

*** HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION NO. 31409 OF 2014

% 29.01.2015

Vinjamuri Rajagopala Chary, S/o. V.Parthasarathacharyulu,
Aged about 77 years, Occu: Advocate, r/o. 3rd Lane,
Arundalpet, Guntur, Guntur District.

.... Petitioner

Vs.

\$ The Government of Andhra Pradesh, rep.by its Principal
Secretary, Revenue Department, Secretariat, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Smt. T.S.Sridevi, counsel for
petitioner

Counsel for the respondents : Government Pleader for Revenue
for respondents 1, 2, and 4
Sri V.T.M.Prasad, standing counsel
for respondent No.6
Government Pleader for Endowments
For respondents 3 and 5

<Gist :

>Head Note:

? Cases referred:

1. 2013 (1) ALT 345
2. 2013 (4) ALT 541

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.31409 of 2014

ORDER:

The case of the petitioner is that land to an extent of Ac.4.64 cents in Sy.No.91 of Harischandrapuram Village, Tulluru Mandal, Guntur District is ancestral property of the petitioner and the same was in possession and enjoyment of the family members of the petitioner for more than 90 years. After demise of the father, petitioner succeeded to the property. Pattadar pass books and title deeds were issued on 20.02.1996. With an intention to dispose of the said property, petitioner approached the Sub-Registrar, Amaravathi (4th respondent) to ascertain the market value and stamp duty. The 4th respondent informed the petitioner that Commissioner and Inspector General of Registration and Stamps vide Memo G1/7106/2014 dated 20.08.2014 circulated list of prohibited lands. Survey No.91 is also included and the same is shown as belonging to Sri Venkateswara Swamy Temple (6th respondent). Petitioner was therefore informed that in view of the letter of Commissioner, he is not entertaining any document with respect to land situated in Sy.No.91. Aggrieved thereby, this writ petition is instituted.

2. Heard Ms. T.V.Sridevi, learned counsel for the petitioner, learned Government Pleader for Revenue, Sri V.T.M.Prasad, standing counsel for respondent No.6 and learned Government Pleader for Endowments.

3. Learned counsel for the petitioner contended that land in Sy.No.91 to an extent of Ac.4.64 cents is a private patta land and in possession and enjoyment of the family members of the petitioner for several decades. Unless notification is issued in accordance with Section 22-A(1)(c) of the Registration Act prohibiting such registration, no authority including Commissioner and Inspector General of Registration and Stamps can prohibit the registration of any property. Thus, order of Commissioner and Inspector General of Registration and Stamps is *ex facie* illegal without competence and jurisdiction. It is further contended that registering authority cannot refuse to act on the request of a person for processing a document for registration based on executive orders.

4. In support of the contentions urged, learned counsel for the petitioner placed reliance on the following decisions:

i) **P.Srinivasulu and others v. Sub-Registrar, Renigunta, Chittoor District and others** [\[1\]](#)

ii) **Pasuparthi Jayaram and others v. Government of Andhra Pradesh, rep. by its Commissioner, Endowments Department, Hyderabad and others** [\[2\]](#)

iii) Judgment in Writ Appeal No.106 of 2014 dated 14.02.2014

5. Sri V.T.M.Prasad, entered appearance on behalf of 6th respondent –temple and

filed counter-affidavit. The stand of the respondent-temple is that the temple owns Ac.528.92 cents of land in various survey numbers including the land to an extent of Ac.4.64 cents in Sy.No.91 of Harischandrapuram village. This extent of land is classified as 'Adyapaka Service'. Various extents of land is earmarked for various services for the temple, such as, Bhajantri, Kumba Dance, decoration, Chamara Kainkaryam etc. This piece of land was given in view of rendering of 'Adyapaka Service' to the ancestors of the petitioner. If service is not rendered, the person cannot continue to enjoy the property. It being a service inam and as petitioner is not rendering the service, he cannot be allowed to continue in possession of the property. Land was never permanently granted to the ancestors of the petitioner as claimed by the petitioner and the temple is taking steps for recovery of possession from the encroachers by filing appropriate application under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act, 1987').

6. Learned standing counsel further contended that respondent-temple is a public institution as per Section 6(c) of the Act, 1966. The property in issue is included in the property register maintained under Section 38 of the Act 17/66 (corresponding provision is Section 43 of Act, 1987). The register shows that an extent of Ac.11.60 cents in Sy.No.91 was endowed to Madabhusi Rangamma. He further contended that once such an entry is made in the register, the same shall be presumed to be genuine unless contrary is proved. The entry made in the statutory register has not been challenged by any person including the petitioner. What is communicated by the Commissioner and Inspector General of Registration and Stamps is reiteration of the status of the property as endowment property. Learned standing counsel further contended that if petitioner disputes the status of the property as reflected in the statutory register, he has to avail effective remedy as available under the Act, 1987 and that the writ petition is not maintainable when the petitioner has effective and efficacious remedy available under the Act, 1987. In support of the said contention, learned standing counsel placed reliance on the decision of this Court in W.A.NO.500 of 2012, dated 09.10.2012 and W.P.No.26566 of 2011, dated 18.01.2012.

