



**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

\*\*\*

**W.P.Nos.10004, 9714, 9723, 9727, 9736, 9744, 10101, 10257,**  
**10268, 10342, 10355, 10361, 10363, 10364, 10383, 10399,**  
**10412, 10413, 10414, 10415, 10416, 10458, 10459, 10460,**  
**10461, 10462, 10463, 10464, 10488, 10493, 10508, 10512,**  
**10513, 10520, 10524, 10525, 10526, 10538, 10541, 10546,**  
**10571, 10573 & 10576 of 2021**

**Between:**

Chintha Narasimha Swamy,  
S/o Ganga Raju,  
R/o Tottaramudi Village,  
Ainavilli Mandal East Godavari District 533 211.

... **Petitioner**

And

- \$ 1. The Assistant Commissioner, Endowments Department,  
Rajamahendravaram, East Godavari District.
2. Sri Muktheswara and Muleswara Swamyvarla Devasthanam,  
Rep. by its Executive Officer, Tottaramudi Village, Ainavilli Mandal,  
East Godavari District.

... **Respondents**

**Date of Judgment pronounced on : 24-08-2021**

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

1. Whether Reporters of Local newspapers : Yes/No  
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No  
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No  
Of the Judgment?



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**\* HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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**10546, 10571, 10573 & 10576 of 2021**

**% Dated: 24-08-2021**

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Rep. by its Executive Officer, Tottaramudi Village, Ainavilli Mandal,

East Godavari District.

**... Respondents**

! Counsel for petitioner

: A. Satya Prasad, learned Senior  
Counsel appearing for Sri Pakash  
Buddarapu.

^Counsel for Respondents 1:

G.P. for Endowments

^Counsel for Respondent No.2

: K. A. Madhava Reddy, learned  
Standing Counsel for Endowments.

<GIST :

>HEAD NOTE:

? Cases referred:



**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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**COMMON ORDER:**

This batch of cases, even though filed by different petitioners as separate writ petitions has common facts and common issues of law. Accordingly all these cases are being disposed of by this common order.

2. The facts necessary for disposal of this batch of writ petitions, are as follows:-

In the year 1993, the 2<sup>nd</sup> respondent Temple herein, filed O.S.No.76 of 1993 in the Court of the II Additional District Munsif, Amalapuram, against 22 defendants. Defendant Nos.1 to 4 were members of the family of the Archakas of the Temple. Defendant Nos.5 to 22 were said to be the persons in illegal occupation of the land belonging to the temple. The prayer in the suit was for permanent injunction restraining the defendants from making any construction in the plaint schedule property and for a mandatory injunction to remove the structures, which were already constructed. This suit was dismissed by the trial Court by way of a judgment and decree dated 10.07.1997 and the same has become final as no appeal had been filed against the said judgment and decree. Thereafter, in the year 2016, members of the families of the Archakas of the temple had filed



W.P.No.5319 of 2016 before the erstwhile High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh. The contention of the Archakas/petitioners in that writ petition, was that the respondents therein, being the authorities under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for Short 'the Act') as well as the revenue department and Gram Panchayat, were not protecting the properties of the temple, which were being encroached by third parties. The Hon'ble High Court by an order dated 19.02.2016 had directed respondent Nos. 2 to 4 therein to take necessary steps to protect the property belonging to the temple and to take necessary steps forthwith for removal of encroachments, if any. The said writ petition, as will be mentioned in the later part of this judgement, has been disposed of recently.

3. In the year 2018, three petitioners, who are other members of the family of the Archakas of the 2<sup>nd</sup> Respondent temple, including petitioner No.3 in W.P.No.5319 of 2016, had again approached the erstwhile High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, by way of W.P.No.4884 of 2018. The contention of the Archakas/petitioners in that writ petition was that the property given to the Archakas of the temple, viz., Ac.7.80 cents of land in Rs.No.73 and Ac.0.40 cents of land in R.S.No.62/5 of Tottaramudi Hamlet of Mukteswaram Village, Inavelli Mandal, was being encroached upon by various persons, and the respondents were not taking any steps to protect the property against the encroachments or remove the illegal encroachments. Five of the respondents in W.P.No.5319 of 2016 were also arrayed as respondents in W.P.No.4884 of 2018. The Regional Joint Commissioner,



