

**HONOURABLE SRI JUSTICE RAJA ELANGO**

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**W.P.M.P.No.11144 OF 2015**

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**WRIT PETITION NO.26343 OF 2007**

**ORDER:**

1. This writ petition is filed challenging the order of the 1<sup>st</sup> respondent in Case No.F/333/3005 dated 25.8.2007, whereunder the order, passed by the Revenue Divisional Officer, Chevella in Case No.L/76/2000, dated 27.11.2004 declaring the Mahant-Baba Sagar Dasji as owner of the land in question, was declared as null.

2. Brief facts of the case are as follows:

(i) It is stated that the erstwhile Nizam of the Hyderabad State granted Ac.640.00 of land as inam to Dharam Das Mahant Baba Puran Das for the purpose of performing pooja and other rituals and for following the tradition of Baba Sri Sajjan Shah Kamalpathi Tripathi Maharaj and issued Muntakab. An entry was made in Kitab-Ul-Awkaf bearing No.1119, dated 12 Aban 1315 Fasli.

(ii) The traditional mode of succession to the office of the Mahant of the institution is by nomination of the successor, by the incumbent Mahant made during his life time, to be implemented on his nirvana. It is stated that the rights in regard to the property are held by the succeeding Mahants in their individual capacity without reference to any obligation or duty to perform service to an institution. The Mahant-Baba Sagar Dasji (hereinafter referred to as "Mahant in question") is the absolute owner and possessor of the subject lands by virtue of his succession to the Mahantship.

(iii) In the years 1963-1966, the then Mahants i.e., Baba Sevadas and Baba Gyandas in order to meet the expenses of the Mutt leased out Ac.535.06 gts of land to the 3<sup>rd</sup> respondent-M/s. Indian Detonators Limited (now Gulf Oil Corporation

Limited) for 99 years with pre-emptive right to purchase in case of sale. In pursuance of the above arrangement of lease, the 3<sup>rd</sup> respondent constructed a building in that area.

(iv) While so, an agreement of sale was entered into between the Mahant in question and the deponent-GPA holder on 27.8.1981 and 15.6.2000. As per the recitals in the agreement dated 27.8.1981, an extent of Ac.400.00 was sought to be alienated to the deponent-GPA Holder at Rs.30,000/- per acre, in connection of which, an amount of Rs.6,00,000/- was paid towards earnest money and the deponent was appointed as an irrevocable GPA on 1.9.1981. By letter dated 11.8.1997 the 3<sup>rd</sup> respondent was called upon to exercise the right of pre-emption for purchase of land, which was not exercised by the 3<sup>rd</sup> respondent. In all an amount of Rs.41,50,000/- was paid by the deponent to the Mahant in question. Since the property was under the threat of trespass, the deponent filed a suit seeking to execute the sale deed, which culminated in passing a decree in O.S.No.202 of 2000 filed by the deponent against the Mahant in question for specific performance of agreement of sale. The 3<sup>rd</sup> respondent filed O.S.No.142/2002 for cancellation of the decree and the same is pending.

(v) While the things stood thus, the deponent-GPA holder of the Mahant Baba Sagar Dasji filed an application under the provisions of A.P. (TA) Abolition of Inams Act before the 2<sup>nd</sup> respondent-Revenue Divisional Officer, Chevella Division, Ranga Reddy District, claiming that the Mahant Baba Sagar Dasji is the absolute owner and possessor of the lands in Sy.Nos.475, 476, 477, 478, 479, 1010/1 to 1010/15, 1024 to 1030, 1036 to 1042, 1066 to 1070 & 1086 of Kukatpally village, Balanagar Mandal, and seeking to grant occupancy rights certificate while making relevant entries in the revenue records.

(vi) The 3<sup>rd</sup> respondent-lessee filed objections before the Revenue Divisional Officer stating that the GPA holder and the Mahant in question have no rights to alienate the property in question and they are not entitled to get any occupancy certificate.

