

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos.10200, 9536, 10567 of 2005, 2575, 2579, 2583, 2587, 3309, 3318 and 3984 of 2007

-

COMMON ORDER:

1. Since the subject matter of these writ petitions is one and same, they are heard together and disposed of by this Common order.

2. All these writ petitions are filed questioning notices dated 02.04.2005 and 09.01.2007 issued under purported exercise of power under Section 82(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') calling upon the petitioners to hand over the possession of various extents of land shown in Sy.Nos.13, 15 and 17 of Avilala Village, Tirupati Rural Mandal, Chittoor District as illegal, arbitrary and in violation of the provisions of the Act.

3. The case of the petitioners is that various extents of the land in Sy.No.13, 15 and 17 of Avilala Village was a banjar and uncultivable land and that sometime in the end of 18th century or in the earliest of 19th century, the then Mahanth of the Hathiramji Mutt granted "Shashwata patta" in favour of the petitioners' predecessors subject to the condition of payment of the cist to the respondent Mutt. The predecessors of the petitioners developed the land and made it fit for cultivation. But by virtue of Andhra Pradesh Estates Abolition & Conversion into Ryotwari Act, 1948, the intermediary tenures were abolished and ryotwari tenure came into being, where under the cultivator is required to pay the cist only to the Government. Hence, the petitioners stopped payment of cist to the respondent Mutt. In such circumstances, the respondent Mutt filed various suits in the year 1971 for recovery of possession as well as for recovery of damages against the petitioners and their predecessors in the interest of the petitioners. The said suits were dismissed and the appeals and second appeals filed against them were also dismissed. As such, there is no

land lord and tenants relationship between the petitioners and the respondent Mutt and the ownership of the respondent Mutt stood extinguished. Later the respondent Mutt filed O.S.No.244 of 1985 against the petitioners and 73 others for permanent injunction restraining them from converting the above said lands into house plots and using the said land for purposes other than agricultural purpose or from alienating the same to the third parties. The said suits were decreed by judgment and decree dated 30.08.1993 and the appeals filed against the same were allowed reversing the judgment of the trial Court. The Second Appeals filed by the respondent Mutt are pending. In view of the above, the impugned notices issued purportedly under Section 82(1) of the Act are illegal.

4. Counters are filed in all the writ petitions with similar contentions stating that by virtue of Section 82 of the Act, the existing leases stand cancelled. Even in the suits filed by the Mutt in the year 1971 regarding recovery of rents, there is categorical finding that the Mutt is entitled for recovery of rents and it shows that relationship of tenancy exists between the petitioners and the respondent Mutt. By operation of Section 82 of the Act, the leases stood cancelled and the respondent Mutt issued notices in Form 1 under Rule 5 of A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules 2003. It is also the case of the respondents that no shaswata pattas were granted in favour of the petitioners much less in favour of the predecessors of the petitioners. It is the case of the respondents that Andhra Pradesh Abolition and Conversion into Ryotwari Act, 1954 is not made applicable as the said land is patta land of the respondent Mutt. Second Appeals were filed against the dismissal of the suits and dismissal of the first appeals. In Second Appeal No.719 of 1984 and batch filed by the Mutt liberty was given to canvas the issue under Section 82 of the Act by observing that application of Section 82 depends upon the investigation of further facts. The lands covered under Sy No.13, 15 and 17 were inam lands under title deed bearing No.2937 granted in favour of Bugga Mutt, Tirupati and Gundluri Venkamma for upkeep of Kasam Kaluva of Avilala Village. By virtue of the judgments rendered in the suits filed by the Mutt in the year 1971 the respondents are bound to take possession of the subject lands and issued notices to petitioners under Section 82 of the Act read with Rule 5 of the Rules.

If the petitioners are not land less poor, exercising power under Section 83 of the Act and the Rules framed under G.O.Ms.No.379 dated 11.03.2003, the respondents can approach the Deputy Commissioner for removal of encroachments, as the said rule was upheld by Division Bench of this Court in W.P.No.4974/2004 and batch dated 24.06.2005. It is also stated that one B.Ramaiah, employee of the Mutt fabricated documents, cist receipts and other documents belonging to the lands in Sy.No.13, 15 and 17 and obtained orders from the Civil Court in all the suits filed by the respondents in the year 1971 against the petitioners for recovery of possession. The said fraud was detected and a case was registered in Crime No.139 of 2004 under Section 420, 471, 473, 474, 409, 120 (B) IPC and Sections 3 and 4 of Land Grabbing Act and Ramaiah was arrested and all the fabricated documents were seized. The petitioners never filed any petitions against the respondents for declaration of title of the property nor their validity. Therefore, petitioners cannot be granted permanent lease and sought for dismissal of the writ petitions.

