IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN

THURSDAY, THE SECOND DAY OF NOVEMBER, TWO THOUSAND AND TWENTY THREE

WRIT PETITION No.8692 OF 2003
(THROUGH PHYSICAL MODE)

Vaka Raghava Reddy, S/o.Ramakrishna Reddy, 75 years, r/o.Karavadi Village, Ongole Mandal, Prakasam District and others.

… Petitioners

Vs.

Government of Andhra Pradesh, rep. by its Secretary, Hindu Religious and Charitable Endowments Department, Secretariat, Hyderabad and others.

… Respondents

ORDER

Heard.

2) BRIEF FACTS OF THE CASE:

- Vaka Venkata Reddy (Ancestor and Predecessor in title of the Writ Petitioners) being a devotee of the 5th Respondent Temple (Sri Sitarama Swamy Temple), had purchased agricultural land to an extent of Ac.29-95 cents situated in Survey No. 223 of Karumanchi Village, Prakasam District under a registered sale deed dated 25-11-1862 with the object of utilising the income

arising out of the said property for "Kalyanotsavams and Kainkaryams" taking place in the said temple.

- The present Writ Petitioners are the successors of Late Sri Vaka Venkata Reddy.
- The hereditary trustees of the temple represented by P. Venkataraya Sarma, filed two applications in O.A. Nos. 72 and 73 of 1964 before the Deputy Commissioner under Section 57 & 77 of the A.P. Charitable and Religious Institutions and Endowments Act, 1966 questioning the Vaka Family as hereditary trustees for the specific endowment and their exclusive right to perform Kalyanostavam and receive traditional temple honours on such occasions. The Deputy Commissioner upheld the rights of the members of the Vaka Family to perform the said rituals.
- Aggrieved by the said orders, the hereditary trustee of the temple filed O.S. No. 47 of 1975 & O.S. No. 1 of 1976 before the District Judge, Ongole. The learned District Judge held that the concerned property was purchased by Vaka Family with a view to perform kalyanotsavam etc in the temple out of the income of the property. However the learned Judge held that they have not been maintaining the accounts and so directed the defendants to maintain the accounts from the date of judgment and to deposit the income in a scheduled bank etc;

  The Assistant Commissioner, Endowments was given liberty to demand an account of the income from the year 1962 and realise the same.

- Against the judgment of the learned District Judge in O.S. Nos. 47 of 1975 and 1 of 1976, the hereditary trustee of the temple preferred an appeal vide Appeal. Nos. 270 & 614 of 1978.
- When there was no response to his demand from the Defendants 1 to 5 (Writ Petitioners herein) , on 07-03-1979, the 3rd respondent has served a Memo of Charges on the trustees of the specific endowment that
  a) The trustees have not rendered the accounts of the income arising out of the specific endowment right from the year 1960 and thereby have violated the directions of the Hon'ble Court in the suit in O.S. 47 of 75 and 1/76 on the file of the District Court, Ongole to maintain true and correct accounts.
  b) The trustees were guilty of misconduct, misappropriation of the income from the endowment and were guilty of breach of trust.
  c) The trustees are liable to render accounts for the years 1960 to 1979 at the rate of Rs. 6,000/- per year for Ac. 29-05 cents and for 20 years it costs Rs. 1,20,000/- which is the accumulated income of this endowment.
  d) The trustees have divided the property according to their shares in their family property and are keeping it in their possession till this date.

In view of the gravity of the above said charges, the Asst. Commissioner, Endowments, Ongole in exercise of powers vested in him under Section 26 (3) of the Act 1966 have placed the trustees of the specific endowment under suspension pending enquiry.

- For the purpose of enquiry into the above said charges, the hereditary trustees of the specific endowment have filed an explanation before the Asst. Commissioner stating that:
  a) The charges are contrary to the judgment of this Hon'ble Court dated 23-02-1982 vide AS Nos. 270 and 614 of 1978; that they are not liable to account for the past expenditure on their part for the endowment purpose for the period prior to 23-02-1982.
  b) As per the original sale deed, it only talks about the spending income arising out of the land towards performance of Kalyanosthavams and Kainkaryam and it does not mention about maintenance of account by the trustees.
  c) The Executive Officer of the temple acting in collusion with the tenants of the property, was collecting rents at far lesser rates than the actual rates to see that only Rs. 6,000/- is realised and thus misappropriating the balance amount.
  d) The trustees of the Specific Endowment have never flouted any directions contained in the Judgments in OS. 47/1975 and in OS. 1/1976 of Sub Court Ongole.
  e) The trustees of the Specific Endowment are entitled to divide the endowment among themselves for the sake of convenience of administration and in proportion to their respective shares so that they can discharge their trust obligations more conveniently.
  f) The hereditary trustees are not guilty of any breach of trust or misappropriation.
  g) In fact when the land recovery decrees were passed against the tenants of the above mentioned specific endowment properties,

the tenants have preferred revisions before this Hon'ble High Court vide CRP Nos. 3655 of 1997 and batch[1] dated 1-10-1997 where it was held that

> "Hereditary Trustees of Specific Endowment i.e., plaintiff – decree holders are entitled to execute their decrees first against the Devasthanam and in case of failure to recover the amount, for any reason, then only execute the decrees against the petitioner – tenants."

- By Order dated 05-10-1996 vide Rc.No. A1/8791/95, the third respondent (Asst. Commissioner, Endowments) held that hereditary trustees failed to prove their case and consequently they are liable to be removed from the management of the specific endowment.
- A Revision Petition No.7 of 1997 was preferred before the Revisional Authority i.e. 2nd Respondent (Regional Joint Commissioner, Multi Zone II).

The Revision has been dismissed by the order dated02-01-2003 holding that the Executive Officer of the Temple is entitled to take possession of the Specific Endowment properties and also recover profits made by the appellants (hereditary trustees of specific endowment) over the land of specific endowment and lease out the land to be recovered from the appellants by way of public auction by following the rules in force.

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[1] The revision has been filed by the tenants of the trustees against the decision of a Small Causes Court in Small Causes Suit which held that there exists the relationship of landlord and tenant between the trustees – Plaintiffs and the tenants – Defendants and consequently decreed the suits.

- Against the orders passed in Revision Petition No. 7 of 1997 dated 02-01-2003, the present Writ Petition has been filed by the Petitioners.

RELIEF SOUGHT:

To issue an appropriate writ, order or direction, particularly one in the nature of a Writ of Mandamus declaring:

a) The Order in Revision Petition No. 7 of 1997 dated 02-1-2003 of the 2nd respondent, confirming the Order of the 3rd respondent dated 05-10-1996 as void, illegal, unjust.
b) And consequently direct the Respondent authorities not to interfere with the rights of the petitioner/hereditary trustees in respect of the specific endowment in favour of the 5th respondent temple, Karawadi Village, Prakasam District etc.

3) PETITIONERS CONTENTIONS:

- The petitioners submits that they are the descendants of one Vaka Venkata Reddy who purchased the subject matter of the Agricultural Land from one Mr. Addanki Lakshmaiah via registered sale deed dated 25-11-1862. The sale deed conveys an absolute interest in the property in favour of the purchaser and it also states that income arising out of the said land shall be used for the purpose of performing Kalyanosthsavams and Kainkaryam relating to the 5th respondent temple in Karavadi Village. Thus a specific endowment has been created in favour of the temple and the petitioners have thus been the hereditary trustees of the said specific endowment.