(vii) The 2<sup>nd</sup> respondent-Revenue Divisional Officer allowed the application filed by the petitioner. Aggrieved by the same, the 3<sup>rd</sup> respondent-lessee filed an appeal before the 1<sup>st</sup> respondent-Joint Collector, Ranga Reddy District. The Joint

Collector disposed of the appeal declaring the order of the Revenue Divisional officer as null. Challenging the same, the petitioner filed the present writ petition.

3. In the counter-affidavit and the additional counter-affidavit, the 5<sup>th</sup> respondent stated as follows:

(i) The 5<sup>th</sup> respondent-Mahant was recognized by the Commissioner, Endowments Department, Hyderabad by proceedings dated 25.11.2006 as Mahant of Sri Udasin Mutt, Hussaini Alam, Hyderabad. The Mahant in question-Baba Sagar Dasji is the erstwhile Mahant. The GPA holder, who gave affidavit on behalf the erstwhile Mahant died on 21.8.2008 and therefore, the writ petition cannot be maintained.

(ii) Sri Udasin Mutt, which was shown as 3<sup>rd</sup> respondent before the Joint Collector in Case No.F1/333/2005, has not been made as a party in this writ petition. Therefore, the writ petition is liable to be dismissed for non joinder of a necessary party, who was figured as respondent No.3 before the Joint Collector.

(iii) The Baba Sagar Dasji who executed G.P.A to the deponent was removed from the position of Mahant by virtue of the proceedings dated 25.11.2006 issued by the Commissioner of Endowments and thereby, he was ceased to be a Mahant by the date of filing the writ petition. In view of the same, either the Mahant or his G.P.A holder have no locus standi to maintain this writ petition.

(iv) The lands in question were endowed as service inam grants for the religious purposes and therefore, rights cannot be claimed by the succeeding Mahants in their individual capacity.

(v) The Munthakab shows that there is an entry in File No.43/1/Entry/1952 with regard to proceedings dated 14.7.1954 informing the Registrar Balda about the prohibition of lands from registration of sale, mortgage and transfer etc.

(vi) Previously, the Mutt filed eviction proceedings in O.A.No.579 of 2010 (old O.A.No.21/2008) before the Deputy Commissioner, Endowments, Hyderabad, against the lessee-3<sup>rd</sup> respondent herein and the said O.A. was allowed and the order in the said O.A. was confirmed by this Court in W.P.No.31893 of 2011 and consequently, the matter is now pending before the Supreme Court.

(vii) During the pendency of the above O.A., since the G.P.A Holder died, the Mahant in question and the legal representatives of the GPA holder sought to implead themselves in the O.A. by filing I.A.Nos.1 and 3 of 2009. The said I.As were dismissed by holding that the Mahant in question and the legal representatives of the GPA holder have no locus standi.

(viii) The Mahant in question cancelled the GPA on 23.1.2001 pursuant to the proceedings of the Deputy Commissioner dated 14.11.2000, and the said cancellation proceedings were questioned by the GPA holder in R.P.No.26 of 2001 before the Regional Joint Commissioner, Endowments Department, Hyderabad. In the said revision petition, the Mahant in question filed a counter stating that he never executed any such General Power of Attorney and that the said GPA was fabricated taking advantage of his signatures on blank papers. The said Revision was dismissed basing on the counter affidavit filed by the Mahant in question.

(ix) The Revenue Divisional Officer ought not to have conceded to grant any occupancy rights in favour of the Mahant in question as the same is contrary to Section 4 of the A.P. (TA) Abolition of Inams Act, 1955.

(x) The Mahant in question gave wrong statements as to his age and residence and therefore, the writ petition is liable to be dismissed.

(xi) The application filed by the GPA holder for grant of occupancy rights to the Mahant in question was not maintainable in the light of the statement of the Mahant in question in R.P.No.26 of 2001.

