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APHC010097882026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3330]
(Special Original Jurisdiction)

MONDAY, THE 6th DAY OF JULY 2026

PRESENT
THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.5378 of 2026

Between:

1. M MURALI, S/O M.PEDDA VENKATESU, AGED ABOUT 52 YEARS, OCC BUSINESS, R/O 19/646, RKM STREET, KADAPA, YSR KADAPA DISTRICT.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REVENUE (ENDOWMENTS-1) DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATHI, REP.BY ITS PRINCIPAL SECRETARY - 522 238.
2. THE COMMISSIONER OF ENDOWMENTS, STATE OF ANDHRA PRADESH, GOLLAPUDI, VIJAYAWADA - 521 225.
3. THE ASSISTANT COMMISSIONER, ENDOWMENTS DEPARTMENT, KADAPA, YSR KADAPA DISTRICT - 516 001
4. YADALLA PITCHAIAH CHETTY CHARITIES ASSOCIATION, FLAT NO.301, 3RD FLOOR, D.NO.20/999-9-3-5, JONNALAGADDA HEIGHTS, KADAPA TOWN AND MANDAL, YSR KADAPA DISTRICT. PIN-516 001. REP.BY ITS FOUNDER FAMILY MEMBER AND SECRETARY DR.JWALA CHAITANYA.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction, more particularly a writ in the nature of Writ of MANDAMUS declaring the Notice in

Rc.No.170/MSLVA'PC/42, dated 31-01-2026 of the respondent No.4 i.e., Yadalla Pitchaiah Chetty Charities Association, Kadapa rep.by its Founder Family Member and Secretary Dr.Jwala Chaitanya issued under Sec.83(2) of the Act, 30 of 1987 as amended by Act, 36 of 2023 as bad, illegal, arbitrary, opposed to law and one without jurisdiction.

Counsel for the Petitioner:

1. M VIDYASAGAR

Counsel for the Respondent(S):

1. V HIMABINDU
2. GP FOR ENDOWMENTS

The Court made the following:

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.5378 OF 2026

ORDER:

W.P.No.5378 of 2026 is filed to issue a writ, order or direction, more particularly, a writ in the nature of Writ of Mandamus to declare the order passed by the A.P.Endowments Tribunal Amaravathi in O.A.No.54 of 2018 dated 21.01.2026 permitting the withdrawal of O.A. and granting liberty and the consequential Notice issued under Sec.832 of the Act 30 of 36 of 2023 vide Notice Rc.Amended by Act 1987 No.170/MSLV/YPC/42 dated 31.01.2026 of the respondent No.4 i.e., Yadalla Pitchaiah Chetty Charities Association Kadapa rep. by its Founder Family Member and Secretary Dr.Jwala Chaitanya as illegal arbitrary opposed to law and one without jurisdiction.

2. The 4th and 3rd respondents respectively filed O.A.No.54 of 2018 on the file of the A.P.Endowments Tribunal at Amaravathi, Pedakakani, to pass eviction orders against the writ petitioner herein directing to vacate and surrender vacant possession of the petition schedule property, i.e., building bearing D.No.19/646 encroached portion measuring east-west 115 feet and north-south 10 feet in Sy.No.30/2B/1A1, located in Kadapa Town.

3. While the O.A. is pending for consideration/trial/enquiry, the 4th and 3rd respondents herein have filed I.A.No.911 of 2025 for withdrawal of the O.A. and to avail the remedies that are available under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act 30 of 1987'). The Endowments Tribunal, vide order dated 21.01.2026, has allowed the I.A., consequently, the O.A. was dismissed as withdrawn, granting liberty to proceed according to law.

4. Subsequent to dismissal of the O.A. as withdrawn, the 4th respondent has issued notice under Section 83(2) of the Act 30 of 1987, as amended by Act 36 of 2023, to submit explanation within the stipulated time or to vacate the schedule premises, and, in case the petitioner has no explanation to offer, appropriate action will be taken against the writ petitioner as per the provisions of the Act 30 of 1987.

5. The said notice issued under Section 83(2) of the Act 30 of 1987, as amended by Act 36 of 2023, is under challenge in the present Writ Petition on the following grounds:

(i) The Act nowhere specifies that the said enactment would come into force retrospectively and it also does not empower any such permission to proceed to initiate proceedings of eviction under the new

Act to either withdraw the existing proceedings and to initiate afresh, obviously, the very permission granted permitting the 4th respondent to withdraw O.A.No.54 of 2018 with a permission to proceed as per law is wholly impermissible.