- It is submitted that the Ownership, Rights of Management and Possession of the property have always been with Vaka Venkata Reddy and later on with his successors i.e. Writ Petitioners.

  Thus it has been contended by the petitioners that they hold the property as hereditary trustees and the income in respect of the said property is to be utilised for the said religious purposes. The same has been evidenced by the Judgment of the Court of District Munsiff in OS.No. 111 of 1915 and OS. No. 47 of 1975 and further the Hon'ble High Court of Andhra Pradesh in **A.S.Nos. 270 and 614 of 1978[2] dated 23-02-1982,** wherein the Hon'ble High Court has held that

  i) The Vaka Family purchased the property with an obligation to utilise the income arising from the property towards the performance of Kalyanotsavams and kainkaryams in the suit temple.

  ii) The Defendants 1 to 5 (Writ Petitioners herein) have been in possession of the property since 1862 and about 100 years have elapsed between 1862 and 1964. Throughout this period they have been in possession of the property as trustees thereof.

  ii) The members of the Vaka Family have been functioning as the hereditary trustees of the specific endowment since about 4 generations by 1964 and they have the right to jointly participate along with the hereditary trustees of the temple in the performance

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[2] The issue in these First Appeals were with regard to
i) whether the Sale Deed dated 25-11-1862 creates a Specific Endowment for performing the Kalyanotsavam in Karavadi by members of the Vaka Family as hereditary trustees for Specific Endowment?
ii) whether the members of the Vaka Family have got the exclusive right to perform the Kalyanotsavam in the temple and receive traditional temple honours on such occasions?

of Kalyanosthavams and Kainkaryams subject to the terms and conditions laid down in the Judgment.

iii) The trustees of the specific endowment shall be permitted to participate only after the depositing of Rs. 6,000/- with the hereditary trustee on a tentative basis and balance income arising from the specific endowment as determined by the audit shall be deposited by the trustee of the specific endowment within 6 months after such determination failing which they would not be allowed to participate in the performance of Utsavams.

iv) While performing Utsavams the hereditary trustees of the temple shall have the preference over the trustees of the specific endowment in the matter of reciting Sankalpams and in receiving the Customary Honours. The trustees of the specific endowment will be allowed to participate after setting aside the suspension orders against them.

- The petitioners further submits that by order dated 05-10-1996 vide Rc No. A1/8791/95 the 3rd respondent wrongly held that the hereditary trustees have failed to prove their case and consequently they are liable to be removed from the management of the specific endowment. The 3rd respondent has without any jurisdiction, went into the question of title of hereditary trustees and wrongly concluded that the said trustees cannot divide it. He ignored the vital distinction between the ownership of the corpus of the property and the usufruct (income) from the property. Here the subject matter of the specific endowment is only the income from the property and not the property itself. Thus the entire

appreciation of the material on record before the said authority is vitiated both in law and in fact.

- Further the Revisional Authority i.e. 2nd respondent had wrongly dismissed the revision by order dated 02-01-2003 by holding that the Executive Officer of the Temple is entitled to take possession of the Specific Endowment properties and also recover profits from the hereditary trustees etc. The orders of the said authorities are bad in law for the following reasons:

a) The 3rd respondent went wrong in thinking that the various charges against the hereditary trustees are proved as they have failed to maintain any account in as much as they have not realised income from 1983 onwards;

b) The 3rd respondent failed to see that it was the Executive Officer of the temple who in collusion with the tenants of the properties collected income and he has to account for it;

c) Even before 1982 when there was no direction from the Hon'ble High Court to maintain account etc. the hereditary trustees who have succeeded before this Hon'ble High Court in AS No.270 and 614 of 1978 have been actually performing "Kalyanosthavams and Kainkaryams" spending all the income they have derived from the properties.

d) Even after the Executive Officer has started collecting income himself from the tenants of the properties the hereditary trustees were spending their own money and performing all "Kalyanosthsavams and Kainkaryams" in the temple. It is only the Executive Officer that has to account to the Temple and

Endowment Department in respect of the income realised from the Endowment properties in question.

e) In the absence of realising income by the hereditary trustees because of the wrongful and illegal attitude of the tenants, they could not discharge their obligation of depositing anything into the bank to the credit of the temple. On the other hand they have been spending their own monies for performing the "Kalyanosthavams and Kainkaryams". The various findings of the 3rd respondent in respect of various legal proceedings on the file of various Courts are all contrary to the facts and purports of the judgments in those cases.

f) Both the 2nd and 3rd respondent authorities have erred gravely in ignoring the purport and effect of the judgment of this Hon'ble Court in CRP Nos. 9655/97 dated 01-10-1997 wherein the rights of the hereditary trustees of the specific endowment have been clearly recognised and orders of the authorities under challenge are arbitrary and unjust.

g) The Revisional Authority has failed to take into consideration the explanations and contentions of the hereditary trustees in as much as he has not at all applied his mind to the facts of the case and he has only repeated merely the conclusions of the 3rd respondent.

h) The impugned orders of the 2nd respondent are contrary to the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act.

- The petitioners submit that before framing the charge of misappropriation of funds it has to be preceded by the statutory

procedure of Section 58 (1), (2) (b), 59 (iii), 60 (1), 61 (1) (2), 62, 64 of A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987. By virtue of the above sections, an auditor should have been appointed to do an estimate as regards to the expenditure, deficit if any left unspent out of the income from the Endowment and the same should have been considered while taking appropriate decision in the matter. If the provisions of accounts and audits have been followed, it would have provided a correct conclusion for the authorities to afford a proper opportunity to the delinquent trustees to remedy the matter.

- The petitioners further submits that from the aforesaid facts, the hereditary trustees are not guilty of any misconduct on their part and they have been acting *bona fide* and earnestly in attempting to safeguard the interests of the specific endowment created by their ancestor. Hereditary trustees are entitled to be in possession and management of the said endowment properties. They are entitled to perform "Kalyanotsavam and Kainkaryams" in the said temple. Neither the Executive Officer nor the departmental authorities have any right or interest in impending the exercise of their legitimate rights on the part of the hereditary trustees in respect of specific endowment mentioned above.
- It is further submitted that the Endowment Authorities have no right either to suspend or remove the hereditary trustees of any specific endowment from exercising their rights in respect of the endowment in a hereditary and legitimate manner. Further in respect of the several tenants of the Endowment properties the

hereditary trustees have filed eviction cases vide ATC. Nos. 33 to 40 of 1993 on the file of the Court of the II Additional Junior Civil Judge, Ongole, for eviction of the tenants. They were all decreed in their favour on 24-04-1998 and Appeals preferred by the tenants were dismissed in common judgment in the batch of appeals filed vide ATA Nos. 5 to 18 of 1998 on the file of the Court of District judge, Ongole dated 11-12-2000.

