

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION NO: 42457/2017

VALLURU SIVA PRASAD, S/O. LATE VALIUM BABU RAO,,
OCC: BUSINESS, R/O. D.NO. 8-3-276, 8TH LANE,
BUCHAI AH THOTA, GUNTUR CITY, GUNTUR DISTRICT.

... PETITIONER

Versus

THE DISTRICT REGISTRAR REGISTRATION STAMPS
GUNTUR, GUNTUR CITY, GUNTUR DISTRICT. (FOR
REGISTRATION OF ALIENATION DEEDS) AND OTHERS

... RESPONDENTS

DATE OF ORDER PRONOUNCED : **06.05.2025**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers
may be allowed to see the order? : Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to
see the fair copy of the order? : Yes/No

SUBBA REDDY SATTI, J

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

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... RESPONDENTS

! Counsel for Petitioners : Sri K. Sridhar
^ Counsel for Respondents : GP for Assignment; GP for Revenue,
Sri Khaja Basha,
Standing counsel

< Gist:

> Head Note:

? Cases referred:

- 1) 2024 Supreme (AP) 1069
- 2) AIR 1968 SC 1196
- 3) (2019) 13 SCC 42
- 4) (2003) 10 SCC 578
- 5) (2007) 8 SCC15
- 6) AIR 1953 SC 65
- 7) 2004 SCC OnLine Bom 204
- 8) (2014) 4 SCC 434
- 9) (2022) 7 SCC 508
- 10) 2016 (2) ALD 236
- 11) 2001 (1) SCC 582
- 12) AIR 1974 SC 130

This Court made the following:

APHC010961372017



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

[3331]

TUESDAY, THE SIXTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 42457 /2017

Between:

Valluri Siva Prasad

...PETITIONER(S)

AND

The State Of Andhra Pradesh Rep By Its Principal
Secretary and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1. K. SRIDHAR

Counsel for the Respondent(S):

1.GP FOR ASSIGNMENT (AP)

2.GP FOR REVENUE (AP)

3.SHAIK KHAJA BASHA

The Court made the following:

::ORDER::

Impugning the proceedings issued by respondent No.3 vide proceedings in Rc.No.1104/2005/E4 dated 29.10.2007 to respondent No.1, to prohibit the registration of documents relating to transfer of property of an

extent of Ac.11-38 cents in survey No.508 and an extent of Ac.4-00 cents in survey No.509, in pursuance of the list published by respondent No.2, under Gazette Serial No.874 dated 28.06.1962, the above writ petition is filed.

2. The averments, in brief, in the affidavit, are that the petitioner owns the property admeasuring 313.3 square yards in D.No.508 of Vasavi Nagar, Guntur. The land of an extent of Ac. 2-00 cets, in survey No.508 belonged to Sri Ch. Suryanarayana, who purchased the same under a registered document bearing No.2852/1946 dated 16.10.1946. After Sri Suryanarayana's lifetime, his wife Manikyamma enjoyed the property and later gifted it to her daughter Ch. Padmavathi vide registered gift deed dated 04.06.1964. Smt. Padmavathi, converted Ac.2-00 cts into house plots and sold to different individuals, after obtaining permission from Urban Land Ceiling (ULC) authorities.

b) The Andhra Pradesh State Wakf Board (respondent No.2) filed suit O.S.No.129 of 1967 against Smt. Cherukuri Manikyamma and others for recovery of possession of the property in survey Nos.508 (Ac.2-00 cts) and 509 (Ac.4-00 Cts). The said suit was dismissed by the Sub-ordinate Judge, Guntur, on 30.11.1972. Against the said judgment, plaintiff/respondent No.2 filed an appeal A.S. No.164 of 1972, and the defendant No.5, (R4 in appeal) filed cross objections on the file of the II Additional District Judge, Guntur. The first appellate Court dismissed the appeal in respect of item No.1 of the suit schedule property i.e. Ac.2-00 cts in S.No. 508 and allowed the appeal in respect of item No.2 i.e. land in S.No. 509. Respondent No.3 in the appeal (defendant No.3 in the suit) filed S.A.No.294/1978, and the same was allowed on 18.08.1980. Thereby, the suit filed by the plaintiff for recovery of possession was dismissed in toto.

c) Despite the judgment and decree in O.S.No.129 of 1967, respondent No.3, by the proceedings impugned instructed respondent No.1 to prohibit registration of documents, relating to transfer of property of an extent of Ac.11-38 cents in survey No.508, Vasavi Nagar, Guntur District,

which includes the petitioner's plot in an extent of Ac.2-00, is Wakf property. Hence, the writ petition.