(ii) As per the amended Act 36 of 2023, which was brought into force on 27.10.2023 defines the authorities competent to issue the notice to encroachers but nowhere specifies the role of a member of the founder's family to stretch his hands to exercise his jurisdiction or is authorized to exercise his jurisdiction to issue a notice under the Act 30 of 1987; and under Section 83 of the Act 30 of 1987, neither it is issued by the Executive Officer of the R4-Charity nor it is issued by the 3rd respondent-Assistant Commissioner, who are authorized to issue such notices under the Act 30 of 1987 as amended by Act 36 of 2023.

6. Thus, it voiced that the impugned notice suffers from lack of jurisdiction and by virtue of withdrawal; the 4th respondent has lost his claim to proceed on the petitioner's property under the Act 36 of 2023. Hence, prayed to set aside the impugned notice dated 31.01.2026. In addition to the above legal grounds, the petitioner has pleaded factual matrix.

7. The 4th respondent has filed counter affidavit and denied all the averments made in affidavit filed in support of the Writ Petition, *Inter alia*, it is asserted as in the following manner:

(i) It is submitted that the contention of the writ petitioner that the person/authority who caused notice for the 4th respondent is not competent to issue notice. It is absolutely incorrect. The 4th respondent institution is an exempted institution by notification u/s.154 of The Endowment Act vide G.O.Ms.No.1098, Revenue (Endowments-I) Department dated 11.09.2008 exempting Sections 15 and 29 of Endowments Act and vide G.O.Ms.No.306 Revenue (Endts) Department dated 05.11.2021 exempting all provisions except Section 80, in view of the same, the trustee or any person in management is competent to discharge the functions of Executive Officer also in dual capacity and Executive Officer for all practical purposes. Without prejudice to the said convention, even otherwise the Proviso to Section 29 of The Endowments Act empowers the Trustee or any other person to discharge the functions of Executive officer.

(ii) It is submitted that the Trustee/Secretary for all practical purposes, is also an Executive Officer more particularly in view of proviso to Sec.29 of The Endowment Act. The very appointment of the

present Founder Family Member who is the 4th respondent is replacing the then existing Executive Officer vide proceedings in R.C.No.D1/COE-25026/14/2020 dated 12.01.2021 and authorized to discharge the functions of Executive Officer also, as such the present Founder Family Member/Secretary is an EO for all practical purposes including to discharge the functions u/s.83 of the Endowments Act. Without prejudice to the above contentions, since the subject institution is an exempted institution, the deponent has been discharging the functions of Trustee as provided u/s.23 as well as Executive Officer as provided u/s.29 of The Endowment Act for the sake of Sections 83(2) and 83(8) and reference of other provisions under the said section makes it clear that the executive authority defines and includes Trustee, in his absence, as such the trustee is competent while discharging functions of Executive Officer to invoke Section 83 and competent to proceed further since got jurisdiction. The functions of the deponent are dual in nature covered by the above said provisions and the Trustee is responsible under Section 23 for entire management and all administrative responsibilities including the functions of the EO in his absence. Further under rules issued in G.O.Ms.No.888, defines

Executive Authority, which also clinches that Trustee is Executive Officer, in his absence.

(iii) It is submitted that it is the further contention of the writ petitioner that the O.A. already filed for removal of encroachment cannot be withdrawn and the present notice under the Amended Act is impermissible, is liable to be rejected, for the reason that the previous proceedings were initiated under un-amended Section 83 which is not in force now and totally a new and comprehensive section is enacted. It is not involving any taking away or introducing or providing any benefit, but it relates to procedural in nature for effective adjudication, while providing reasonable opportunity and remedies. It is not the case that there is some insertion or deletion of part of the provision. But the present amendment made is total substitution of old sections while also deleting Sections 84 to 86 which were earlier interdependent. In other words, the entire old Section 83 and interdependent Sections 84 to 86 were substituted by new provisions, which is comprehensive. The proceedings earlier initiated as per old provisions cannot be continued in view of repealing of the said sections under non-existing provisions. Without prejudice to the above submissions, presuming it is allowed to continue under the repealed provision, the procedure for

execution of the said order u/s.84 of the Act were also repealed. In view of the same, presuming an order is obtained under the repealed Act, it cannot be executed as such, there is no other option except withdrawing the proceedings under the repealed Act and invoking new provisions and there cannot be any objection much less regarding invocation of the amended provision.