- On account of the orders passed by the 2nd and 3rd respondent authorities, the petitioners are unable to perform their functions properly and effectively. Moreover the said orders are in utter disregard of the judgment of this Hon'ble Court in various proceedings as referred above.
- The decision of the Hon'ble High Court in 2004 (3) ALD 43 is contrary to the decision of the Hon'ble High Court in Judgment in A.S. No. 270 & 614 of 1978 dated 23-02-1982; moreover, that is inconclusive and therefore not binding.
- The Writ Petitioners are mainly relying on the judgments of Hon'ble High Court of Andhra Pradesh vide

i) AS. No. 270 & AS.No. 614 of 1978 dated 23-02-1982

ii) SA. No. 1134 of 2000; 205 of 2001; 238 of 2001 dated17-03-2006[3]

iii) CRP. Nos. 3655 to 3660 of 1997 dated 01-10-1997[4] and

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[3] These Second Appeals were filed against the judgments of the lower courts allowing the hereditary trustees of the specific endowment to recover arrears of Maktha from the tenants of the suit property.
The Hon'ble High Court has held that the descendants of late Vaka Venkata Reddy have the title and right to maintain the suit properties and utilise income derived therefrom for 'Kalyanotsavam and Kainkaryam' of the said temple. The recitals of the sale deed and also as per the Judgement in O.S.No. 11 of 1961, the plaintiffs are entitled to be in possession of the property and also entitled to supervise and maintain the same. Thus they are entitled to collect Maktha from the tenants of the suit schedule property. It is always open for the Endowments Department to regulate the number of trustees required to look after the specific endowment from the descendants of Late Vaka Venkata Reddy.

iv) CRP. Nos 1542 of 1997; 1521 & 5632 of 2000; 2471 & 4897 of 2001 dated 07-02-2003[5]

Relevant Provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987

- Section 2 (22) - Definition of Religious Endowment
- Section 2 (25) - Definition of Specific Endowment
- Section 8 - Commissioners Powers
- Section 16 - Abolition of the Posts of Hereditary Trustees
- Section 17 - Appointment of Non - Hereditary Trustees - preference for the founder members
- Section 20 - Chairman of the Non - Hereditary Trust Board is to be from the founder's family members

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[4] The Revision Petitions involve common questions of law and facts. The Revision Petitions were filed against S.C No. 46 of 1992 and Batch dated 31-10-1995 where decrees have been passed for recovery of certain amounts from the tenants by the trustees of the specific endowment.
The Hon'ble High Court held that relationship of landlord and tenant between the trustees - plaintiffs and the petitioners-tenants did not come to an end on suspension of trustees and just because they had paid the rents to the Devasthanam as per their desire or notification, the liability to pay rent to the trustees did not absolve. Hence it upheld the judgement of the learned District Munsiff and found no reason to interfere with the same.
In the result, the revision petitions are dismissed. However , the decrees shall be modified to the effect that the liability of the petitioners-tenants and Devasthanam shall be joint and several. However , the plaintiffs-decree holders shall be entitled to execute their decrees first against the Devasthanama and in case of their failure to recover the amount, for any reason, then only execute the decree against the petitioners-tenants.

[5] The High Court held that all the leases between the parties in these petitions came to an end on the date of commencement of the Endowments Act and thereafter there is no landlord and tenancy relationship between the institution and cultivator. A Division Bench of this Court in W.P. No. 28714 of 1998 dated 19-02-2002 also held that the provisions of A.P. (Andhra Pradesh) Tenancy Act, 1956 have no application to the Endowments Act in view of the Judgment of the Supreme Court referred supra. Therefore the proceedings before the Authorities under the Tenancy Act are not maintainable and the proceedings initiated either by the Institution or by the cultivator are non est in law.
Therefore all the proceedings initiated and orders passed under the Tenancy Act have become non est in law and the parties are not entitled to enforce the orders passed under the Tenancy Act. Thus all matters have become infructuous.
It is for the respective parties to work out their remedies under the Endowments Act alone. The CRPs are accordingly disposed of.

- Section 58 to 64 - Procedure of Audit etc.

NOTE: During the pendency of this Writ Petition, some of the petitioners in the case died and surviving Petitioners are entitled to continue to proceed with this litigation vide order in the MEMO dated 17-11-2022 by this Court.

4) Respondent No. 2 counter [Regional Joint Commissioner, Multi Zone II, Endowments Department at Tirupati]:

- It is submitted that for the purpose of performing Kalyanotsavam and Kainkaryams in the temple, one Sri Vaka Venkata Reddy created specific endowment dedicating the property purchased by him under the registered sale deed dated 25-11-1862. The said dedication was complete and the property stood vested with the temple and the donor was divested with his ownership rights over the property after such dedication and he is no longer the owner of the said property.

  The successors of the donor used to maintain the property as Trustees. When the petitioners failed to abide by the directions of this Hon'ble Court in A.S. No. 270 and 614 of 1978, the 3rd respondent initiated disciplinary proceedings against the petitioners and framed 8 charges against them. After full fledged enquiry, it was held that all the charges were proved against the petitioners.
- Regarding Hereditary Trusteeship, it is submitted that by the operation of Section 16 of Act 30 of 1987, the office of the hereditary trustee was abolished. The petitioner failed to get

themselves declared as hereditary trustees of the specific endowment by the Deputy Commissioner, Endowments Department as required under the provisions of the Act 30 of 1987. Therefore, the petitioners are no more trustees of the temple. Further, they filed suit in O.S. No. 284 of 2002 on the file of the Addl. Junior Civil Judge, Ongole for recovery of rents against Sri V. Venkata Subbamma and others arraying the instant temple as the 4th defendant and the same was dismissed on merits on 11-03-2005. Assailing the said judgment and the decree the petitioners preferred an appeal in A.S. No. 102/2005. The said appeal was also dismissed on 23-03-2010 on merits. The petitioner failed to abide by the directions of this Hon'ble Court in AS. No.. 270 and 614 of 1978 and failed to render the accounts.

i) It is specifically averred in the above judgment that participation of the trustee of the specific endowment during any calendar year shall be permitted only after the trustees of the specific endowment deposit with the hereditary trustee the amount of Rs. 6,000/- on a tentative basis.

ii) The balance arising from the specific endowment during the audit made by the Endowments Department should be deposited within 6 months after such determination, failing which the trustees of the specific endowment shall not be allowed to participate in the performance of Utsavams and

iii) The trustees of the specific endowment will be allowed to participate only after the setting aside of the suspension orders passed against them .

- The Revision Petition No.7 of 1997 was rightly dismissed by the 2nd respondent. The order contains detailed reasons and conclusions and needs no further clarification.
- As regards the hereditary trusteeship is concerned, the petitioners are not the hereditary trustees of the subject temple and there is no such declaration by the Endowments Department. The petitioners failed to carry the object of dedication and the specific endowment.
- The subject temple is under the management of Fit Person appointed by the Endowments Department vide D.Dis.No. G1/12336/B4, dated 09-03-1984 and Kalyanotsavam and Kainkaryams in the subject temple are being performed by the fit person from the date of his appointment.
- By virtue of A.S. No. 270 and 614 of 1978 the petitioners are entitled to question the validity of the specific endowment and the authority of the department to supervise the endowment. The petitioners are not entitled for any relief and the Writ Petition is liable to be dismissed with costs.

5) RESPONDENT NO.5 COUNTER [Executive Officer, Sri Sitarama Swamy Temple, Karavadi Village, Ongole Mandal, Prakasam District]:

- It is submitted that originally the 3rd respondent issued orders u/Sec. 26 of the Act 17 of 1966 which is corresponding to Section 28 of the present Endowments Act, 1987. The 3rd respondent has initiated disciplinary proceedings against the trustees of the specific endowments attached to the 5th respondent temple and

framed as many as 8 charges and by holding an enquiry comes to a conclusion that all the charges are proved against them and removed them as trustees of the specific endowment.