3. A counter affidavit was filed on behalf of respondent No.2. It was contended, *inter alia*, that a writ petition, challenging the list of Wakf property published in the notification under Section 5(2) of the Wakf Act, 1954, is not maintainable. The registered document of the year, 1946 does not provide details about the vendor of late Ch. Suryanarayana, and said Ch. Suryanarana has no title to the property.

b) The Andhra Pradesh State Wakf Board filed O.S.No.129 of 1967 against five defendants in respect of two items. Item No.1 comprises Ac.2-00 in survey No.508, and Item No.2 comprises Ac.2-00 in survey No.509. A small portion of the property was the subject matter of the suit. The plaint schedule property, along with the other property, is Wakf property as per the Andhra Pradesh Gazette Part-II dated 28.06.1962, and it was granted for the service of Nirkhi. The plaint schedule properties were illegally and unauthorizedly alienated by defendant No.4 in favour of defendants 1 to 3.

c) After the death of defendant No.4, his son came on record as defendant No.5 and filed a written statement on behalf of Muthavali and pleaded that the alienations made by his father are not valid. The judgment and decree arising out of O.S.No.129 of 1967 would apply only insofar as items 1 and 2 of the plaint schedule properties are concerned. The Gazette notification was not dealt with by the Civil Court. The mere finding given by the Civil Court will not take away the right or title of the Andhra Pradesh State Wakf Board over the property. The State Government issued a gazette notification on 28.06.1962, notifying the list of properties as Wakf properties, and the notification is subsisting. No objections were raised to the notification either at the time of the survey or before publication. Therefore, the inclusion of notified properties in the list of prohibited properties under Section 22(A)(1)(C) of the Registration Act, 1908, is valid. The petitioners, without

approaching the Tribunal, filed the above writ petition. Eventually, prayed to dismiss the writ petition.

4. The petitioners filed an interlocutory application to direct respondents 1, 4 and 5, to received, register and release conveyance deeds in respect of the subject property. By order dated 20.12.2017, an interim order was granted.

5. Learned counsel for the petitioner would contend that the suit filed by the Andhra Pradesh State Wakf Board for recovery of possession of the property was dismissed in respect of Ac.2-00 cents each in survey Nos.508 and 509 in Vasavi Nagar, Guntur District. Against the said judgment and decree, the plaintiff filed an appeal, and the first appellate Court partly allowed the appeal in respect of land in survey No.509. The second appeal filed by defendant No.4 in the suit, regarding the land in Survey No.509, was allowed, and thereby the suit was dismissed in toto. He would also submit that even after suffering a decree in the suit for recovery of possession of Ac.2-00 each in survey Nos.508 and 509, from a competent civil court, issuance of the proceedings impugned in the writ petition is not only illegal but also arbitrary. He would also submit that the decree passed by the civil court binds respondents.

6. Per contra, learned standing counsel would contend that Ac.11-38 cents in survey No.508, and Ac.8-22 cents in survey No.509 were gazetted as Wakf land by notification dated 28.06.1962. The petitioner ought to have challenged the gazette notification. The mere finding of the civil court does not take away the right of the Wakf Board over the property. The list was communicated by respondents 2 and 3 in compliance with the orders in W.A.No.343 of 2015 and batch (reported in 2016 (1) ALT 550) and a Government Memo No.179064/IDM/A1/2015 dated 08.03.2016.

7. The points for consideration are:

- 1. Whether the proceedings impugned in the writ petition, despite the Civil Court decree, are legally sustainable?**

2. Whether the writ petition filed by the petitioner is maintainable?

8. Before delving into the matter, let the Court examine the Civil litigation between the Wakf Board and the predecessor in title, of the petitioner. The Andhra Pradesh State Waqf Board, (herein after referred to as 'Waqf Board') represented by its Regional Officer, filed suit O.S.No. 129 of 1967 on the file of the Subordinate Judge Court, Guntur, against Ch. Manikyamma and four others for recovery of property, future profits etc., In the plaint, it was contended, inter alia, that the suit schedule property, along with other properties, was granted for the service of Nikhri (for calling Muslims daily for reading Namaj) in Guntur town. The Waqf Board, Hyderabad, declared the suit property as Waqf property as per the notification in Andhra Pradesh Gazette, Part-II, dated 28.06.1962, and the same became final. The defendants 1, 2, 3 have been in illegal possession of the plaint schedule properties, in view of the alienations made by defendant No.4, on 16.07.1964. Defendant No.4 did not obtain a sanction from the competent authority to alienate the suit property. The defendants, including the predecessor in title of the petitioner, contested this suit.

9. The Trial Court framed eight issues. The relevant issues are:

1. Whether the suit schedule property is waqf property?
2. Whether the suit is barred by limitation?
3. Whether the declaration alleged to have been made by the waqf board is true, valid and binding on the dependents
4. Whether the suit properties were granted for the services of Nikhri as alleged in the plaint and if so, do they constitute trust property?
5. Whether the suit alienations are valid and binding on the plaintiff?
6. Whether the defendants perfected their title by way of adverse possession.

