issuing any notice and without following due procedure, the 5th respondent wants to conduct public auction is illegal and arbitrary.

10. It is contended by respondents counsel that the auction was conducted on 30.05.2016 around 27 persons were participated and 12 persons paid the auction deposit amount of Rs.3,000/- and 5 persons participated in the audition. The auction was knocked down in favour of one Sri Yella Chinna Rao, S/o. Seethaiah, R/o. Jammu village for an amount of Rs.82000/- per annum for the entire extent. However the lease has not been approved in favour of the highest bidder due to the existing status quo orders. It is further contended that, if the auction is finalized and the possession is delivered to the highest bidder, the temple will be benefited, as the amount paid by the petitioner to the previous trustee towards the 'maktha' is not even one percent in the highest bid amount fetched in the public auction.

11. On a perusal of the material on record, it is observed that, the petitioner has filed a Memo along with documents viz., copy of land Patta, copy of possession certificate, Copies of Cist receipts and copies of Adangal and Pahanies, claiming possession over the subject land. Moreover, as per the recitals in the Section 25 Register the mango garden was in existence as long as back in the year 1957. Further the adangal filed by the petitioner are of the year 2010 and the present adangals show that the temple is the owner and possessor of the mango garden.

12. It is pertinent to mention here Section 87 of The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (in short 'the Endowments Act'), which reproduced hereunder:

87. [Power of Endowments Tribunal to decide certain disputes and matters. [Substituted by Act No. 33 of 2007, dated 11.12.2007.]

(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, 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 from 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.]

13. Section 88 of The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 the Right of appeal against the decision of the Endowments Tribunal under Section 87. *[Substituted by Act No. 33 of 2007, dated 11.12.2007.]*

“Any person aggrieved by the decision of the Endowments Tribunal under Section 87 and Section 119 may, within ninety days from the date of receipt of the decision prefer an appeal to the High Court.”

14. As per Section 87 and 88 of the ‘Endowments Act’, it is very clear that 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. Such exercise could not be done in the instant case. The learned Government Pleader for the respondents vehemently argued that the petitioner is an encroacher over the subject property. Therefore, it is contended that the writ petition is not maintainable under Article 226 of the Constitution.

15. The scope of Article 226 of the Constitution of India is reproduced hereunder:

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.”

16. Section 83 of the Endowments Act deals with eviction of encroachment, which reproduced hereunder:

“83. Encroachment of land, building, or any property belonging to a charitable or religious institution or endowment and the eviction of encroacher:- (1) *Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the encroachment of land,*

building, or any property of a charitable or religious institution or endowment is prohibited.

(2) The Executive Officer of the Charitable or Religious Institution or Endowment or the Assistant Commissioner or any authority higher in rank thereof, shall, by notice, require the encroacher to remove the encroachment as hereinafter provided:

Provided that the encroacher shall be entitled to submit reply/ explanation to such notice within one week from the date of receipt of such notice, which shall be duly considered and appropriate orders thereon shall be passed:-

- (a) Either withdrawing the notice issued and dropping further proceedings; or*
- (b) Affirming the notice and duly stipulating the time within which such encroachment shall be removed.*

(3) If the encroacher fails to remove the encroachment within such stipulated period, the authority who issued the notice shall remove the encroachment with police assistance, if necessary and recover the cost of removal from the encroacher.

(4) For the purpose of securing police assistance, the authority concerned shall approach the jurisdictional Superintendent of Police/ Commissioner of Police who shall thereupon provide such police assistance as is deemed necessary for the removal of encroachment.

(5) Any act of encroachment including the attempt to encroach shall be a cognizable offence, non-bailable and triable as a warrant case, in accordance with the provisions of Code of Criminal Procedure, 1973, punishable with imprisonment for a term which shall not be less than three years but which may extend to eight years and with fine which may extend to Rupees one lakh.

.....”

17. And also 84 of the Endowments Act provides mode of eviction on failure of removal of the encroachments as directed by the Endowments Tribunal. [Substituted by Act No. 33 of 2007, dated 11.12.2007.]

(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 any order of the Endowments Tribunal under sub-section (4) of Section 83 from preferring an appeal before the High Court to establish that the Charitable and religious Institution or Endowment has no title to the land, building or space:

Provided that no appeal shall be preferred after expiry of ninety days from the date of receipt of the order under sub-section (4) of Section 83:

Provided further that no such appeal shall be preferred by a person who is let in to the possession of land, building or space, or who is a lessee, licensee or mortgagee of Institution or Endowment.]

18. As seen from the material on record, it appears that there is a serious dispute involved in between the petitioner and 5th respondent with regard to title over the subject land. The petitioner has not chosen to approach Endowments Tribunal for redressal of his grievance. Since the 5th respondent is claiming the subject land as their land, the issue falls within the jurisdiction of the Endowments Tribunal as per the 'Endowments Act'. An appeal lies against the Award passed by the 'Endowments Tribunal' under Article 226 of the Constitution of India. Therefore, the relief sought for by the petitioner in the instant case is not comes under purview of under Article 226 of the Constitution of India, therefore, this writ petition is not maintainable.

19. However, it is suffice, to issue a direction to the petitioner to approach learned Endowments Tribunal by way of filing Interlocutory Application in O.A. for redressal of his grievance in accordance with law, within four (04) weeks from the date of receipt of a copy of this order. On such submission, the learned Endowments Tribunal is directed to protect the interest of the petitioner till disposal of Interlocutory Application filed by the petitioner in O.A. Till then, the respondents are directed not to take any coercive steps against the petitioner in respect of the subject land.

20. With the above observation, the Writ Petition is disposed of. There shall be no order as to costs. As a sequel, all the pending miscellaneous applications shall stand closed.

DR. K. MANMADHA RAO, J

Date ∴ -03-2025

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THE HON'BLE DR. JUSTICE K. MANMADHA RAO

WRIT PETITION No.16886 OF 2016

Date: 28.03.2025

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