Endowments, Rajahmundry, the Superintendent of Police, East Godavari District, and the Sub-Inspector of Police, Inavilli Police Station, were added as parties to W.P.No.4884 of 2018. The Tahsildar, Inavilli Mandal, who was arrayed as respondent No.5 in W.P.No.5319 of 2016 was dropped in W.P.No.4884 of 2018. The Hon'ble High Court had again passed an interlocutory order dated 15.02.2018, in I.A.No.1 of 2018, directing the respondents to comply with the directions given in W.P.No.5319 of 2016 and to remove the encroachments by following due procedure prescribed by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Tribunal Rules, 2010 (for short 'the Rules') and the judgments of the Hon'ble High Court. This writ petition is also pending.

4. As none of the persons, said to be in possession of the land belonging to the temple, had been made parties in either of these writ petitions, implead petitions came to be filed by the said occupants of the land, which is the subject matter of the writ petitions, with the contention that in view of the dismissal of O.S.No.76 of 1993, the implead petitioners cannot be evicted and also on the ground that the directions of the Hon'ble High Court were being interpreted by the authorities to mean that the said occupants of land could be evicted without following the procedure established by law and more particularly Section 83 of the Act. The implead petitioners had also raised the ground that they and their predecessors had been in possession of this land for decades and had obtained possession by way of a permanent lease from the then Archakas of the temple. In



those circumstances, they claimed that none of the petitioners in the above two writ petitions or the respondents in those writ petitions could evict them or remove them in accordance with law or otherwise.

5. The implead petitioners had also filed Writ Appeal No.446 of 2018, against the interlocutory orders of the Hon'ble High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, dated 15.02.2018 in W.P.No.4884 of 2018. A Division Bench of the Hon'ble High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, by way of an order dated 13.03.2018 had disposed of the writ appeal setting aside the order dated 15.02.2018 with a further direction to hear both I.A.No.1 of 2018 and the implead application together.

6. While these two writ petitions were pending before the High Court, the respondents herein, filed applications under Section 83 of the Act, before the Endowments Tribunal, for eviction of all the persons said to be in occupation of various extents of land in part of Ac.7.80 cents of land in S.No.73/1 and part of Ac.0.40 cents of land in R.S.No.62/5 of Tottampudi Hamlet of Mukteswaram Village, Inavilli Mandal, and for payment of damages. These applications were numbered as O.A. Nos. 498 to 500, 502 to 511, 513, 515 to 526, 528, 530, 532 to 543, 555, 560, 562 of 2019. The respondents herein had also filed applications in each of the said cases for payment of damages pending disposal of the main eviction petitions. The Andhra Pradesh Endowments Tribunal, after considering these applications had passed separate orders in all the said applications on 23.03.2021 directing the persons in occupation to pay varying amounts of



damages per month to the 2<sup>nd</sup> respondent, pending disposal of the main eviction petitions.

7. Aggrieved by the said orders, the persons in occupation, who have suffered these orders, have filed separate writ petitions, which are being disposed of by the present common order.

8. Sri A. Satya Prasad, learned Senior Counsel appearing for Sri Pakash Buddarapu, learned counsel for the petitioners in all these cases, assails the orders under challenge on the following grounds.

A) The A.P. Endowments Tribunal is barred from taking cognizance or proceeding with the eviction petitions, including the interlocutory applications for damages, as long as W.P.No.5319 of 2016 and W.P.No.4884 of 2018 are pending before this Court. It is the contention of Sri Satya Prasad, learned Senior Counsel that, the persons in occupation had raised issues on the merits of the case, including the claim that the ancestors of the writ petitioners therein had granted permanent leases to the predecessors of the persons in occupation. He contends that these issues would also arise in the eviction applications filed before the endowments tribunal, and as such, cannot be taken up by the Tribunal till a decision is taken in the above two writ petitions.

B) No interlocutory or other orders can be passed by the A.P. Endowments Tribunal, unless both the Chairman and the Member constituting the Tribunal are present, and at worst, such orders can be passed by the Chairman of the Tribunal. However, in the present case, the post of Chairman is vacant and the Member is passing orders,



including the impugned orders and the said orders are without jurisdiction and authority.