10. During the trial, on behalf of the plaintiff, the work inspector was examined as PW1 and exhibits A1 to A10 were marked. On behalf of the defendants, DW1 to DW4 were examined and exhibits B1 to B11 were marked. The survey report relating to the suit property, the Gazette Notification regarding the properties and the Gazette Notification forming the Waqf Board were marked as Exs. A2 to A4. The registered sale deeds executed by defendant No. 4 in favour of DW1 and others were marked as Exhibit B1. Defendant No.4 purchased Ac.2-00 cts in survey No. 508 vide Ex B5 dated 03.07.1920 and later sold to the husband of D.W1.

11. The Trial Court concluded that the suit schedule property is a Waqf property; however, Ex.A3 Gazette Notification does not bind defendants 1 to 3. The Trial court also concluded that the defendants perfected the title by adverse possession and eventually dismissed the suit.

12. The plaintiff in the suit (Wakf Board) filed an appeal, A.S.No. 164 of 1973 on the file of II Additional District Judge, Guntur. The first Appellate Court recorded a finding that item No.1 of the plaint schedule property (Ac. 2-00 cts in S.No. 508) purchased by the husband of the first defendant in the suit, is not a Waqf property. Defendant No. 4 purchased the said extent under a registered sale deed, Ex. B5 dated 03.07.1920, and hence, the said property lost the character of Waqf. In respect of item No.2 (S.No. 509), the Appellate Court reversed the finding of the trial court. Accordingly, the judgment was rendered on 31.10.1977.

13. Defendant No.3 in the suit filed a Second Appeal, S.A. No. 224 of 1978. The second appeal was allowed by judgment and decree dated 18.08.1980. Since the second appeal was allowed, the suit filed by the Waqf Board was dismissed in toto.

14. It is pertinent to mention here that the First Appellate Court recorded a finding that item No.1 of the plaint schedule property was purchased by **defendant No.4 under a registered sale deed Ex.B5 dated 03.07.1920**

from one of his family members and therefore, it became the personal property of defendant No.4 and hence, the plaintiff's claim in respect of that item was rejected. (emphasis is mine)

15. Thus, a perusal of the findings recorded by the competent civil court would bespeak that an extent of Ac.2-00 cts in survey number 508, initially purchased by defendant No.4 in the suit, on 03.07.1920, and thereafter, he sold the same to the husband of defendant No.1 in the suit, on 16.07.1946 and it is not Wakf property.

16. In the writ affidavit, it was pleaded about the division of the property into plots by the owner and the purchase of the plots by the petitioner and others.

17. The Trial Court, indeed, recorded a finding while dealing with issues 1 and 3 that the Gazette notification EX.A3 doesn't bind the defendants 1 to 3 and it became final.

18. Thus, the Waqf Board, being a party to the suit, is aware of the findings in Civil Suit, in respect of the property Ac.2-00 cts in S.No. 508 of Guntur. Having suffered a decree, whether it is appropriate, on the part of the Waqf Board, respondent No.2, or its officers to communicate to respondent No.3 to include Ac.2-00 cts in survey number 508 of Guntur in the list of prohibited properties, (S.No. 508 total Ac. 11-38 cts including Ac.2-00 cts), the answer should be an emphatic 'No'.

19. In the counter-affidavit filed, on behalf of the second respondent in para 5, it was contended that "the judgment and decree arising out of O.S.No.129 of 1967 would apply only insofar as Items No.1 and 2 of the plaint schedule properties, and that only in respect of Ac. 2.00 cts of land in Survey No.508 and Ac.2-00 cts of land in Survey No. 509". Having pleaded so, again it was pleaded that the Gazette Notification published in favour of Waqf Institution and Waqf Board, is in force and the Civil Court neither discussed nor addressed it; in fact, it is contrary to the finding recorded by the Civil Court. The findings recorded in the suit bind the parties to the suit, hence, the

findings bind respondent No.2. The plot purchased by the petitioner is part of Item No.1 of the suit schedule property in survey No. 508 of Guntur. The inconsistent pleas in the counter speak for themselves.

20. Whether the judgment and decree in the civil suit of a competent civil court operate as *res judicata*?

21. The answer to the point is affirmative. The judgment and decree in O.S.No.129 of 1967 on the file of Subordinate Judge, Guntur, eventually confirmed in second appeal, to which the Board is a party, operates as *res judicata*.