7. Learned standing counsel further contended that Andhra Pradesh (A.A.) Inams (Abolition and Conversion into Ryotwari) Act, 1956 was amended by Amendment Act 16/2013 and is retrospective in operation. According to the Amendment, pattas granted for the service inams burdened with service should be deemed to have been null and void and no effect can be given to the pattas in that manner.

8. In the instant case, no earlier alienation of the property in issue is brought on record. Ryotwari patta claimed to have been granted in favour of the petitioner is not

filed. The claim of the petitioner rests only on the fact that the property was given to the ancestors of the petitioner for the services rendered to the temple and it vested permanently in the family of the petitioner and, thus, petitioner is entitled to deal with the property as his private patta land. The stand of the respondent temple that the property is shown in the statutory register as belonging to the temple and as per Resettlement Register of the village, the property is classified as 'temple Adyapaka Service' is not controverted.

9. As per Section 38 of the old Act and Section 43 of the new Act, it is mandatory to maintain register of any registered institution/endowment, which contain all the details of movable and immovable assets of the temple. The 6th respondent contended that in terms of the said provision, register is maintained and in the said register the property in issue is also included as belonging to the 6th respondent temple. This contention is not controverted. As per Section 46(3) of the new Act, until the contrary is established presumption is that all the entries made in the register maintained under Section 43 of the new Act are genuine. Thus, burden lies on the petitioner to disprove the stand of the 6th respondent temple that the subject land is not land belonging to the 6th respondent. Except filing of extract of pattadar pass book and title deeds, no material is filed to disprove the stand of the 6th respondent temple. As can be deduced from the narration of the facts in the affidavit filed in support of the writ petition, pattadar pass books and title deeds may have been issued by relying on the ryotwari patta granted to the petitioner.

10. It is specific stand of the 6th respondent temple that this piece of land was given as service inam and the service inam is not a permanent grant. The title of the land continuously vests in the temple and such inam is available as long as service is rendered. As the inam granted in this case was for "Adyapaka Service" rendered by the ancestors of the petitioner, as long as such service was rendered, such inam subsisted and once the service was not rendered, the inam cannot be continued. Act, 1956 was amended by way of Act 16/2013, whereby Section 4 was amended and sub-section (4) was added. According to the provision in sub-section 4, if the inam land is burdened to render service to an institution or endowment, no person would be entitled to ryotwari patta and institution or endowment alone would be entitled to ryotwari patta for such inam land. According to the first proviso appended to sub-section 4, even if ryotwari patta is granted, such patta is deemed to have been null and void and no effect can be given to such patta granted.

11. In support of the claim that the land in issue is granted as "Adyapaka Service", the extract of village Resettlement register is filed. It would thus show that the inam

granted to the ancestors of the petitioner was service inam. In accordance with the mandate of Section 4(4) of the Act, 1956, even if ryotwari patta was granted to the petitioner, the same has no legal validity and thus, pattadar pass books or title deeds issued in terms thereof have no legal validity. Having regard to the mandate of Sections 43 and 46(3) of Act, 1987 and Section 4(4) of Act, 1956, the title continues to vest in the temple and petitioner is not entitled to alienate the said property. According to Section 75 of Act, 1987, sale of land granted as service inam would be null and void unless such transaction is effected with the prior sanction of the Government. In fact, the case of the 6th respondent-temple is that even petitioner is not entitled to be in possession of the said property as petitioner is not rendering any service to the temple and the temple is entitled to claim possession of the property.

12. In view of the statutory mandate as referred to above, even in the absence of the letter written by the Commissioner and Inspector General of Registration and Stamps, the petitioner is not entitled to alienate the property as the property does not belong to him and continues to be vested in the 6th respondent temple. What is communicated by Memo dated 20.08.2014 is the list supplied by Endowment Department. The said list of Endowment Department is not filed, but apparently it reflects the various extent of land standing in the name of various temples. This list would come to the aid of the registering authority while processing any document for registration presented before him. Unless a document is presented by an authorized person entitled to undertake transaction on behalf of the endowment institution, the registering authority cannot entertain the document. As record would disclose and in view of the statutory mandate of provisions referred to above, the property in issue falls within the domain of Section 22-A(1)(c) of the Registration Act. Thus, the memo under challenge has to be understood in the context of the statutory provision referred to above.