5. Reply affidavits are filed stating that findings given in favour of the petitioners in the suits filed by the respondents have become final and the same cannot be reagitated in these writ petitions. It is stated that there is no provision in the Andhra Pradesh Charitable Hindu Religious Institutions and Endowments Act, 1987, nullifying the decrees passed by the competent Civil Court. It is also stated that shashwata pattas were granted in favour of the petitioners' predecessors by the then Mahant long before the enactments came into being and there is no provision in the said enactments nullifying the said shaswata pattas granted by Mahant. That payment of cist cannot be equated with rent. The contention that Section 82 of the Act of 1987 overrides the judgment is raised for the first time in the second appeal and the same was not allowed to be raised therein. Section 160 of Act 30/1987 had no effect of invalidating the judgments rendered by competent civil court. As such, Section 160 of the Act 30/1987 cannot be pressed into service by the respondents in this proceedings and the judgments rendered in original suits filed in the year 1971 had no effect, since the same is unilateral one and is contrary to law. Further, the Rules made in G.O.No.379 dated 11.03.2003 have no application to the facts of the case as they are applicable in case of termination of a

subsisting agricultural leases whereas in the present case, the petitioners contention is that they have acquired title to the property by virtue of judgement rendered by the Civil Court in the suits filed in the year 1971 and the petitioners assert that they are in continuous possession and enjoyment of the property till today. It is also stated that the said lands are notified for the purpose other than agricultural use and as such the same cannot be shown as an agricultural land in the revenue records and the said lands are outside purview of revenue authorities. The competent civil court rejected similar contentions of the respondents in LAOP No.1 of 2000 on the file of the Principal Senior Civil Judge, Tirupati.

6. Rejoinder is filed by the respondents to the reply affidavit stating that no shaswata pattas were filed at any point of time either in the suits filed in the year 1971 or subsequent proceedings and no particulars of shaswata pattas were given except vaguely stating in the written statement in the suits filed in the year 1971. Issuance of alleged Shaswata patta is false and the provisions under Section 76(1) of Madras Hindu Religious Endowments Act, 1927 and Section 29 (1) Madras Hindu Religious endowments Act, 1951 and Section 74 (1) Act 17/1966 and Section 80 of Act 30/1987 are applicable to the facts of the case. Further, the trial Court in the suits filed in the year 1971 held that the Mahanth cannot grant lease for more than 5 years and in view of Section 29(1) of Hindu Religious Endowments Act the transaction entered by the Mahanth with the defendants is void. The trial Court also granted liberty to the respondent Mutt to file separate suit for collection of rents. Therefore, it is clear that the transaction between the respondent Mutt and the defendants therein is a lease and by operation of Section 82 of the Act 30/1987, the said lease stands cancelled and by invoking the said provision read with rules framed under G.O.Ms.No.379 dated 11.03.2003, the respondent Mutt is entitled for possession of the lands. It is stated that the said lands were never notified and taken over by the Government under the provisions of Section 3(1) of A.P. Estates (Abolition and Conversion into Ryotwari) Act, 1948. The contention of the petitioners that the lands in question are being converted into ryoti lands is to be rejected as the petitioners failed to produce the ryotuwari patta granted under the provisions of the said enactment. It is also stated that one B.