22. This Court in **Y.Nagasubbamma Vs State of Andhra Pradesh**¹ considered the applicability of the principle of 'Res Judicata' to the writ petitions and concluded that Section 11 CPC would apply to the writ petitions. It was held thus:

9. Finality of judgment puts an end to the judicial process. The doctrine of *res judicata* is based on three Roman maxims:

(1) "Nemo debet bis vexari pro una et eadem causa" (no man should be vexed twice for the same cause).

(2) "Interest republicae ut sit finis litium" (it is in the interest of the State that there should be an end to a litigation).

(3) "Re judicata pro veritate accipitur" (judicial decision must be accepted as correct).

10. In *Virudhunagar Steel Rolling Mills Ltd. Vs. Government of Madras*,² the Constitution Bench of the Apex Court held that *res judicata* will apply in writ petitions also. As per Section 11 of Civil Procedure Code, 1908, when the matter has been directly and substantially in issue in a former Page 4 of 11 suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, the

¹2024 Supreme (AP) 1069

²AIR 1968 SC 1196

decree in former suit would be res judicata between the plaintiff and defendant or between the co-plaintiff and co-defendant.

23. In **P. Bandopadhyaya Vs. Union of India**,³ the Hon'ble Apex Court held thus:

“8.11. The decision in S.V. Vasaikar v. Union of India, 2003 SCC Online Bom 171 : (2003) 2 Mah. L.J. 691 : (2003) 4 Bom. C.R. 79 was not challenged before the Supreme Court, and has since attained finality. Therefore, the relief sought by the appellants before the High Court was barred by the principle of res judicata.

Reference can be made to the decision of the Constitution Bench in Direct Recruit Class-II Engg. Officers' Assn. Vs. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339 : AIR 1990 SC 1607 wherein Sharma, J., on behalf of the five-Judge Bench, held: (SCC pp. 740-741, Para 35)

“35.....It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao v. State of U.P. (1962) 1 SCR 574 : AIR 1961 SC 1457 held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general

³(2019) 13 SCC 42

principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32.”

Albeit the decision of the Constitution Bench was in the context of a writ petition filed under Article 32, it would apply with greater force to bar a Page 5 of 11 writ petition filed under Article 226, like the one filed by the present appellants, by the operation of the principle of res judicata.

24. The Hon’ble Apex Court in **K.Ethirajanv. Lakshmi**⁴ held that:

“20. The argument that the principle of res judicata cannot apply because in the previous suit only a part of the property was involved when in the subsequent suit the whole property is the subject-matter, cannot be accepted. The principle of res judicata under Section 11 of the Code of Civil Procedure is attracted where issues directly and substantially involved between the same parties in the previous and subsequent suit are the same, maybe, in the previous suit only a part of the property was involved when in the subsequent suit, the whole property is the subject-matter.also considered the applicability res judicata.

25. In **Sarojav Chinnusamy (dead) by LRs. and another**⁵ the Hon’ble Apex Court held as follows:

In this connection, reference can be made to a decision of the Madras High Court in Arukkani Ammal v. Guruswamy which was also relied on by the first appellate court. The Madras High Court in that decision observed as follows: (LW p. 708, para 1)

⁴(2003) 10 SCC 578),

⁵(2007) 8 SCC 15.

“It is also difficult to appreciate the view taken by the District Munsif that ex parte decree cannot be considered to be ‘full decree on merits’. A decree which is passed ex parte is as good and effective as a decree passed after contest. Before the ex parte decree is passed, the court has to hold that the averments in the plaint and the claim in the suit have been proved. It is, therefore, difficult to endorse the observation made by the Principal District Munsif that such a decree cannot be considered to be a decree passed on merits. It is undoubtedly a decree which is passed without contest; but it is only after the merits of the claim of the plaintiff have been proved to the satisfaction of the trial court, that an occasion to pass an ex parte decree can arise.” (emphasis supplied)

16. We are in full agreement with this view of the Madras High Court holding that a decree which is passed ex parte is as good and effective as a decree passed after contest. A similar view has also been expressed by a Division Bench of the Allahabad High Court in *BramhanandRai v. Dy. Director of Consolidation.*”

26. Thus, a conspectus of the above expressions, even an ex parte decree, would operate as res judicata. Even if the earlier decision is wrong, it still operates as res judicata.

27. In **Mohan Lal Goenka v. Benoy Krishna Mukherjee**⁶ the Apex Court categorically held that the correctness or otherwise of a decision has no bearing on the question whether or not it operates as res judicata.