The contention of Sri Satya Prasad, learned Senior Counsel, is as follows:-

a) Section 162 of the Endowments Act, provides for a Tribunal consisting of a Chairman and a Member. These two posts are distinct and fall into separate categories. A decision of the Tribunal would require the presence of both. However, Section 162 (7) validates all proceedings done in the absence of the Member, on account of a vacancy in that post. There is no provision to validate decisions or proceedings undertaken in the absence of the Chairman.

b) A subsidiary argument raised by Mr. A. Satya Prasad, learned Senior Counsel, was that the Rules, which were amended by G.O.Ms.No.419 dated 26.01.2015, are clearly incompatible with the provisions of the Act and as such these Rules which also permit the Member, in the absence of the Chairman to pass orders both in the main applications as well as the interlocutory Applications, are clearly in conflict with and are in violative of the provisions of the Act, and as such, these Rules have to be ignored.

9. Sub-rule (3) of Rule 22 of the Rules were added by way of G.O.Ms.No.419 dated 09.11.2015. This sub-rule provides that wherever there is a vacancy of Chairman existing, the Member will act as Chairman and would be competent to conduct proceedings and pass orders including decrees. This Rule goes beyond the provisions of Section 167 (7) of the Act. It is settled law that the Rules cannot run contrary to the provisions of the Act, which provides only for the absence of the Member and not the Chairman.





10. The learned Government Pleader for endowments contended that both the grounds raised by the petitioners are not tenable. She submits that both the "Chairman" and "Member" fall within the category of members described in Section 162(7) and relies upon Section 162 (3) for the said contention.

**Consideration of the Court:**

11. The first contention raised by the petitioners is that the Endowment Tribunal could not have proceeded with the eviction petitions or the interlocutory applications during the pendency of W.P.No.4884 of 2018 and W.P.No.5319 of 2016. These two writ petitions have been disposed of by this court by an order dated 17.08.2021. The operative part of the order is as follows:

"In that view of the matter, these writ petitions are disposed of with a direction to the Endowments Tribunal to permit all the persons in possession of the lands against whom the Original Applications have been filed to raise all issues relating to the maintainability of the applications, as well as on the merits of the case. Upon such issues being raised, the tribunal shall frame appropriate issues and decide these issues along with the issues relating to the merits of the case after giving due opportunity and hearing to the persons raising these issues."

12. On account of the above order, this issue does not survive anymore. However, since the issue of the maintainability of the Original Applications would have to be decided by the Tribunal, it would be in the fitness of things to remit all these cases back to the Tribunal to decide whether the main applications as well as the applications filed for damages are maintainable before deciding on the interlocutory applications for damages.



13. The second ground along with the subsidiary issue raised therein is that the impugned orders in this batch of writ petitions were passed by the Member of the Tribunal in the absence of the Chairman and such an order is not in accordance with the requirements of Section 162 of the Act. The further argument is that even though Rule 22 (3) of the Rules provided for passing of such orders by the Member, in the absence of Chairman, the said Rule would have to be ignored as it is in conflict with the requirements of Section 162 of the Act.

14. The learned Senior Counsel had also pointed out to various provisions in the Rules, which stipulate that the Tribunal, would have the power of a civil Court for various purposes and also have the power to impose sentence of imprisonment up to a period of two years. He submits that the Members who have no judicial experience would effectively be given power which has to be exercised by a judicially trained person with experience in deciding such matters and such a situation would not be conducive for a proper adjudication of issues.

15. The provision, relevant for deciding this issue, is Section 162 of the Act, which reads as follows:

**162. Constitution of Endowments Tribunal.** - (1) Government may, for the purpose of this Act, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or the matter relating to a Charitable Institution, Dharmadayam, Religious charity, Religions Endowments, Religious Institution or any Institution as defined in the Act and also define the local limits and jurisdiction of each of such Tribunals.



(2) Where any application is made relating to any property of the institution which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the Head Office or the main institution is located and where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute question or other matter.

(3) The Tribunal shall consist of a Chairman and one other member to be appointed by the Government.