Ramaiah who is the incharge of all legal matters of the respondent Mutt gave evidence on behalf of the Mutt by colluding with ex-tenants of the Mutt and created documents with facsimile signatures and played fraud on the Mutt. He gave false evidence admitting that the petitioners were granted shaswata pattas though he was aware that no shaswata pattas were granted in favour of the defendants therein. Being well aware of the fact that Mutt has purchased the property under registered sale deed vide document No.985/1884 and 986/1884 from Bugga Mutt Tirupati and in all the revenue records and Andangals, the respondent Mutt is recorded as pattadar of the lands in question, one B.Ramaiah played fraud for the entire extent of Ac.174.75 cents. The Mutt authorities filed suit in O.S.No.244/1985 and the said suit was decreed. Against the same, first appeals were filed and the said appeals were allowed. And the second appeals preferred against the same were decreed in favour of the Mutt. Admittedly, the respondent Mutt is a religious and charitable institution registered under the provisions of the Endowments Act. In view of the provision under Section 94 of the Act 19 of 1951, Section 103 of Act 17 of 1996 and Section 143 of Act 30 of 87, the provisions under Law of Limitation i.e., Article 142, Article 134 of 1908 Act or Article 65 of 1963 Act are not applicable to the lands belonging to the charitable and Hindu Religious Institutions including the lands in question.

7. Additional Counter affidavit is filed stating that this Court has granted interim order dated 26.02.2007 in W.P.M.P.No.3307 of 2007 in W.P.No.2575 of 2007 stating that if the petitioners have to be evicted, a notice under Section 84 of A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 has to be given to the petitioners. Since the petitioners failed to vacate the premises they were evicted by taking assistance of the police and panchanama dated 17.11.2007 was also recorded to that effect. Therefore the cause in the writ petitions does not survive.

8. Learned counsel for the petitioners submit that notices issued under Section 82(1) of the Act read with Rule 5 are illegal as they are against the

provisions of the Act since the 1st respondent Mutt has no title over the subject as the suits filed by the Mutt in the year 1971 for recovery of possession against the petitioners and predecessors in interest of the petitioners were dismissed holding that the petitioners and predecessors in interest of the petitioners perfected their title by adverse possession. Against the same, first appeals and second appeals were preferred and that the judgments rendered in first and second appeals have become final. As such, it is not open for the respondent Mutt to again reagitate the same by issuing notices under Section 82 of the Act. He also submits that in the second appeals filed against the judgments arising out of the suits filed in the year 1971, the Court refused to accept the plea of respondents under Section 82 specifically. He submits that the findings in the said judgments have become final and they are not binding on the respondent Mutt. As such, the respondents have no jurisdiction to invoke Section 82(1) of the Act read with Rule 5 of the Rules framed under G.O.Ms.No.379 dated 11.03.2003. He also submits that the respondents filed O.S.No.244 of 1985 against the petitioners and the same was decreed in favour of the Mutt. Against the said judgment, some of the defendants preferred first appeals and that when some of the first appeals were allowed, second appeals were preferred and allowed. Out of those second appeals, only one Second appeal i.e., S.A.No.606/1999, a review petition is filed and the same is pending. As such, the issue has not become final. He also submits that the respondent Mutt has not traced its title. He submits that the so called fraud alleged to be committed by one B.Ramaiah, cannot be adjudicated in the present writ petitions since the said issue has been held in the suits filed in the year 1971. If fraud was played, the respondents could have initiated action within the time. They have not raised the said issue in the first and second appeals arising out of the suits. He also submits that when the suits were filed for recovery of possession and title of the lands in Survey numbers 13, 15 and 17, similar plea was raised and the same was negatived by the Civil court. He relies on the Judgments reported in ***Yeshwantrao Laxmanrao Ghatge v. Baburao Bala Yadav and T.Kaliamurthi v. Five Gori Thaikkal Wakf*** .

9. On the other hand, Sri K.R. Prabhakar, learned Standing counsel for respondents submits that petitioners who are the defendants in the suits filed in