- It is further submitted that as against the order of removal from trusteeship, an appeal lies under Section 90 of the Endowments Act, 1987. The present revision before the 2nd respondent is not maintainable in law. In the revision petition also, the 2nd respondent has clearly drawn a finding that all the charges were proved beyond any doubt. Regarding the charge of division of property among the writ petitioners, respondent no. 2, relying on the O.S. No. 11 of 1961[6] and S.A. No. 1215 of 1904 (Madras High Court) held that the land is dedicated to the temple and the trustees in violation of the above judgments had treated the temple property of their own. This charge is enough to disqualify the writ petitioner to become trustees. Moreover, the right of hereditary trusteeship was abolished by Act 30 of 1987 and by operation of law also, even if the petitioners succeeded before the respondent

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[6] O.S. No. 11 of 1961 **(17-12-1963)** on the learned Subordinate Judge, Ongole. The temple was the plaintiff in the above suit.

Suit is for the recovery of possession of the Suit Schedule property and to direct the defendants 1 to 5 (Trustees) for rendition of account of the income from the suit properties during the time of their management and to pay the same and for costs.

Issues and Findings:

1. **Whether the plaint schedule property constitutes specific endowment in favour of the plaintiff's temple?**
   The suit schedule property constitutes specific endowment in favour of the plaintiff temple

2. **Whether the plaintiff is entitled to possession of the suit schedule property?**
   The Plaintiff is not entitled to possession of the suit schedule lands

3. **Whether the plaintiff is entitled to ask for accounts of the income on the suit schedule land from the defendants 1 to 5 and if so for what period?**
   The plaintiff is not entitled to ask for an account of the income on the suit schedule land from defendants 1 to 5.

no. 2, they cannot get anything, as the hereditary trusteeship was abolished.

- The same issue was recently raised between the same parties and this Hon'ble Court has given a clear finding that, the Writ Petitioners are not the owners of the land but the temple is the owner of the land vide its judgment reported in 2004 ALT (4) 341 and the judgment has attained the finality. Hence in view of the judgment reported in 2004 ALT (4) 341 also the present writ petition is liable to be dismissed.

6) CASES RELIED UPON BY THE PETITIONERS

- **Maharaja of Jeypore vs. Rukmini Patta mahadevi garu**[7]

In the present case, the issue was with regard to

i) Whether service attached to the grant or lease by the plaintiff is remuneration for discharging the service annexed to the said office or on tenure subject to the condition and burden of rendering such service to the Zamindar?

ii) Whether the plaintiff can take back the land on non performance of such service?

The Hon'ble Court held that it is competent to the plaintiff in the former case (i.e. grant or lease as a remuneration) to dispense with such services and to resume the Pargana at pleasure, and in either case the defendant is liable to forfeit the Pargana by repudiating the plaintiff's title and his (defendant's) liability to render such services, and it is competent to the plaintiff to enforce such forfeiture as he has

[7] 1918 SCC Online PC 2

done by his notice, dated 24-04-1906 and resume the possession and management of the Pargana.

Under Indian law there are circumstances in which such a repudiation will work as a forfeiture. By Transfer of Property Act, 1882 - Section 111 (a), lease of immovable property, determines -

(g) by forfeiture, that is to say (1) in case the lessee breaks an express condition which provides that, on breach thereof the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third persons or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease.

This statutory provision not being retrospective, does not govern the present case. But it is in substance the placing in a statutory form of the rule of law which had already been adopted by the Courts in India.

The qualification that the denial must be clear and unmistakable terms has not infrequently been applied by the Courts in India, which have held that where a tenant admits that he does hold as a tenant of the person who claims to be his landlord, but disputes the terms of the tenancy and sets up terms more favourable to himself, he does not, though he fails in establishing a more favourable tenancy to himself, so far deny the landlord's title as to work a forfeiture.

Further the High Court held that **refusal to render these services did not operate to create a forfeiture or give occasion for resumption.**

The defendant held and the respondent holds a tenure under the appellant.

- **Rani Chhatra Kumari Devi vs. Prince Mohan Bikram Shah**[8]

The Hon'ble Court held that Trust would only continue during such time as equity would enforce specific performance.

But even assuming that by reason of the Contract the properties were impressed with a continuing trust in favour of the respondent, their lordships are unable to hold that this would entitle him to sue for possession as "owner". The Indian law does not recognise legal and equitable estates.

By that law, therefore, there can be but one "owner", and where the property is vested in a trustee the "owner" must, their lordship think, be the trustee. This is the view embodied in the Indian Trusts Act, 1882: See SS. 3, 55, 56 etc.

7) CASES RELIED UPON BY THE GP FOR ENDOWMENTS

- **Vaka Ramakrishna Reddy v. Venkata Subba Reddy**[9] **(27-02-2004)**

The present Revision petition is filed against the judgment and decree dated 24-01-2000 of the II Addl. Junior Civil Judge, Ongole in Small Causes Suit No. 67 of 1998.

The Suit is for recovery of maktha for the years 1995-95 to 1997-98 over the land cultivated by the 1St respondent with interest or to grant the same as damages for use and occupation of the land.

Whether the plaintiff is entitled to continue in possession of the suit property by collecting rents from the tenants and spend the

[8] 1931
[9] 2004 (3) ALD 43

said amount for the purpose for which the specific endowment was created?

The erstwhile High Court of Andhra Pradesh observed that "charitable institutions includes "Specific Endowment". When once the provisions of Endowments Act, 1987 are applicable, the charitable institutions become public institutions, therefore, the trustees are bound to render accounts for the income they receive from the specific endowment, and are bound to spend the said money for Kalyanothsavams and other festivals. But the plaintiff and other trustees failed to render any accounts and there were allegations that they are not utilising the entire amount for the purpose mentioned therein.

When once the trustees of charitable institutions fail to discharge their duties, the Government has every power either to appoint another team of trustees or keep the temple under the management of the Executive Officer, pending appointment of the trustees. As per the provisions of the Endowments Act, 1987, the trustees, including hereditary trustees, are liable to be removed. The system of hereditoryship was also abolished through Endowments Act, 1987, therefore, there cannot be a lien to any individual to claim the trusteeship.

When it is made out from the material that the plaintiff and other trustees were removed through the order of the Assistant Commissioner, the management of the specific endowment has to be taken up by another team of trustees or the Executive Officer. Under Section 29 of the Endowments Act, 1987, it is the responsibility of

the Executive Officer to protect the properties of the Charitable institutions and he is empowered to take steps for protecting such properties, subject to the supervision of the trustees.

Since the plaintiff and others are no more trustees of the specific endowment, the question of supervising and managing the affairs of the specific endowment by them does not arise. The Executive Officer is competent to sue and be sued in the name of the specific endowment, therefore, he has every right to receive the rents paid by the tenants. Since the plaintiff and other trustees were removed from the trusteeship, they are not entitled to supervise the affairs of the specific endowment and the Executive Officer or the next team of trustees have to protect the specific endowment and see that the income of the specific endowment is utilised for the purpose for which it was created.

After carefully going through the record, it is understood that on account of passage of time, the successors of the transferee are getting the property divided due to increase of legal heirs and if the number further increases and if they are allowed partition the property for every generation, there is every likelihood of the property disintegrated and ultimately nothing remains to yield any income and it may not be possible to fulfil the obligation created under Ex.A-1 document (Sale Deed). The transferee under Ex.A-1 gifted the property to fulfil the purpose of the endowment for which it was created. It is the high duty of the trustees to maintain transparency regarding the income from the property and the expenditure they incur. The transparency of the income and expenditure would be possible only by opening a bank account in a nationalised bank

operating the account by depositing the amounts realised from the lands and withdrawing the same for the purpose for which specific endowment is created.