(4) The Chairman shall be a person who is or has been a judicial officer not below the rank of a District Judge and a member shall be a person, who holds or has held a post not below the rank of Additional Commissioner of Endowments.

(5) The Government may, from time to time, likewise reconstitute any Tribunal constituted under subsection (1) or may abolish such Tribunal.

(6) The procedure followed by a Tribunal and the manner of taking decision there at and the procedure and conduct of its business shall be such as may be prescribed.

(7) No Act or proceeding of any Tribunal shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect, in the constitution or reconstitution thereof.

16. Section 162(3) stipulates that every Tribunal constituted under Section 162 shall consist of two persons, viz., a Chairman and one other member. It must be noted that, in the event of the work of the Tribunal increasing beyond the capacity of the Tribunal, the Act does not provide for expansion of the tribunal by inducting more members. Section 162(1) and (2) provides for establishment of as



many Tribunals as may be necessary. Section 162(4) lays down the qualifications necessary for the appointment of the Chairman and the qualifications for the appointment of the Member. There is no definition for the term "Chairman" or "Member" of the Tribunal under the Act. The said terms are defined under Rules 2(3) and (5). Rule 2(3) had been amended by G.O.Ms.No.419 dated 09.11.2015 to provide for appointment of retired High Court Judges also. However, this sub-rule has been further amended by G.O.Ms.No.385 dated 30.08.2019 bringing it back in line with the provisions of Section 162(3). A similar amendment in the definition of Member was again rectified by G.O.Ms.No.385 dated 30.08.2019.

17. Coming back to the provisions of Section 162 of the Act, Section 162(7) validates all acts or proceedings of the Tribunal conducted during the vacancy among its members. This would mean that, in the normal course, all decisions and proceedings of the Tribunal, have to be done with the participation of both the persons. In the event of a vacancy arising in relation to one of its members, the other person can carry on all the functions of the Tribunal.

18. The question that comes up now before this Court is whether the Chairman should be treated as a Member also, or whether he would not come within the meaning of Member under Section 162(3).

19. Sub-section (3) of Section 162 mandates that the Tribunal shall consist of a Chairman and one other Member. That is, the Tribunal consists of two people only. In such a situation, the only interpretation possible, to give meaning to the words "one other", would be to treat the Chairman as one member and the "member" as



the second member of the Tribunal. Any other interpretation would mean that the words "one other" are superfluous and such an interpretation would be against the cardinal principle of interpretation that a provision of law has to be read so as to give meaning to every word in the provision.

20. Section 162 (7) would strengthen this interpretation. Section 162(7) validates all acts or proceedings, which would otherwise be deemed to be invalid on account of the vacancies among its members. Section 162(3) provides for constitution of a Tribunal with a Chairman and one other Member. This would mean that if the Chairman is not to be treated as a Member, there would only be one Member in the Tribunal. However, Section 162(7) provides for validation of actions, which would be invalid on account of vacancy among "its members". The Act speaks of a plurality of Members. In such a case, the only way plurality can be given meaning is by interpreting the provisions of the Act to mean that the Chairman also is a Member of the Tribunal. In view of this interpretation, placed by this Court, on the provisions of Section 162, it would have to be held that the Chairman is also a Member of the Tribunal and actions taken by the Member, in the absence of the Chairman, on account of a vacancy in that position, would stand validated under Section 162(7).

21. While the provisions of Section 162 could only be interpreted in the manner set out above, it must not be forgotten that such a provision is made to provide for temporary exigencies of posts in the Tribunal being vacant. This cannot mean that the State, under the protection of Section 162(7) can keep the post of Chairman vacant for long periods extending into years and continue to run the Tribunals



with single Members. As pointed out by Sri Satya Prasad, learned Senior Counsel, the Tribunal has powers of imprisonment and the powers of a civil Court, for passing of decrees which would be binding on the parties before the Tribunal. The prolonged absence of a Chairman, who would be a person with the experience of a District Judge, is not, by any stretch of imagination, a compliance of the statutory requirement of section 162.