the year 1971, were directed to pay the cist to Hathiramji Mutt which shows that relationship of tenancy exists between the petitioners and the respondents. Even the second appeals arising out of the said suits, an observation is made giving liberty to the Mutt to invoke Section 82 of the Act. As such, the respondents have issued notices under Section 82(1) of the Act. Even the subsequent suit in O.S.No.244 of 1985 filed by the Mutt for permanent injunction against the petitioners and predecessors in the interest of the petitioners preventing them from converting the said lands for the use other than agricultural purpose, was decreed against 74 defendants. Out of 74 judgment debtors, only 25 defendants filed 4 first appeals and the judgments have become final in so far as the remaining 49 defendants are concerned. The first appeals filed by the 25 defendants were allowed only on the ground that the land in question comes under Estate Abolition Act. Against the same, the Mutt preferred Second appeal in S.A.No.606/1999 and batch and the same were allowed by judgment dated 03.06.2013. Against one of the Second Appeal i.e., S.A.No.606/1999, a review petition No.2160/2013 is filed and the same was allowed on the ground that respondents in the second appeal were not given an opportunity to answer the additional substantial question of law. He also submits that the subject lands are patta lands recorded in the name of Mutt in Adangals. It is further contended that the petitioners have not produced any pattadar passbooks nor filed so called shaswata pattas alleged to have been issued by the then Mahant to substantiate their rights. It is further stated that the petitioners have obtained judgment and decree by colluding with one B. Ramaiah who is employee of the Mutt and a crime was registered against B.Ramaiah and after filing the charge sheet, a departmental enquiry was conducted and a report was filed by the enquiry officer holding that the fraud has been played by one B.Ramaiah. He therefore submits that any judgment and decree obtained by playing fraud is *void ab initio* and the same can be challenged in the collateral proceedings. Even otherwise, the effect of the said judgments were also considered in the writ petitions filed by some of the petitioners. In respect of his contentions he relied on judgments reported in ***Secretary to Government, Revenue (Endowments) Department, Andhra Pradesh, Hyderabad vs. Swamy Ayyappa Cooperative Housing Societies Limited, Hyderabad, Chittoor Chegaiah and others vs. Peeda Jeeyangar Mutt and others and A.V.Papayya Sastry and others v. Government of A.P.***

and others

10. Before going into the merits of the case it will be useful to note relevant provisions.

Section 82(1) of the Act reads as follows:

“Lease of Agricultural Lands: Any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment subsisting on the date of commencement of this Act shall, notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person stands cancelled.”

Rule 5 (1) of the Rules reads as follows:

Issue of Notice: (1) A notice in Form No.1 annexed to these Rules shall be issued to the cultivating tenant (other than a landless poor person) duly informing him that the lease held by him stood cancelled by virtue of the provisions in sub-section (1) of Section 82 of the Act, and that the lease hold right in respect of the said lands are proposed to be leased out as per rules and calling upon him to forthwith handover possession of the lands failing which he shall be evicted invoking the provisions under Sections 84, 85 and 86 of the Act, treating him as an encroacher in the order passed under Section 83(4) of the Act.”

11. The suits were filed by the respondent Mutt in the year 1971 against the petitioners and their predecessors in interest of the petitioners were dismissed, but, a reading of the said judgment shows that the defendants in the suits are liable to pay the rents and cist to the respondent Mutt. The said findings were affirmed in the first appeals and also in second appeals. In the subsequent suit filed by the Mutt in O.S.No.244/1985 against the petitioners and their predecessors in interest, injunction was granted on 30.08.1993 restraining the petitioners from converting the plaint schedule land into house sites or anything other than agricultural purpose. Against the same out of 74 defendants, only 25 defendants filed four first appeals. Though the first appeals were allowed, the said judgments in the first appeals were subsequently reversed in the second appeals i.e S.A.No.606/1999 and batch filed by the respondent Mutt. Then again a review was filed in one second appeal i.e.,

S.A.No.606/1999 and the same was allowed on the ground that respondents in the appeal were not given an opportunity to answer the additional substantial question of law. The effect of the judgments rendered in the suits filed in the year 1971 by the Hathiramji Mutt for recovery of possession against the petitioners and their predecessors in interest were considered in the subsequent writ petitions i.e., W.P.No.3849/2011 holding that the petitioners cannot claim any benefit accrued or right is conferred on them by the judgment and decree in O.S.No.115/1971. It is also the case of the respondent-Mutt that a case was registered against one of the employee of the Mutt i.e., one B.Ramaiah. Disciplinary proceedings were initiated against him and enquiry was also called for and a report was filed stating that he has committed fraud. Since the suits filed in the year 1971 appear to be partly decreed on the evidence of one B.Ramaiah and though the same attained finality, the same can be questioned in the collateral proceedings as held by this Court in ***A.V.Papayya Sastry's case (Supra 3)*** wherein it is held as follows;

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order ___by the first court or by the final court___has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or underserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of “finality of litigation” cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest fraudulent litigants.