(if) It is submitted that the proceedings under the repealed provision were withdrawn with liberty to invoke the amended provision and to proceed further which order became final passed in O.A.No.54/2018 dated 09.12.2025 there is due permission while withdrawing the earlier proceedings and rightly invoked the amended Act for issuance of notice under challenge dated 31.01.2026, such order in O.A. became final.

(v) It is submitted that the judgment relied on by the petitioner have no application for the present case. There is no accrued benefit under old Act nor it is taken away under amended Act. The amendment is only to the effect that there is a mechanism provided for effective adjudication instead of procedure under old Act. In other words either the old provisions or amended provisions are procedural in nature in order to conduct enquiry. In fact, there is total substitution and

replacement of old provisions. Even it is adjudicated under old Act without prejudice, the above contentions, it cannot be executed in view of omitting of Sections 84 to 86. Hence, the petitioner cannot rely on the said judgment.

(vi) It is submitted that absolutely there are no valid reasons to maintain the present writ petition. In fact, this Hon'ble Court was pleased to consider similar issue that whether Sec 83 as amended by Act 36 of 2023 can be invoked for removal of encroachments and whether writ petition is maintainable as against the orders under amended provision. This Hon'ble Court was pleased to pass orders in W.A.Nos.1188/2025 & 1191/2025 dated 13.11.2025 holding that the Executive Officer can invoke amended Section 83 for removal of encroachment while Trustee / Secretary discharging the same, though incidentally considered the scope of Section 75 and 77. Yet there is another order passed by this Hon'ble Court in W.P.No.28866/2024 & W.P.No.28869/2024 dated 20.12.2024 holding that the alternative remedy cannot be ignored and the person aggrieved by the order u/s.83 can avail the remedy of appeal before the Endowment Tribunal.

8. Heard Sri M. Vidyasagar learned counsel for the petitioner and Sri V.Venugopal Rao assisted by Smt. V.Himabindu counsel for the 4th

respondent-institution and learned Government Pleader for respondents 1 to 3.

CONTENTIONS OF THE PETITIONER'S COUNSEL:

9. Counsel for the petitioner made oral submissions essentially reiterating the facts as stated in the affidavit arguing that the amended act 36 of 2023 doesn't specify that it would come into force retrospectively and the very granting permission to proceed as per law by the Endowment Tribunal is wholly impermissible and relied on the following judgments in support of the above said contention. The Judgment of the Apex Court in the case of ***Ambalal Sarabhai Enterprises Ltd., Vs. Amrit Lal & CO., and another*** reported in (2001) 8 SCC 397: "*For the proposition that the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with the law as existed under the repealed statute*."

10. And the other judgment of erstwhile High Court of Andhra Pradesh in the case of ***Sri Satya Pramod's Teertha Swamuluvaru Vs. Commissioner of Hindu Religious and Charitable Endowments, Andhra Pradesh, Hyderabad and another*** reported in AIR 1971 A.P. 371.

CONTENTIONS OF THE 4TH RESPONDENT COUNSEL:

11. The learned designated senior counsel Sri V.Venugopal Rao made oral submissions essentially reiterating the facts that as stated in the counter affidavit arguing that prior to the amendment of Sections 84 to 86 of the Andhra Pradesh Charitable Hindu Religious Institution and Endowments, Act 30 of 1987 the Deputy Commissioner is vested with the power of removal of encroachments and obtain possession with aid of the police subsequent to the amendment to the provisions indeed the writ petitioner is protected by the principles of natural justice and a procedure is incorporated to evict the encroacher hence the senior vehemently opposed the argument of the counsel appearing for the writ petitioner.

ANSWERING THE I CONTENTION:

12. At the outset, it is the contention of the petitioner's counsel the respondents 4 and 3 cannot withdraw the O.A. and that the amendment that carried out to Section 83 vide amended Act 36 of 2023 doesn't specify that it would come into force retrospectively and the very granting permission to proceed as per law by the Endowment Tribunal

is wholly impermissible and it is not retrospective is support of this contention the following two judgments were relied.