13. The facts in **P.Srinivasulu** are entirely different. The Trustees of the temple passed resolution authorizing the Life Trustee to execute sale deeds in respect of the trust land. Consequently the lands were transferred by way of execution of sale deeds during the years 1981, 1983 and 1985. The concerned Trust was brought under the provision of the Endowments Act only with effect from on 13.04.1995. Thus, the provisions of the Act would apply only from that date. In the above factual context, this Court held that title is validly passed on to the purchaser and Government or religious institution cannot claim the subject land as still owned by them. The Court also further observed that without taking steps for nullification of the sale deeds executed by the Life Trustee in favour of the father of the first petitioner, the respondents could not prevent transfer of the subject land in favour of the other petitioners. The Court also observed that whenever there was a *bona fide* claim with regard to the title and

possession by any third party, such claim cannot be curtailed merely on the ground that such land belongs to either Government or Religious Institutions. Court also further held that the complicated questions with regard to title and possession cannot be gone into by the respondents by preventing transfer of lands in exercise of power under Section 22-A of the Registration Act.

14. In **Pasuparthi Jayaram**, letter addressed by the Commissioner of Endowment on 19.04.2010 to various authorities in Chittoor district indicating the particulars of the immovable properties allegedly belonging to Sri Hathi Ramji Math, Tirupati and Sri Bugga Math, Tirupati, directing the registering authority not to entertain registration of the documents in connection with the properties listed out was in issue.

15. Learned single Judge of this Court observed that Section 22-A of the Registration Act pre-supposes title of the institution over the land and merely prohibits the registration of the documents executed without valid authorisation. Learned single Judge further held that unless there is a notification under Section 22-A(2) of the Act, no prohibition can be enforced and, therefore, communication dated 19.04.2010 held without jurisdiction and unsustainable.

16. In W.P.No.11635 of 2013, letter dated 21.01.2013 of the Commissioner of Endowments directing the Sub-Registrar, Visakhapatnam, not to entertain registrations on properties listed out in the said letter was challenged. The writ petition was allowed setting aside the said letter.

17. The temple preferred W.A.No.106 of 2014 contending that Survey number in question was registered in the name of appellant temple and, therefore, in accordance with the provision contained in Section 22-A(1)(c), there was a prohibition against the registration of the properties. Reliance was placed on the judgment of single judge in **Pasuparthi Jayaram** (*supra*). The Division Bench held that for properties covered under Section 22-A(1)(c), there was no need for notification, but Commissioner of Endowments has no jurisdiction directing Sub-Registrar not to register documents without any specific permission. In the absence of such power conferred under the Registration Act or the Rules made thereunder, it was not open for the Commissioner to address such letter. The Division Bench noticed that L.G.C.No.5 of 2000 filed by the temple was dismissed for non-prosecution long ago and application filed after more than 11 years for restoration was pending consideration. The Division Bench also noticed that as early as in the year 1949 lay out was approved by the competent authority, house plots were carved out, buildings were constructed and people are living in the colony. Thus, Division Bench of this Court held that it is not open for the registering authority to prohibit registration. Reiterating the principles laid down in

P.Srinivasulu case, Division Bench held that registering authority cannot embark on enquiry, with regard to title and possession when there is *bona fide* dispute with regard to such title and possession.

18. The decisions relied upon by the petitioner do not come to the aid of the petitioner. In the facts of this case, as successfully contested by the 6th respondent-temple, as per the Resettlement Register of the Village, the land is classified as 'temple Adyapaka Service' and as per the provision of Section 4(4) of the Act, 1956, no ryotwari patta can be granted and even if it is already granted, it is null and void and property continues to be vested in the institution. Thus, as per the material on record, the property continues to vest in the 6th respondent temple. Therefore, petitioner cannot claim, merely on the factum of his possession or the earlier inam granted to his ancestors for the service rendered by them, to contend that he is the owner and entitled to alienate. Thus, in the facts of this case, the petitioner is not entitled to relief prayed by him and writ petition is liable to be dismissed and it is accordingly dismissed. However, it is left open to the petitioner to ascertain his title by due process of law and any observations made in the writ petition do not come in the way in adjudicating the claim of the petitioner on the title to the property in issue. No costs.

Miscellaneous petitions if any pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date : 29.01.2015

Note:

L.R. copy to be marked: Yes

B/o.

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WRIT PETITION No.31409 of 2014

Date: 29.01.2015

kkm

[\[1\]](#) 2013 (1) ALT 345
[\[2\]](#) 2013 (4) ALT 541