The suit viz., O.S.No. 11 of 1961 filed by the temple was dismissed when there was no allegation of mismanagement of the property by the plaintiff and other trustees. But, the subsequent developments led to initiate departmental action against the trustees and as they were appropriating the income without maintaining proper accounts, the department plunged into action and ultimately removed the trustees.

The object of the specific endowment is to render Kalyanothsavams and Kainkaryam to the deity Sri Seetharamaswamy Varu. Under any circumstances, there shall be no deviation from fulfilment of the object. The object of the Endowments Act, 1987 is to protect the properties of charitable endowment and religious institutions. Since the concerned authorities noticed the failure of the trustees maintaining the accounts of the income and expenditure, there was no option, except to remove them from service and to entrust the duty of management to the Executive Officer. The Executive Officer received the rents paid by the tenant and made necessary entries in the record on behalf of the temple. Since the plaintiff and other trustees are removed from trusteeship, they are not entitled to demand rents of specific endowment from the tenants on behalf of the temple.

So far as the participation of the plaintiff and their other family members in Kalyanothsavams and other Kainkaryam is concerned, since they are the legal heirs of the family which used to manage the specific endowment, they shall be allowed to participate in those

functions as family members of the original trustee and they have every right to ascertain the particulars of the income of the lands and the expenditure incurred in respect of the endowed property.

Since the first respondent (tenant) paid Maktha to the Executive Officer on proper acknowledgement, the plaintiff is not entitled to recover the same. Therefore the Civil Revision Petition is dismissed.

8) In ***M/s Gammon India Ltd. V. Commissioner of Customs, Mumbai***[10]**,** the Hon'ble Supreme Court held that when the language is clear and unambiguous, there is no need to resort to the interpretative process in order to determine whether the said Condition is to be imparted strict or liberal construction.

The Court further observed that if a Bench of a Tribunal, in identical fact- situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another bench of the tribunal on earlier occasion, that will be destructive of the institutional integrity itself. What is important is the Tribunal as an institution and not the personality of the members constituting it. If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, the propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a large bench, for which provision exists in the Act itself.

- In ***Krishna Lal vs. Food Corporation of India & ors***[11]**,** the Hon'ble Supreme Court observed that "Availability of an

[10] 2011 AIR SCW 4175
[11] AIR 2012 SC (Supp) 46

alternative remedy for adjudication of dispute is, therefore, not a ground that can be pressed into service at this belated stage and is accordingly rejected."

- In ***Executive Officer, Sri Bhramaramba Mallikarjuna Swamy Temple, Beeranguda, Patancheru Mandal, Medak District v. Sai Krupa Homes, Karimnagar and others***[12]**,** regarding the jurisdiction of the Civil Court to decide a suit for declaration with respect to lands which are claimed to be property of the Temple and covered under Act 30 of 1987, the Hon'ble High Court held that

"Similar issue was considered by this Court in a Division Bench judgment in JAGGAYYA's case which is based upon the decision of the Supreme Court, which considered similar contention with respect to Andhra Pradesh Charitable and Hindu Religious Institutions and Endowment Act, 1966 wherein similar question with reference to Section 77 of the 1966 Act was considered and the suit was held to be maintainable. The present Section 87 being similar to Section 77 of the 1966 Act, it has to be held that since it is a suit for declaration, the same would not fall within the purview of the authorities under the Act 30 of 1987 under Section 87. Similarly, Section 151 contains a bar of jurisdiction that no suit or legal proceeding in respect of administration or management of an institution or endowment or any other matters of dispute for determining or deciding, for which the provision is made in this Act 30 of 1987 shall be instituted in any Court. As a suit for declaration of title is not falling within the

[12] 2010 (6) ALD 207

parameters of Section 151 of the Act 30 of 1987 the said contention of the appellants is liable to be rejected and it is accordingly rejected."

- In ***Villuri Subba Rao and others Vs. Sri Karyasiddeswara Swamy Vari Temple, Dhinnayagudem rep. By Fit-person and Executive Officer and others***[13]**,** the main issue is with regard to whether a suit can be filed in the civil court in view of the provisions contained in the Endowments Act?

The Hon'ble Court held that though there is no provision in the 1967 Act ousting the jurisdiction of the Civil Court expressly the position as pointed out by the Division Bench is that Section 77 was construed as ousting the jurisdiction of the civil court. So , no distinction can be made between 1951 Act and 1966 Act on that ground i.e. regarding the jurisdiction of the civil court in the matters to be decided by the Deputy Commissioner because even regarding the 1966 Act it was held that the Civil Court has no jurisdiction to entertain the disputes to be enquired by the Deputy Commissioner even though there is no specific provision ousting the jurisdiction of the Civil Court.

- In ***Rbf Rig Corporation, Mumbai vs Commissioner Of Customs (Imports), Mumbai***[14]**,** the Hon'ble Supreme Court held that Article 226 of the Constitution confers powers on the High Court to issue certain writs for the enforcement of fundamental rights conferred by Part-III of the Constitution or for any other purpose.

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[13] 1990 (1) An.n W.R. 313
[14] AIR 2012 SC (Supp) 176

The question, whether any particular relief should be granted under Article 226 of the Constitution, depends on the facts of each case. The guiding principle in all cases is promotion of justice and prevention of injustice. In *Comptroller and Auditor-General of India v. K.S. Jagannathan*, (1986) 2 SCC 679, this Court has held:

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

In *Dwarkanath v. ITO*, AIR 1966 SC 81, this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country."

In Halsbury's Laws of England, 4th Edn., Vol.I, para 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

- In ***D.V. Raghavacharyulu vs Deputy Commissioner Endowments Department, Guntur and others***[15]**,** the Hon'ble Division Bench of the erstwhile Andhra Pradesh High Court held that "The hereditary trustee is entitled to succeed to the officer under the rule of succession and he can be suspended, removed or dismissed after following the procedure under sub-sec. (2) of Section 20 of Act 17 of 1966 but the authorities have no right to suspend the hereditary trustee pending disposal of the charges framed against him."

[15] AIR 1984 ANDHRA PRADESH 39

- In ***Amarawadi Venkata Narsaiah Trust, Hyderabad v. State Of Andhra Pradesh and others***[16]**,** the issue for consideration in the present case is whether the agriculture department is legally entitled to retain possession of the subject land, be it for an educational or any other purpose, in the light of the specific endowment created by late Sri Amarawadi Venkata Narsaiah under his will dated 21. 08. 1954. Late Sri Amarawadi Venkata Narasaiah, being the donor of the endowed properties, created a charitable and religious endowment in as much as he desired that an educational institution be established with the use of his property. The said endowment also had religious overtones as he desired that the educational institution should be named after lord Sri Venkateswara.

The Hon'ble High Court held that "The State having been placed under an obligation by the donor, cannot claim independent proprietary rights in respect of the endowed properties, in excess of or over and above what was bestowed upon it under the will dated 21. 08. 1954. It is manifest that the State being the original trustee under the will dated 21. 08. 1954 could not have betrayed such trust and it is not open to the agriculture department, claiming through such trustee, to assert any rights over the subject lands in variance with the objective of the endowment.The stand of the agriculture department that the state had such rights must therefore be rejected."

[16] 2009 (2) ALD 417

- In ***Pannalal Bansilal Patil & Ors. Etc vs State Of Andhra Pradesh & Anr***[17]***,*** the Hon'ble Supreme Court observed that Section 17 of the predecessor Act of 1966 had given power to a hereditary trustee to be the chairman of the board of non-hereditary trustee. Though abolition of hereditary right in trusteeship under Section 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfillment of the objective with which it was founded unless, in due course, foul in its management is proved.

Therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feeling to actively participate, not only as a true representative of the source, but the same also generate greater influence in proper and efficient management of the charitable or religious institution or endowment. Equally, it enables him to persuade other members to follow the principles, practices, tenets, customs and sampradayams of the founder of the charitable or religious institution or endowment or specific endowment.

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[17] AIR 1996 SUPREME COURT 1023

Mere membership along with others, many a times, may diminish the personality of the member of the family. Even in case some funds are needed for repairs, improvement, expansion etc., the board headed by the founder or his family member may raise funds from the public to do the needful, while the executive officer, being a Government servant, would be handicapped or in some cases may not even show interest or inclination in that behalf. With a view, therefore, to effectuate the object of the religious or charitable institution or endowment or specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective.

The founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable or religious institutions or endowment or specific endowment thereof in future. It would add incentive to establish similar institutions.

Sections 17 and 29(5) of Act 30 of 1987 cannot, therefore, be faulted. Whatever rigour these sections have, would be duly get softened by the requirement of the board being headed by the founder or any of his family members, as the case may be. Subject to this rider, the Supreme Court upholds the validity of these two Sections.

- In ***Govt. Of A.P. v. G. Rajendranath Goud and others***[18], the Division Bench of Hon'ble erstwhile High Court of Andhra Pradesh held that "Section 142 of Act 30 of 1987 has saved only the "honour" of participating in the religious ceremonies by the

[18] 1996 (6) ALD 147 (DB)

trustees. In other words, such an "honour" the hereditary trustee would continue to enjoy without any 'honorarium' or any kind of rights, which were earlier recognised as hereditary rights. The other saving as provided under Section 17(1) of the Endowments Act, 1987, is that whenever a trust is to be constituted, one of the trustees shall be from the family of the founder trust, if he is not disqualified. As per this provisions the 'honour' is saved to the family of the founder of the trust to occupy one seat in the trust board by virtue of such hereditary right of succession without being appointed as a trustee in the manner prescribed for other trustees, as long as such trustee of the founder family is qualified to be a trustee."

- In ***Sunita Devi vs State Of Bihar and another***[19]**,** the Hon'ble Supreme Court observed that "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law", as held in *Young v. Bristol Aeroplane Co. Ltd.*, [1944] 2 All E.R. 293, is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority," Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution of India, 1950 which embodies the doctrine of precedents as a matter of law. The above position was highlighted in *State of U.P. and Another v. Synthetics and Chemicals Ltd. and Another*, [1991] 4 SCC 139. To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.

[19] AIR 2005 SUPREME COURT 498

- In ***Ramachandra Dagdu Sonavane (Dead) By L.Rs. and ors v. Vithu Hira Mahar (Dead) By L.Rs. & ors***[20]**,** the Hon'ble Supreme Court observed that "if an earlier judgment has to operate as res-judicata in the subsequent proceedings, then all the necessary facts including pleadings of the earlier litigation must be placed on record in the subsequent proceedings."
- In ***Ramji Gupta & Anr vs Gopi Krishan Agrawal (D) & Ors***[21]**,** the Hon'ble Supreme Court observed that "In order to operate as res judicata, the finding must be such, that it disposes of a matter that is directly and substantially in issue in the former suit, and that the said issue must have been heard and finally decided by the court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding a matter which is directly in issue in the case, cannot be made the basis for a plea of res judicata.

A question regarding title in a small cause suit, may be regarded as incidental only to the substantial issue in the suit, and therefore, when a finding as regards title to immovable property is rendered by a Small Causes Court, res judicata cannot be pleaded as a bar in the subsequent regular suit, for the determination or enforcement of any right or interest in the immovable property."

- In ***Smt. Gangabai vs. Smt. Chhabubai***[22]**,** the Hon'ble Supreme Court observed that "When a finding as to title to immovable property is rendered by a Court of Small Causes res judicata cannot be pleaded as a bar in a subsequent regular civil suit for the

[20] AIR 2010 SUPREME COURT 818
[21] AIR 2013 SUPREME COURT 3099
[22] AIR 1982 SUPREME COURT 20

determination or enforcement of any right or interest in immovable property. In order to operate as res judicata the finding must be one disposing of a matter directly and substantially in issue in the former suit and the issue should have been heard and finally decided by the court trying such suit. A matter which is collaterally or incidentally in issue for the purposes of deciding the matter which is directly in issue in the case cannot be made the basis of a plea of res judicata. It has long been held that a question of title in a Small Cause suit can be regarded as incidental only to the substantial issue in the suit and cannot operate as res judicata in a subsequent suit in which the question of title is directly raised."

- In ***Bhagwan Dayal vs Mst. Reoti Devi***[23]**,** the Hon'ble Supreme Court observed that "If a particular matter is one which does not fall within the exclusive jurisdiction of the revenue court, then a decision of a revenue court on such a matter, which might be incidentally given by the revenue court, cannot be binding on the parties in a civil court. The present suit was not within the exclusive jurisdiction of the revenue court and, therefore the suit in the civil court was maintainable. The relevant part of s. 11 of the Code reads:

> "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or-between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such

[23] AIR 1962 SUPREME COURT 287

subsequent suit or the suit in, which such issue has been subsequently raised, and has been heard and finally decided by such Court." In this case the title to properties now put in issue was tried in the revenue court. But that court is not competent to try the present suit in which the same issue is raised. It follows that in terms of s.11 of the Code, the decision on the said issue in the revenue court could not operate as res judicata for the necessary condition of competency of that court to try the present suit is lacking.

- In ***Sajjadanashin Sayed Md. B.E. Edr. (D) by L.Rs. vs Musa Dadabhai Ummer & Others***[24]**,** theHon'ble Supreme Court observed that "It will be noticed that the words used in Section 11 CPC are "directly and substantially in issue". If the matter was in issue directly and substantially in a prior litigation and decided against a party then the decision would be res judicata in a subsequent proceeding. Judicial decisions have however held that if a matter was only 'collaterally or incidentally' in issue and decided in an earlier proceeding, the finding therein would not ordinarily be res judicata in a latter proceeding where the matter is directly and substantially in issue."

  The Hon'ble Supreme Court further observed that "It is well settled that an earlier decision which is binding between the parties loses its binding force if between the parties a second decision decides to the contrary. Then, in the third litigation, the

[24] AIR 2000 SUPREME COURT 1238

decision in the second one will prevail and not the decision in the first."

- In ***R.S. Bakshi and anr vs. H.K. Malhari and anr***[25]**,** the Hon'ble Delhi High Court held that "Rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider my statue while deciding that issue, a case cannot be referred to a Larger Bench on mere asking of a party. A decision by two Judges, has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law."

- In ***Ushodaya Enterprises Ltd. vs. Commissioner Of Commercial Taxes, AP***[26]**,** the Hon'ble Division Bench of erstwhile Andhra Pradesh High Court held that "In a case of conflict arising from the decisions of co-equal benches of the Supreme Court, the High Court is free to disregard the decision which is based on an obvious mistake of fact or the one which purports to follow the ratio of an earlier decision though such ratio is found to be non-existent. The High Court can legitimately decline to follow such a decision and follow the earlier decision which is backed by reasoning-whether it is acceptable to the High Court or not, and which is free from any such apparent flaw. We are unable to persuade ourselves to subscribe to the view that the later decision

[25] 2002 IAD DELHI 589
[26] 1998 (3) ALD 478 (FB)

should be automatically followed despite the fact that it rests on a conclusion based on an erroneous impression that an earlier decision took a particular view which in fact it has not taken. By doing so, we are neither questioning the hierarchical superiority of the Supreme Court nor the higher wisdom of the Hon'ble Judges of the Supreme Court. We are preferring one decision to the other - both rendered by Division Benches, for obvious reasons so as to avoid an incongruity leading to travesty of justice."