13. As seen from the judgment of the Apex Court in the case of **Ambalal Sarabhai Enterprises Ltd., Vs. Amrit Lal & CO., and another** reported in (2001) 8 SCC 397, when any right is accrued in pending cases then the amended provisions of the act has to be looked into only for the purpose of determining whether the amended provisions indicates a different intention, relying on Section 6 of the General Clauses Act.

14. In the same judgment the Apex Court at para No.37 as observed in the following:

In view of our aforesaid findings, since Rent Controller has the jurisdiction over the subject-matter, it will not be right for the landlord to continue with two parallel proceedings; one under the General Law and other before the Rent Controller. Hence, we further order that **the respondent-landlord to withdraw one of the two proceedings within a period of 6 weeks from today**.

15. In the judgment of erstwhile High Court of Andhra Pradesh in the case of **Sri Satya Pramod's Teertha Swamuluvaru Vs. Commissioner of Hindu Religious and Charitable Endowments,**

Andhra Pradesh, Hyderabad and another reported in AIR 1971 A.P. 371, for the very same proposition and the relevant para is hereby extracted:

> "Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act but only for the purpose of determining whether they indicate a different intention. The following two paragraphs are extracted for the benefit for better understanding.
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> "The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation, Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law."

> “In cases where Section 6 of the General Clauses Act is not applicable, the courts have to scrutinise and find, whether a person under a repealed statute had any vested right. In case he had, then pending proceedings would be saved. However, in cases where Section 6 General Clauses Act is applicable, it is not merely a vested right but all those covered under various sub-clauses from (a) to (e) of Section 6. General Clauses Act. We have already clarified right and privileges under it is limited to those which is acquired and accrued. In such cases pending proceedings is to be continued as if the statute has not been repealed.”

16. The above judgment cited by the petitioner’s counsel manifests that vested rights cannot be nullified by new legislation. In this case, the new legislation has not diminished the petitioner's rights; rather, it has enhanced them. Under Sections 84 and 85 of the Act of 1987 (Act 30 of 1987), the Deputy Commissioner was the competent authority to remove encroachments with police assistance. The petitioner has failed to specify which rights have accrued to them or how the repealed and amended provisions negatively affect their position. Conversely, the amended provisions provide the petitioner with the protection of natural justice and establish a formal procedure for the eviction of encroachers.

Under Order XXIII Rule 1(3) CPC lays down following grounds on which a Court may allow withdrawal of suit. It reads as under:

17. R.1. Withdrawal of suit or abandonment of part of claim.- At any time after, the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or a part of his claim

(2) xxxxxx

(3) Where the Court is satisfied.-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

18. In the case of ***K.S. Bhoopathy and Ors Vs. Kokila and Ors.***, reported in (2000) 5 SCC 458, it has been held that it is the duty of the Court to be satisfied about the existence of “formal defect” or “sufficient grounds” before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the “formal defect” or “sufficient

grounds", such right cannot be considered to be so absolute as to permit or encourage abuse of process of Court. The fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order XXIII Rule 1(3) CPC, the Court must be satisfied about the "formal defect" or "sufficient grounds". "Formal defect" is a defect of form prescribed by the Rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, mis-joinder of parties, failure to disclose a cause of action etc. "Formal defect" must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.

19. In terms of Order XXIII Rule 1(3) (b) where the Court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the word "sufficient grounds", there are two views: One view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the

other view was that the words “other sufficient grounds” in clause(b) should be read independent of the words a ‘formal defect’ and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with “formal defect” envisaged under clause (a) of Rule (1) sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b) that is ”sufficient grounds”.

20. In R. ***Rthianavel Chettiar and another V.V. Sivaramman and others*** (1999) 4 SCC 89, the Apex Court opined:

> "That where a decree passed by the trial court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in the parties to the suit under the decree cannot be taken away by withdrawal of the suit of that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's rights. The impugned judgment of the light court in which contrary view has been expressed cannot be sustained."

21. Courts generally protect valuable rights already accrued to a party, meaning amendments usually cannot destroy past admissions or frustrate final judgments already based on evidence, in the present case on hand there is no evidence adduced and it is trial stage and no rights of the writ petitioner was destroyed that accrued to the petitioners. It is

imperative a right to withdraw a suit in the suit or would be unqualified, if no right has been vested in any other party that the withdrawal would not affect or prejudice anybody's vested rights, then the court can permit to withdraw the suit.