(xii) Further, filing of the present writ petition by the Power of Attorney Holder on behalf of the ex-Mahant suppressing the cancellation of the GPA, amounts to misleading the Courts.

(xiii) Further, the GPA holder, who gave affidavit on behalf the erstwhile Mahant died on 21.8.2008. As per the counter filed by the Mahant in question in R.P, the GPA was cancelled in the year 2001. In the circumstances, the petition i.e., WPMP No.11144 of 2015 filed by the Mahant in question to amend the cause title and to show him as Mahant Baba Sagar Dasji by deleting the name of the GPA Sri Kalyani Narsing Rao, itself discloses that the writ petition was filed by suppression of all the material facts. Therefore, the writ petition is liable to be dismissed in limine.

(xiv) The leases were granted pursuant to G.O.Ms.No.529, dated 10.5.1976 and also a Memorandum No.3939/E.III/63-4, dated 24.3.1964. A perusal of the said G.O. and the memorandum clearly show that the land in question belongs to Sri Udasin Mutt. Even the lease deeds would show that the lands were leased out by the then Mahant on behalf of the Mutt.

4. During the course of arguments, the learned Counsel for the petitioner submitted that the then Mahant has leased out the land in question and the 3<sup>rd</sup> respondent-lessee, who got lease of the subject property, is estopped from questioning the title of the Mahants under the provisions of the Evidence Act, and therefore, the lessee is not entitled to question the order of the Revenue Divisional Officer.

5. In reply, the learned Counsel appearing for the 3<sup>rd</sup> respondent submitted that the lease deeds would clearly go to show that the lands were given on lease by the then Mahant on behalf of the Mutt and the Mahant is only a trustee of the Mutt and therefore, it cannot be said that the Mahant is the owner of the property. He further contended that the land in question was leased out to the 3<sup>rd</sup> respondent on behalf of the Mutt and now, the Mahant in question in collusion with the GPA holder is claiming rights in his individual capacity and therefore, there is nothing wrong in questioning the order of the RDO.

6. The learned Counsel for the petitioner submitted that the property was given to the Mahants for the purpose of performing pooja and other rituals and following the tradition of Baba Sri Sajjan Shah Kamalpathi Tripathi Maharaj and issued Muntakab and that the rights in regard to the property are held by the succeeding Mahants in their individual capacity without reference to any obligation or duty to perform service to an institution. Therefore, the petitioner is the absolute owner and possessor of the lands in question by virtue of his succession to the Mahantship.

7. In reply, the learned Counsel appearing for the 5<sup>th</sup> respondent submitted that the lands in question vest with the mutt and the claim for occupancy right certificate

under Section 4(1) of the Act of A.P. (Telangana Areas) Abolition of Inams Act, 1955 can only be maintained by the institution, but not by individual capacity.

8. As could be seen from the material on record, the following facts are apparent:

(i) The then Mahant-Baba Sagar Das executed G.P.A. in favour of Sri Kalyani Narsing Rao on 1.9.1981.

(ii) The G.P.A. holder filed an application before the Revenue Divisional Officer on 18.11.1999, for grant of Occupancy Right certificate in favour of Mahant-Baba Sagardas and GPA holder in respect of the lands in question, on the ground that the Mahant had obtained Succession certificate from the Special Tribunal under A.P. (Telangana Area) Atiyat Enquiry Act. The Occupancy Right certificate was issued on 27.11.2004.

(iii) Questioning the same, the lessee-3<sup>rd</sup> respondent in respect of the said land preferred an appeal before the Joint Collector. On 25.8.2007, the Joint Collector allowed the appeal on the ground that the GPA holder has no locus standi.

(iv) The GPA executed by the Mahant in question was cancelled by him on 23.1.2001 pursuant to the proceedings of the Deputy Commissioner on 14.11.2000 and also on the ground that the GPA holder fabricated some blank papers.