28. A Division Bench of Bombay High Court in **Sanjay G. Khemuka (Dr.) v. State of Maharashtra**⁷, by relying upon Mohan Lal Goenka case (Supra) observed as follows:

39. At this stage, we want to express that it is not-necessary that the decision rendered by the Competent Court should be legally sound and sustainable in law. Even the erroneous orders or decisions in the earlier case or proceedings operate as res judicata. The Apex Court laid

⁶(AIR 1953 SC 65),

⁷2004 SCC OnLine Bom 204

down proposition of law in this regard way back in 1953 in case of *Mohanlal Goenka v. Benoy Kishna Mukherjee*, (1952) 2 SCC 648 : AIR 1953 SC 65. In Paragraph 23 of its Judgment, the Apex Court has observed thus:—

‘There is ample authority for the proposition that even an erroneous decision on a question of law operates as ‘res judicata’ between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as ‘res judicata’. A decision in the previous execution case between the parties that the matter was not within the competence of the executing Court even though erroneous, is binding on the parties.’

29. The Hon'ble Apex Court in **R. Unnikrishnan v. V.K. Mahanudevan**⁸, observed as follows:

23. In *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy* [(1970) 1 SCC 613] this Court held that for the application of the rule of res judicata, the court is not concerned with the correctness or otherwise of the earlier judgment.

30. Thus, given the categorical findings in the civil litigation in O.S.No. 129 of 1967; A.S.No. 164 of 1973 and S.A.No. 224 of 1978, the communication made by respondent No.2 concerning Ac.2-00 cents out of Ac.11-38 cents in S.No. 508 of Guntur, is hit by the principle of ‘*Res Judicata*’, and hence the communication in respect of Ac.2-00 cts in S.No. 508 of Guntur, is liable to be set aside.

31. Learned standing counsel during the arguments contended that the petitioners can also approach the Wakf Tribunal and get the dispute resolved regarding the Title, and it is the proper remedy.

Whether the petitioner had to approach the Wakf Tribunal?

⁸(2014) 4 SCC 434

32. The contention of the learned standing counsel has no merit, because of Sections 6(1) and Sec 7(5) of the Waqf Act, 1995 (for short 'the Act'). Section 6 of the Act envisages disputes regarding auqaf. Section 6(1), which is relevant is extracted herewith:

6. Disputes regarding auqaf.—(1) If any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or the mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

33. Section 7 of the Act deals with the power of the Tribunal to determine the disputes regarding auqaf. Section 7(1) and (5) of the Act, relevant, is extracted:

1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as waqf property in a list of auqaf is waqf property or not, or whether a waqf specified in such list is a Shia waqf or a Sunni waqf, the Board or the mutawalli of the waqf, or any person aggrieved by the publication of the list of auqaf under section therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

.....

.....

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.”

34. While section 6 outlines parties to approach the tribunal vis-a-vis a dispute regarding property, Section 7 prescribes jurisdiction of the Tribunal to adjudicate the issue. However, an exception is carved out by way of Section 7(5) of the Act, *qua* the jurisdiction. Once the Civil Court adjudicates the dispute, and it becomes final, relegating the petitioner to the Tribunal is a futile exercise and, in fact, the Tribunal lacks jurisdiction.

35. Learned standing counsel would contend that the writ petition itself, is not maintainable.

Whether the petitioner can invoke the jurisdiction of this Court?

36. No doubt, the property right is no longer a Fundamental Right under Part III of the Constitution of India. The property right is now recognised as a Constitutional Right under Article 300-A of the Constitution of India. Since the right of the petitioner under Article 300-A of the Constitution of India is infringed, the petitioner can certainly maintain a writ petition under Article 226 of the Constitution of India.

37. In **Sukh Dutt Ratra v. State of H.P.**,⁹ the Hon'ble Apex Court traced the recognition of the right to property observed as follows:

“13. While the right to property is no longer a fundamental right [“Constitution (Forty-fourth Amendment) Act, 1978”], it is pertinent to note that at the time of dispossession of the subject land, this right was still included in Part III of the Constitution. The right against deprivation of property unless in accordance with procedure established by law, continues to be a constitutional right under Article 300-A.

14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorisation of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in *Entick v. Carrington* [*Entick v. Carrington*, 1765 EWHC (KB) J98 : 95 ER 807] and by this Court in *Wazir Chand v. State of H.P.*

⁹(2022) 7 SCC 508,

[Wazir Chand v. State of H.P., (1955) 1 SCR 408 : AIR 1954 SC 415]
Further, in several judgments, this Court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.

15. When it comes to the subject of private property, this Court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State.”

38. In the case at hand, the petitioner purchased the plot under a registered document dated **07.02.2011**. Respondent No.2, having suffered a decree in the civil proceedings, as seen from the material available on record, never exercised the right over the property till sending the communication to respondent No.3. The communication to include the land, in question, in the prohibited list under Section 22-A(1)(c) of the Registration Act, in the considered opinion of this Court, would create an unwarranted litigation and results in infringement of the right of the petitioner under Article 300-A of the Constitution of India. Hence, the writ petition is maintainable.