9) NATURE OF PROPERTY:

The Sale deed dated 25-11-1862 mentions that the property is sold to Mr. Vaka Venkata Reddy "for doing every year Kalyana Mahostsavams etc Kainkaryams to Sri Sitarama Swamy in the temple, Karavadi." which reads as under:

> "On 1874 year No.974 Plaintiff's deed, dundhubi Year, Margasira Suddha Chaturdhi dated:-
>
> "Manyam Khandimpu[27]" deed dated 25-11-1862, executed in favour of Vaka Venkata Reddy, Karavadi Village resident, by M/s Addanki Lakshmayya, Maladondrayudu, Ramanna, Narasimham and Lakshmi Narsu. We have in Karumanchi Village, Ongole Taluk, 16 'Gorlu" Manyam, on northern side, northern side half, Eastern side half-8 "gorlu" bounded by East: Kakumani Kondanda Ramulu, Mallavarapu Venkata Reddy,

[27] 'Khandimpu Deed' means 'Condemnation Deed'
"Condemnation refers to the process adopted by the government of seizing private property for public use. The ownership of the property is transferred from private to public enterprise."

Tata Reddy, Venkata Narayana, No. 243,244, Black Cotton Seed land, South: Our land partly, West: Donka land No:230 and our land, North: Land of Nagineni Peddayya, Nagineni Obayya No.247, near Inagaleru, Land of Duggambhotlu Krishnayya No.248, Nagineni Kotayya's 'Koshtam', specified as AB i.e., 8 'gorlu' land, is sold for Rs.1675 to you, and we took that price, it is for doing every year Kalyana mahotsavams etc Kainkaryams to Sri Sitarama Swamy, Karavadi. So, on this 8 'gorlu' land, this "Dundhubhi' year also, according to your wish you can utilise for doing Kainkaryams to the said 'Sitarama Swamy' from generation to generation always.

All waters, trees, treasures etc in this 8 'gorlu' land, you, yourself utilise for the Kainkaryams of 'Sri Sitarama Swami varu'. We or our heirs have no rights for ever. You have to pay taxes to the Government for this 8 'gorlus' land.

This 'Khandimpu' deed is executed voluntarily by us : Lakshmayya's Signature, Malakondrayudu's Signature, Rajanna's Signature, Lakshmi Narusu's Signature, Narsing's Signature.

Witnesses: Karavadi Narasamma, Pisupati Venkambhotlu's son Raghavayya, Addnaki Lakshmi Narsu, 29 October 1862, Addanki Lakshmi Narasayya, Ongole.

Registered on the 26th day of November 1862 at 4PM, Civil Judge, 1874 No.974 filed by Government on 3-11-1874, T.H.Smith, District Munsiff No. 974 filed by Government on 3-11-1874, by guardian on behalf of Plaintiff on 30-06-1875 PDM, given to Plaintiff's pleader Nelaturi Srinivasa Charyulu.

(v) L.A.C completely Dated Judge 27-1-88 Sd. Mohamad Abdul Khadar in District Munsiff court of Ongole O.S.No. 117 of (Torn) produced on the 29.4.16 by the the defendant - admitted in evidence on 29-4-16 and added as (Sd/-) K.K.Suri, District, Munsiff 29-4-1916- Application made on 25-10-1890 stamps call for 28-10-89 stamp paper deposited 29-10-1890 copy ready 5.11.1890 to delivered 12.11.90 (Sd) M.Abdul Khadar examined (True copy) (sd)

D.Venkatanarayana copy claimed 26-8-16 (Sd/-) sri venkatanarayana swami"

It appears from the language of the Sale Deed that the Specific Endowment[28] in favour of the temple is only with respect to the usufruct of the land and not the property itself. If the intention was to endow the land itself there is no need to mention that

"You can utilise the land for doing Kainkaryams to the said 'Sitarama Swamy' from generation to generation. All waters, treasures etc in this 8 'gorlu' land, you, yourself utilise for doing Kainkaryams of 'Sri Sitarama Swamy Varu'."

10) TEMPLE:

The temple is a Section 6 (c) temple. The Executive Officer of the Temple is the Respondent No.5 herein. According to Section 11 of the Act 30 of 1987, the Assistant Commissioner shall, within the

[28] Section 2 (25) of Act 30 of 1987
'Specific Endowment' means any property or money endowed for the performance of any specific service or charity in a charitable or religious institution or for the performance of any other charity, religious or otherwise.

subdivision in his charge, exercise the powers conferred on, and perform the functions entrusted to as such by or under this Act in respect of all institutions and endowments included in the list published under clause (c) of section 6.

The Hierarchy of the Authorities under the Act are as follows:

1. Commissioner
2. Additional Commissioner
3. Regional Joint Commissioner (Incharge of Region)
4. Deputy Commissioner (Incharge of Division)
5. Assistant Commissioner (Incharge of Sub Division)

11) TRUSTEESHIP:

- **SECTION 2**

(29) 'Trustee' means any person whether known as mathadhipati, mohant, dharmakarta mutawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested and includes a Board of Trustees.

(16) Hereditary Trustee means the trustee of a charitable or religious institution or endowment the succession to whose office devolves according to the rule of succession laid down by the founder or according to usage or custom applicable to the institution or endowment or according to the law of succession for the time being in force, as the case may be

- According to Section 16, the hereditary trustees were abolished. But as per the Section 17 (1) proviso, "the **founder**[29] or one of the **members of the family of the founder**[30], if qualified as prescribed, shall be appointed as one of the Trustees." According to Section 15 (2), where the income of the institutions is less than Rs.2.00 lakhs per annum, the **Deputy Commissioner** concerned may constitute a Board of Trustees consisting of five persons in respect of each such temple keeping in view the traditions, sampradayams and wishes of the devotees.

- **Section 28 - Suspension, removal or dismissal of trustee**

  (1) The authority competent to appoint a trustee may suspend, remove or dismiss a trustee if he-

  (a) fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made there under;

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[29] **Explanation I of Section 17 (1):**
'Founder' means,-

(a) In respect of Institution or Endowments exiting at the commencement of this Act, the person who was recognized as Hereditary Trustee under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 or a Member of his family recognized the Competent Authority;
(b) In respect of an Institution or Endowment established after such commencement, the person who has founded such Institution or Endowment or a member of his family and recognized as such by the competent authority.

[30] **Explanation – II of Section 17 (1):**

'Member of the family of the founder' means children, grandchildren and so in agnatic line of succession for the time being in force and declared or recognised as such by the relevant appointing authority.

(b) disobeys any lawful orders issued under the provisions of this Act or the rules made there under, by the Government or the Commissioner [or Additional Commissioner, or the Regional Joint Commissioner] or the Deputy Commissioner or the Assistant Commissioner;

(c) refuses, fails or delays to handover the property and records in his possession relating to the institution or endowment to his successor or any other person authorised in this behalf;

(d) commits any malfeasance or misfeasance or is guilty of breach of trust or misappropriation in respect of the properties of the institution or endowment.

(e) becomes subject to any of the disqualifications specified in section 19; or

(f) in the case of a religious institution or endowment, ceases to profess Hindu religion.