38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be

said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.”

12. Since the respondents also claim that the findings in the suits filed in the year 1971 have become final, the petitioners and predecessors of the petitioners were directed to pay rents and cist to the Mutt. As such, that finding shows that relationship of tenancy exists between the petitioners and the respondents. By virtue of the enactment of Section 82 of the Act, all the leases stand terminated. Consequently, as per Rule 5 of the Rules, respondents are entitled to evict the petitioners who are deemed to be encroachers and the said stand is upheld by Division Bench of this Court in 4974 of 2004 and batch vide order dated 24.06.2005. The petitioners themselves are relying on the findings rendered in the suits filed in the year 1971 as confirmed in second appeals which shows that tenancy relationship exists between the petitioners and the respondent Mutt. Apart from that, the petitioners and their predecessors in interest in collusion with one B.Ramaiah played fraud. It is also to be seen that petitioners claim their title by virtue of shaswata pattas as well as by way of adverse possession, which are contradictory pleas. In view of the same, when once they claim ownership, the question of adverse possession does not arise as held in ***K.Ramabrahmam v. G.Narsing Rao and Achal Reddi v. Ramakrishna Reddiar and others.***

13. In **K.Ramabrahmam’s case** at paras 16, 17 and 18 it was held as

follows;

“16. As regards the second question, it may be noted that once the appellant had based his claim on Ex.A-1/receipt for sale consideration of Rs.750/- in respect of suit property, he can be said to have acquiesced in the title of the executant thereof, i.e. the mother of the respondent. Adverse possession is a concept, that emerges, when a person, not vested with the title, is in possession of the property, in derogation of the title of the rightful owner. If the possession is traceable to any permission or an act, emanating from the actual owner, it cannot be treated as adverse. To adopt the words of the Supreme Court in ***Achal redid v. Ramakrishna Reddiar, AIR 1990 SC 553,***

“Adverse possession implies that it commenced in wrong, and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to contract, it cannot be adverse”.

17. Therefore, an individual who claims to have transacted with the rightful owner, in relation to a property and claims possession, vis-à-vis the property, on the basis of such a transaction, he cannot be permitted to plead adverse possession.

18. In the instant case, apart from basing his claim on Ex. A-1 and other documentary evidence, the appellant has taken the alternative plea of adverse possession, as the basis for declaration of his title. It is true that the adverse possession, which, till recently, used to be a mere defence for recovery of possession; was recognised as a basis for declaration of title. However, once the origin of the possession is traceable to an incomplete transaction, with the rightful owner, the resultant possession, even if true, cannot be treated as adverse, and in that view of the matter, the appellant cannot be granted the relief of declaration of title on the plea of adverse possession, assuming that he had been in possession, for a fairly long time.”

14. The judgments relied on by the learned counsel for the petitioners have no application to the facts of this case.

15. In ***N. Mallakanti and others vs. Chennakesava Swamy Temple, Gargeyapuram Village, Kurnool and another*** it is held that “once the lease is

terminated then the tenant would be deemed to be an encroacher and is liable to be evicted with police aid without approaching the Tribunal". In **A.A. Gopalakrishnan v. Cochin Devaswom Board and others** it is held that "the properties of deities and temples required to be protected and safeguarded by all the persons including its employees and it is also the duty of the Courts to protect and safeguard the properties of Religious and Charitable Institution from wrongful claims".

16. The findings in the suits filed by the Hathiramji Mutt in the year 1971 and findings in O.S.No.244/19754 clearly shows that there exists tenancy relationship between the petitioners and the respondent Mutt. When by virtue of Section 82 of the Act, the leases stands cancelled, the respondents are entitled to evict the petitioners as per Rule 5 of the rules framed under G.O.Ms.No.359 dated 11.03.2003. The trial Court allowed A.S.No.84/1993 and while referring to shaswata pattas held that the appellants therein who are the petitioners and their predecessors are bound to pay the rents to the respondent Mutt. Even that indicates that there exists relationship of tenancy between the petitioners and the respondent Mutt.

17. In view of the above facts and circumstances of the case, I do not see any merit to entertain these writ petitions. Accordingly, these writ petitions are dismissed. No costs.

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

A.RAJASHEKER REDDY, J

Date: 07.09.2015

dv