(v) The GPA was cancelled on 23.1.2001 whereas the present writ petition was filed in the capacity of GPA in the year 2007 and apart from that, the GPA holder died in the year 2008.

(vi) The Mahant-Baba Sagar Dasji was removed from the Status of Mahant as on 25.11.2006.

9. The above material facts make it obvious that the GPA executed by the Mahant in question was cancelled in the year 2001 itself, whereas the present writ petition was filed in the year 2007 by the deponent-Kalyani Narsing Rao on behalf of the Mahant in question, in the capacity of GPA. Apart from that, even prior to the filing of the writ petition, the Mahant in question- Baba Sagar Dasji was removed i.e., on 25.11.2006. Therefore, the deponent was not a GPA and the Baba Sagar Dasji was not a Mahant by the date of filing the present writ petition and as such, they have no locus

standi to maintain this writ petition.

10. Further, after cancellation of the G.P.A in the year 2001, the alleged GPA holder died in the year 2008 itself, during the pendency of the writ petition, whereas the Mahant in question filed an application i.e., WPMP No.11144 of 2015 seeking amendment of the cause title to transpose his name as the petitioner in the place of G.P.A. In this regard also, the very approach of Mahant in question, at this length of time, seeking to come on record, does not appear to be a bonafide one.

11. Further, with regard to the dispute between the GPA holder and the Mahant in question, the counter filed by the respondent No:5, reveals that the GPA holder filed R.P.No.26 of 2001 on the file of the Regional Joint Commissioner, Endowments Department, Hyderabad questioning the direction of the Deputy Commissioner, dated 14.11.2000 and also the cancellation of the GPA dated 23.1.2001 by the then Mahant viz., Baba Sagardas. In the said R.P, the then Mahant-Baba Sagar Das filed a counter stating that the GPA was fabricated with the fraudulent mind on blank, signed papers and that the GPA holder filed an application on 18.11.1999 before Inams Tribunal/Revenue Divisional Officer for grant of Occupancy Right Certificate in the name of Mahant and also in the name of GPA holder in respect of the lands owned by the Mutt, without his knowledge and consent. If that being the case, the very approach of the Mahant in question seeking permission to prosecute the matter personally at this length of time, by suppressing the material facts, does not appear to be a bonafide one in this writ petition, which as a matter of fact cannot be made maintainable even by the G.P.A Holder, whose G.P.A was cancelled even in the year 2001 itself. In these circumstances, it can be said that very filing of the present writ petition itself is collusive one.

12. Even though the scope of the writ petition is confined to a limited purpose, but, incidentally, the facts and circumstances of the case and the orders of the Revenue Divisional Officer and the Joint Collector, would lead to observe that the Mahant, who is a trustee under the Endowments Act, cannot claim that the property should stand in his name. It is well settled that the property endowed to a Charitable Institution, should be construed as that of the Trust only. The trustee is nothing but a

person who is merely conferred with the limited powers of managing the affairs of the Trust. Likewise, the Mahants of such Institutions, who are nothing but as that of the trustees, cannot be conferred with any such individual rights.

13. Furthermore, the material on record makes it obvious that except the Mahant in question, neither the Predecessors nor the Successors of the Mahantship claimed any such individual rights in the property as that of the Mahant in question. Even the Successor of the Mahant in question, who is figured as 5<sup>th</sup> respondent in this writ petition, is not claiming any such individual rights in the property in question. The learned Counsel for the petitioner also failed to state as to how it would cause prejudice to the Mahant in question, if the property is continued to stand in the name of the Mutt.

14. For the above reasons, this Court is of the view that this very writ petition itself is not maintainable and as such, the same is liable to be dismissed.

15. Accordingly, W.P.M.P.No.11144 of 2015 and the Writ Petition are dismissed. No order as to costs. Consequently, the other miscellaneous petitions stand dismissed.

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Justice Raja Elango

Dated: 1.5.2015

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**HONOURABLE SRI JUSTICE RAJA ELANGO**

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