22. Even though the impugned orders cannot be assailed on these grounds, it would have to be held that such a situation cannot be permitted to go on. Accordingly, the Government would be well advised to undertake the reconstitution of the Endowment Tribunal at Amaravati by appointing a Chairman to the Tribunal at the earliest.

23. As the provisions of the Act itself permit a Member, in the event of the post of Chairman being vacant, to pass such orders, any further consideration of whether the Rules are in conflict with the provisions of the Act, would not be necessary. The issue whether these Rules are contradictory to the provisions of the Act and whether the powers granted to the Tribunal under the Rules, in the absence of such provisions in the Endowment Act, are sustainable, are issues, which are left open for decision in a more suitable case.

24. In the circumstances, these writ Petitions are disposed of with the following directions:

1. The orders dated 23.03.2021, passed by the Endowment Tribunal, in

I.A.No.1095 of 2019 in O.A.No.498 of 2019; I.A.No.1097 of 2019 in O.A.No.499 of 2019; I.A.No.1099 of 2019 in O.A.No.500 of 2019; I.A.No.1103 of 2019 in O.A.No.502 of 2019; I.A.No.1105 of



2019 in O.A.No.503 of 2019; I.A.No.1107 of 2019 in O.A.No.504 of 2019; I.A.No.1109 of 2019 in O.A.No.505 of 2019; I.A.No.1111 of 2019 in O.A.No.506 of 2019; I.A.No.1113 of 2019 in O.A.No.507 of 2019; I.A.No.1115 of 2019 in O.A.No.508 of 2019; I.A.No.1117 of 2019 in O.A.No.509 of 2019; I.A.No.1119 of 2019 in O.A.No.510 of 2019; I.A.No.1121 of 2019 in O.A.No.511 of 2019; I.A.No.1125 of 2019 in O.A.No.513 of 2019; I.A.No.1129 of 2019 in O.A.No.515 of 2019; I.A.No.1131 of 2019 in O.A.No.516 of 2019; I.A.No.1133 of 2019 in O.A.No.517 of 2019; I.A.No.1135 of 2019 in O.A.No.518 of 2019; I.A.No.1137 of 2019 in O.A.No.519 of 2019; I.A.No.1139 of 2019 in O.A.No.520 of 2019; I.A.No.1141 of 2019 in O.A.No.521 of 2019; I.A.No.1143 of 2019 in O.A.No.522 of 2019; I.A.No.1145 of 2019 in O.A.No.523 of 2019; I.A.No.1147 of 2019 in O.A.No.524 of 2019; I.A.No.1149 of 2019 in O.A.No.525 of 2019; I.A.No.1151 of 2019 in O.A.No.526 of 2019; I.A.No.1155 of 2019 in O.A.No.528 of 2019; I.A.No.1159 of 2019 in O.A.No.530 of 2019; I.A.No.1163 of 2019 in O.A.No.532 of 2019; I.A.No.1165 of 2019 in O.A.No.533 of 2019; I.A.No.1167 of 2019 in O.A.No.534 of 2019; I.A.No.1169 of 2019 in O.A.No.535 of 2019; I.A.No.1171 of 2019 in O.A.No.536 of 2019; I.A.No.1173 of 2019 in O.A.No.537 of 2019; I.A.No.1175 of 2019 in O.A.No.538 of 2019; I.A.No.1177 of 2019 in O.A.No.539 of 2019; I.A.No.1179 of 2019 in O.A.No.540 of 2019; I.A.No.1181 of 2019 in O.A.No.541 of 2019; I.A.No.1183 of 2019 in O.A.No.542 of 2019; I.A.No.1185 of 2019 in O.A.No.543 of 2019; I.A.No.1215 of 2019 in O.A.No.555 of 2019; I.A.No.1225 of 2019 in O.A.No.560 of 2019; I.A.No.1229 of 2019 in O.A.No.562 of 2019 are set aside and the I.As are remanded back to the Endowment Tribunal.



2. The I.A.s shall be disposed of along with the main O.A.s wherein the issue of maintainability of the above O.A.s shall be decided along with the merits of the main case after a full fledged enquiry into the main O.A.s.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

**R. RAGHUNANDAN RAO, J**

24<sup>th</sup> August, 2021

Js



**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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