(2) Where it is proposed to take action under sub-section (1), the authority competent to appoint the trustee shall frame a charge against the trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced against him and of adducing evidence in his favour; and the order of suspension, removal or dismissal shall state every charge framed against the trustee, his explanation and the finding on such charge, together with the reasons therefor.

(3) Pending disposal of any charge framed against a trustee, the authority competent to appoint the trustee may suspend the trustee

and appoint a fit person to discharge the duties and perform the functions of the trustee.

- The Petitioners were removed from hereditary trusteeship in 1979 by virtue of disciplinary proceedings against them and since then they are not in possession and management of specific endowment.

12) MAINTENANCE OF ACCOUNTS:

- The District Judge in O.S. No. 47 of 1975 & O.S. No. 1 of 1976 held that "the defendants (petitioners herein) have not been maintaining the accounts and so directed the defendants to maintain the accounts from the date of judgment and to deposit the income in a scheduled bank etc and get the accounts audited by the department.

  The Assistant Commissioner, Endowments was given liberty to demand an account of the income from the year 1962 and realise the same."

So by virtue of the above judgment, the petitioners are accountable for accounts of income from the year 1962. But after the year 1979, the petitioners are not in possession of the property. So the issue arises as to Accounts of Income from 1962-1979.

'The charge that they are not maintaining an account of income would itself tantamount to misconduct and misappropriation of income' is a question to be decided.

- After 1979, the petitioners are not in possession of the lands as they were removed from trusteeship pending enquiry proceedings. From 1979 the lands were in possession of fit person appointed by

the Authorities or Executive Officer and they are collecting the rents from the tenants of the specific endowment property.

So no question of maintaining accounts of income or misappropriation of income shall arise after 1979 by the petitioners.

- According to Section 58 of Act 30 of 1987, where annual income of the institution is less than 2 lakhs per year, it shall be audited annually by an officer subordinate to the Assistant Commissioner and deputed by him for the purpose.

According to Section 59, the Auditor shall send a report to the Assistant Commissioner in respect of the institutions included under Section 6 (c).

According to Section 60, the auditor shall specify in his report all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the charitable or religious institution or endowment or of loss or waste of money or other property thereof, caused by neglect or misconduct or misapplication or collusion or fraud or breach of trust or misappropriation on the part of the trustee or of any other person.

Section 61 provides for the rectification of defects in the audit and Section 62 provides for the rectification of defects detected by the commissioner.

Section 64 states that it is the Duty of the trustee to give all assistance and facilities to auditors.

So before alleging misappropriation, misconduct or breach of trust, an audit should have been conducted by an officer subordinate to the Assistant Commissioner and deputed by him for the purpose.

Both the District Judge in O.S. No. 47 of 1975 & O.S. No. 1 of 1976 and the erstwhile High Court in Appeal No. 270 and 614 of 1978, mandated for an audit.

No opportunity was given for the petitioners to pay a sum of Rs. 1,20,000/- as mentioned in the memorandum of charges either before or during the pendency of the enquiry. No audited amount was also specified on the specific endowment to the petitioners at any point of time if they are otherwise liable for any due amount. Instead the petitioners were removed from the management of the specific endowment and possession of the same was taken over by the Executive Officer. The respondent had not considered the explanation of the petitioners in detail and passed the impugned orders erroneously in a coercive manner which is not warranted under law.

13) PRESENT AUTHORITY TO CONSIDER MATTERS AFRESH

- **Section 87 - Power of Endowments Tribunal to decide certain disputes and matters**

(1) The Endowments Tribunal[31] 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-

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

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[31] Section 162

Constitution of Endowments Tribunal

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

(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;

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

- **Section 88 - Right of appeal against the decision of the Endowments Tribunal under section 87**

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.

- **Section 90 - Appeal in certain cases**

  (1) Any person aggrieved may, within ninety days from the date of receipt by him of an order, appeal against such order where it is passed by -

  (i) the Commissioner under sub-section (1) of section 28[32], sub-section (2) or sub-section (3) of section 61[33], to the Government;

  (ii) **the Deputy Commissioner or the Assistant Commissioner, as the case may be, under sub-section (1) of section 28[34] to the Commissioner**.

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[32] Suspension, Removal or dismissal of trustee by a authority competent to appoint a trustee

[33] Rectification of defects in audit etc

14) The issue of maintenance of accounts of income by the petitioners arises only with respect to the income earned from 1960-1979. And the amount at the rate of Rs.6,000/- per year for 20 years would be equal to Rs.1,20,000/- and the petitioners can be directed to pay such amount with interest at 6% per annum. An Audit be conducted for the years 1960-1979 by the competent authority i.e., by an officer subordinate to the Assistant Commissioner and deputed by him for the purpose or if already conducted then if any excess amount found, then the same can be recovered after giving due opportunity of hearing to the petitioners.

- The contention of the petitioners is that as per the sale deed dated 25-11-1862 [Ac.29-95 cents situated in Survey No. 223 of Karumanchi Village, Prakasam District] that "it is only the usufruct of the land and not the land is given on specific endowment."

15) For the foregoing reasons the impugned orders of the 2nd and 3rd respondents respectively in R.P. No. 7 of 1997 dated 02-01-2003 and the order dated 05-10-1996 are hereby set aside and the respondent authorities are directed not to interfere with the rights of the petitioners/trustees of the specific endowment in favour of the 5th respondent temple regarding the income on Ac. 29-95 cents of agricultural land in Survey No. 223 of Karumanchi Village, Ongole Mandal, Prakasam District except in accordance with law henceforth. The respondents nos. 2 to 5 are directed to handover the possession

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[34] Suspension, Removal or dismissal of trustee by a authority competent to appoint a trustee

and management of the above said specific endowment to the petitioners within 4 months from the date of receipt of this order under an acknowledgment with up to date account of the said property. The petitioners shall pay a sum of Rs.1,20,000/- with simple interest calculated at 6% per annum from the year 1980 to till date to the credit of 5th respondent temple account within one month from the date of receipt of copy of this order for the purpose of participating henceforth in Kalyanothsavams and the other sevas/rituals as earlier in the temple and for the purpose of taking possession and management of the above said specific endowment. If any excess amount is to be paid by the petitioners on account of the audit made and determined if any between the periods from 1962 to 1979 for recovery of the same, the respondent authorities can issue demand notice subject to the permissibility of the same under law and the petitioners shall be given an opportunity to submit their explanation for the same within a period of two weeks from the date of receipt of such demand notice and upon hearing the matter by giving due opportunity to the petitioners and upon verification of the records an appropriate decision shall be taken by the respondent authority concerned strictly on merits for such recovery of amount due if any.

16) The petitioners shall maintain separate account showing the income and expenditure of the above said specific endowment and the income derived on it shall be exclusively spent for the kalyanotsavams, sevas and other kainkaryams for the deity in the respondent No.5 temple as per the avowed object of the specific endowment and the above said accounts in detail shall be submitted

periodically to the respondent authority concerned in compliance with the provisions of law.

17) Accordingly, the writ petition is allowed. Interim orders if any deemed to have been vacated. There shall be no order as to costs.

As a sequel, the miscellaneous applications pending if any shall stand closed.

JUSTICE B. KRISHNA MOHAN

November 2, 2023
Usha/Lmv

HON'BLE SRI JUSTICE B. KRISHNA MOHAN

WRIT PETITION No.8692 OF 2003

November 2, 2023

Usha/Lmv