Whether the judgment in Vinjamury Rajagopala Chary Vs State of A.P.¹⁰, empowers respondent No.2 to overturn the civil court decree and allows respondent No.2 to communicate the property to be included the list of prohibited properties in Section 22-A (1)(c) of the Registration Act 1908.

39. It is very unfortunate that without understanding the purport of the judgment in **Vinjamury Rajagopla Chary's** case, respondent No.2, while communicating the list of properties, included Ac.2-00 in S.No.(D.No.)508 (508/1) of Guntur, despite the Civil Court judgment.

¹⁰2016 (2) ALD 236

40. In fact, in **Vinjamuri Rajagopala Chary's** case, the Full Bench of the composite High Court of Andhra Pradesh framed the points for consideration as follows:

“1. What are the prerequisites that are to be satisfied for applying any one or more of clauses (a) to (e) of Section 22-A(1) of the Registration Act to any document dealing with alienation or transfer by way of sale, agreement of sale, gift, exchange or lease, etc. in respect of immovable property presented for registration?

2. Under what circumstances, the act of the Registering Authority concerned (District Registrar or Sub-Registrar) in refusing from registration of the aforementioned document/s by applying any one or more of the prohibitory clauses (a) to (e) under Section 22-A(1) of the Registration Act can be said to be justified?

In paragraph-5 of the judgment, it was observed as follows:

“5. Before we look at and consider Section 22-A of Registration Act, it would be necessary and relevant to make a brief reference to the six judgments of different learned Judges dealing with Section 22-A, to which our attention was specifically invited to, so as to understand the exact nature of controversy and factual matrix against which the questions were framed and addressed therein, to enable us to frame and address the questions, covering the field of operation of this provision. The six judgments are:

T.Yedukondalu Vs. State of A.P. (2011 SCC OnLine P 179 : AIR 2011 AP 132).

Dr.DinakarMogili Vs. State of A.P. (2011 SCC OnLine AP 488 : 2011 (6) ALD 502)

Guntur City House Construction Co-operative Society Ltd., Guntur Vs. Tahsildar ((2012 SCC OnLine AP 20 : 2012 (2) ALD 332).

Raavi Satish Vs. State of A.P. (2012 SCC OnLine AP 856 : 2013 (1) ALT 774).

Vinjamuri Rajagopala Chary Vs. State of A.P. (2015 SCC OnLineHyd 407 : 2016 (2) ALD 236)

C.Radhakrishnama Naidu Vs. State of A.P. (2015 SCC OnLineHyd 198 : 2015 (4) ALT 1)

15. After considering each of the clauses of Section 22-A (1) (a) to (e) of the Act and the Government instructions regarding communication and notification, the reference is ordered as follows:

“36. We, thus, summarize our conclusions and issue directions as follows:

- (i) The authorities mentioned in the guidelines, which are obliged to prepare lists of properties covered by clauses (a) to (d), to be sent to the registering authorities under the provisions of Registration Act, shall clearly indicate the relevant clause under which each property is classified.
- (ii) Insofar as clause (a) is concerned, the concerned District Collectors shall also indicate the statute under which a transaction and its registration is prohibited. Further in respect of the properties covered under clause (b), they shall clearly indicate which of the Governments own the property.
- (iii) Insofar as paragraphs (3) and (4) in the Guidelines, covering properties under clause (c) and (d) are concerned, the authorities contemplated therein shall also forward to the registering authorities, along with lists, the extracts of registers/gazette if the property is covered by either endowment or wakf, and declarations/orders made under the provisions of Ceiling Acts if the property is covered under clause (d).

- (iv) The authorities forwarding the lists of properties/lands to the registering authority shall also upload the same to the website of both the Governments, namely igrs.ap.gov.in of the State of Andhra Pradesh and registration.telangana.gov.in of the State of Telangana. If there is any change in the website, the State Governments shall indicate the same to all concerned, may be by issuing a press note or an advertisement in prominent daily news papers.
- (v) No notification, contemplated by sub-section (2) of Section 22A, is necessary with respect to the properties falling under clauses (a) to (d) of sub-section (1) of Section 22-A.
- (vi) The properties covered under clause (e) of Section 22-A shall be notified in the official gazette of the State Governments and shall be forwarded, along with the list of properties, and a copy of the relevant notification/gazette, to the concerned registering authorities under the provisions of Registration Act and shall also place the said notification/gazette on the aforementioned websites of both the State Governments. The Registering authorities shall make available a copy of the Notification/Gazette on an application made by an aggrieved party.
- (vii) The registering authorities would be justified in refusing registration of documents in respect of the properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A provided the authorities contemplated under the guidelines, as aforementioned, have communicated the lists of properties prohibited under these clauses.
- (viii) The concerned authorities, which are obliged to furnish the lists of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, and the concerned Registering Officers shall follow the guidelines scrupulously.