22. In the present case the government has amended certain provisions and omitted Sections 84 to 86 of the Act while introducing some additions to Section 83 of Endowment Act. If the writ petitioners are so aggrieved ought to have been challenged amended provisions. The writ petitioners have not challenged the validity of the provisions. Instead d the respondents have utitlised the said amended provisions and withdrawn their original application taking advantage of those changes is perfectly within the respondents' rights and the respondents cannot be found fault with. It is pertinent to note that the Endowment Tribunal has not commenced the proceedings by recording any evidence. Hence the 1st issue answered against the writ petitioner.

ANSWERING THE II CONTENTION:

23. The other contention of counsel appearing for the writ petitioner is that Founder Family is not the competent to issue notice under Section 83(2) of the Act and lacks the legal authority to issue a notice under Section 83(2) of the Act. According to this provision, the power to issue

an eviction notice to an encroacher is restricted to the Executive Officer of the Charitable or Religious Institution or Endowment, the Assistant Commissioner, or a higher-ranking authority, in the present case the Founder Family member issued notice and the Founder Family is not only the competent and he lacks jurisdiction to issue the impugned notice dated 31.01.2026.

24. The learned designate senior counsel Sri V.Venugopal Rao argued that, for all practical purposes, the current Founder Family member/Secretary functions as an Executive Officer, including the discharge of duties under Section 83(2) of Act 30 of 1987, as the institution is exempted institution, the person who issued notice discharging the functions of Trustee as provided under Section 23 as well as Executive Officer as provided under Section 29 of the Act 30 of 1987 for the sake of Sections 83(2) and 83(8) of the Act 30 of 1987 and relied on some of the Government Orders (G.O's).

25. Conversely, the learned petitioner's counsel would submit that the Government Orders are inapplicable as they are pertain to Aaryavysya Community and the institution are exempted by the Government it is further contended that that the Sections 23 and 29 of the Act 30 of 1987 do not authorize to issue notices by the Founder Family member and

these provisions are irrelevant to the facts of the case. Consequently petitioner's counsel strongly opposes the argument of the learned senior counsel for the respondents and asserting that the Founder Family member is not the competent and lacks the authority to issue impugned notice.

26. It is relevant to state that under 1st Proviso to Section 29 of the Act 30 of 1987 which reads hereunder:

> "Provided that, where there is no Executive Officer in respect of any Charitable or Religious Institution or Endowment, the trustee or the Chairman of the Board of Trustees or any employee of any Institution or Endowment where the income exceeds Rs.2 lakhs, but is less than Rs.25 lakhs per annum, duly authorised by the Commissioner in this behalf shall exercise the powers and perform the functions and discharge duties of an Executive Officer:"

27. Even accepting that the contention of the petitioner's counsel that the G.O.'s relied by the respondents is inapplicable, according to the proceedings of the Commissioner Endowment Department in Rc.No.D1/COE-25026/14/2020, dated 12.01.2021 filed along with the counter affidavit, the income of the 4th respondent institution Sri Yadava Pitchaiah Chetty Charities Association, Kadapa Town, YSR Kadapa District was published U/S.6(b)(i) of the Act 30/1987 is around Rs.22.00 Lakhs per annum. If an institution's annual income ranges from more than ₹2 lakhs to less than ₹25 lakhs, it comes under the administrative

control of the Commissioner Endowments Department. Under the said proviso, the Commissioner is empowered to appoint someone to discharge the official duties of the temple or institution's that are reserved for an Executive Officer. Accordingly, a member of the founder family was appointed to manage the affairs of the 4th respondent institution, the founder Family Member is an executive officer for all practical purposes under the Act 30 of 1987.

28. Hence, for the above discussion, this Court see no merit in the contentions raised by the writ petitioner, the Writ Petition sans merit and, accordingly, it is dismissed. The respondents are directed to proceed by following the procedure of law before evicting the petitioner. However, no order as to costs.

As a sequel, Interlocutory Applications, if any, pending shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 06.07.2026

siva

Whether the order is:

Speaking Yes/No / Reasoned **Yes**/No

Reportable Yes/No / Non-reportable Yes/No

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.5378 OF 2026

Date: 06.07.2026

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