- (ix) It is open to the parties to a document, if the relevant property/land finds place in the list of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, to apply for its deletion from the list or modification thereof, to the concerned authorities as provided for in the guidelines. The concerned authorities are obliged to consider the request in proper perspective and pass appropriate order within six weeks from the date of receipt of the application and make its copy available to the concerned party.
- (x) The redressal mechanism under Section 22-A(4) shall be before the Committees to be constituted by respective State Governments as directed in paragraph-35.1 above. The State Governments shall constitute such committees within eight weeks from the date of pronouncement of this judgment. (xi) Apart from the redressal mechanism, it is also open to an aggrieved person to approach appropriate forum including Civil Court for either seeking appropriate declaration or deletion of his property/land from the list of prohibited properties or for any other appropriate relief.
- (xi) **The directions issued by learned single Judges in six judgments referred to above or any other judgments dealing with the provisions of Section 22-A, if are inconsistent with the observations made or directions issued in this judgment,** it is made clear that the observations made and directions issued in this judgment shall prevail and would be binding on the parties including the registering authorities under the Registration Act or Government officials or the officials under the Endowments Act, Wakf Act and Ceiling Acts. (emphasis is mine)
- (xii) If the party concerned seeks extracts of the list/register/gazette of properties covered by clauses (a) to (e) of Section 22-A (1), received by the registering officer on the basis of which he refused registration, it shall be furnished within 10 days from the date of an application made by the aggrieved party.

- (xiii) Registering officer shall not act and refuse registration of a document in respect of any property furnished to him directly by any authority/officer other than the officers/authorities mentioned in the Guidelines.
- (xiv) Mere registration of a document shall not confer title on the vendee/alienee, if the property is otherwise covered by clauses (a) to (e), but did not find place in the lists furnished by the concerned authorities to the registering officers. In such cases, the only remedy available to the authorities under clauses (a) to (e) of sub section (1) of Section 22-A is to approach appropriate forums for appropriate relief.

41. The Direction No.(xii) in the Full Bench judgment would discern that the directions issued by learned single Judges in six judgments, referred in the judgment, or any other judgments dealing with the provisions of Section 22-A, if it is inconsistent with the observations made or directions issued, the observations made and directions issued in the judgment (full bench) shall prevail and would be binding on the parties, including the registering authorities under the Registration Act or Government officials or the officials under the Endowments Act, Wakf Act and Ceiling Acts. The judgment, in the considered opinion of this court, does not empower the authorities to reopen the disputes already settled.

42. It is pertinent to mention here that after the judgment in **Rajagopala Chary's** case, the State authorities, be it Endowments, Wakf, etc., communicated the list of properties to the Commissioner Stamps and Registration to include the properties belonged to the respective institutions, despite the earlier litigation attained finality, in the list of Prohibited Properties under Section 22-A of the Registration Act, 1908 and thereby opened a pandaro's box. Thus, communicating the properties to include in the list of prohibited properties under Section 22-A of the Registration Act, is not only illegal and arbitrary but also misuses the powers vested in it.

43. However, as discussed supra, respondent No.2, despite the Civil Court decree, communicated the list of properties including the Ac.2-00 cents in Survey No.508 of Guntur, purportedly, acting upon the ratio in Vinjamury Rajagopala Chari's case. In fact, respondent No.2, being an instrumentality of the State, created unwanted litigation. The indifference on the part of the Wakf Board forced the petitioner to invoke the extraordinary jurisdiction.

Whether respondent No.2, by communicating the list of properties, including Ac.2-00 in D.No.508 of Guntur, overreached the judgment of the Civil Court?

44. It is a settled principle of law that a judgment rendered by the Court will be set aside by the appellate Court alone. The operation of the judgment, in certain circumstances, will be wiped out by making legislation. At no stretch of imagination, respondent No.2, being the executive, can be allowed to overturn the judgment rendered by a competent Civil Court. Respondent No.2 neither sat over the judgment of the Civil Court nor overturned the judgment of the Civil Court.

45. The Hon'ble Apex Court in **Union of India v. K.M. Shankarappa**¹¹, considered the challenge to the vires of the provisions Cinematograph Act, 1952, and also considered the aspect of whether the executive can sit over the judgment of the Court, observed as follows:

7. We are unable to accept the submission of the learned counsel. The Government has chosen to establish a quasi-judicial body which has been given the powers, inter alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision that decision would be final and binding so far as the executive and the Government is concerned. To permit the executive to review and/or revise that decision would amount to interference with the exercise of judicial functions by a

¹¹ 2001 (1) SCC 582

quasi-judicial Board. It would amount to subjecting the decision of a quasi-judicial body to the scrutiny of the executive. Under our Constitution the position is reverse. The executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The legislature may, in certain cases, overrule or nullify a judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the executive or the legislature cannot set at naught a judicial order. The executive cannot sit in an appeal or review or revise a judicial order. ...”

46. Thus, in the guise of protecting the properties, despite the judgment of the Civil Court, to overreach the judgment, the said communication, impugned in the writ petition, was made. Respondent No.2, the Waqf Board, cannot act as an appellate court and communicate the list and create another round of litigation. Respondent No.2 should have kept in mind the National/State litigation policy and its objectives before creating unwarranted litigation.

Whether respondent No.2, being the instrumentality of the State, amenable to Article 12 of the Constitution of India, adhered to principles of the litigation policy?

47. The State or its instrumentalities are expected to be a model litigant and shall maintain ethical standards in prosecuting the litigation, being a compulsive litigant. Of late, this Court has noticed that the State or its instrumentalities are creating litigation and compelling individuals to approach the Courts. The State-sponsored litigation not only burdens the private parties but also undermines the credibility of the State as a responsible litigant. The Hon'ble Apex Court highlighted the importance of a litigation policy way back in the year 1978.

48. The Hon'ble Apex Court in **Dilbag Rai Vs UOI**¹² and others commented regarding the absence of a litigation policy of the States, observed as thus:

“The judgment just delivered has my full concurrence but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit Court here and has been negative in the judgment just pronounced.”

49. Learned Single Judge of this Court in **Kodali Rama Devi vs The State of Andhra Pradesh**¹³, observed thus:

These guidelines as recognized by Common Wealth Countries, the litigation in the courts would be minimized though the Government of India or State adopted Litigation Policy, but it did not serve any useful purpose. Therefore, the Government being litigant is at least expected to follow the ethical issues and practical considerations while dealing with a citizen in litigation before the Court and the government is expected to be honest litigant, to minimize the litigation.

The Andhra Pradesh State also adopted State Litigation Policy dated 30.08.2011 and certain guidelines have been issued with objects mentioned in second paragraph of litigation policy. The main objects are to manage and conduct litigation in a coordinated and time bound manner; ensure that strong cases are won and weak cases are not pursued needlessly; reduce overall government litigation in courts thereby providing relief to the judiciary etc., and also issued certain directions to prevent and control avoidable

¹²AIR 1974 SC 130

¹³WP 18403 of 2021

litigation and settlement of disputes in alternative dispute resolution system, guidelines for filing of appeals. But without keeping in mind, the litigation policy, framed by State dated 30.08.2011, government agencies and authorities are proliferating the litigation by evasive and un-substantive pleas before court, thereby increasing litigation in the courts, which is contrary to guidelines issued by Apex Court in the judgments referred supra.

As per Clause 2.1 of the Andhra Pradesh State Litigation Policy, the objective of the State is to transform Government from a compulsive litigant into a responsible and efficient litigant, to:

- a. manage and conduct litigation in a coordinated and time bound manner;
- b. ensure that strong cases are won and weak cases are not pursued needlessly;
- c. reduce overall Government litigation load in courts thereby providing relief to the judiciary.”

50. Thus, despite the State litigation policy adopted by the State on 30.08.2011, respondent No.2 misused the powers vested in the office and created another round of litigation. The respondent No.2 started an unethical or unwarranted litigation in the guise of protecting the properties and compelled the petitioner to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

51. It is, therefore, high time that both the Central and the State governments undertake a comprehensive revision of their existing litigation policies to ensure that unwarranted litigation is reduced. This Court hopes that if the litigation policy is implemented, it will not only curb frivolous, vexatious and repetitive litigations, but also protects the rights of private citizens and uphold the integrity of the justice system.

52. The case at hand, a classic example, illustrates the State-sponsored litigation, despite the finality of a Civil Court decree, to which respondent No.2

is a party, through the executive / bureaucratic indifference to overreach the Civil Court decree.

53. Given the discussion supra, the writ petition is allowed. The communication sent by respondent No.3 vide proceedings in Rc.No.1104/2005/E4 dated 29.10.2007 to respondent No.1

54. Given the discussion supra, the writ petition is allowed. The proceedings impugned in the writ petition, in respect of Ac.2-00 cts in S.No. 508 of Guntur, is hereby set aside. The authority shall take steps to delete Ac.2-00 cts in S.No.508 (508/2) of Guntur from the list of prohibited properties forthwith. The registering authorities shall entertain the documents presented, if otherwise in order, in respect of the aforementioned properties. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SUBBA REDDY SATTI, J

Date : 06.05.2025

Note: LR Copy to be marked

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THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 42457 /2017

Dated: 06.05.2025

**Note: LR Copy to be marked
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