HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 19159 of 2016

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent Nos.4 and 5, who are Tahsildar and the representative of Sri Chenna Keshava Swamy Temple, Chinnapasupula Village, in interfering with the rights of the petitioners over land to an extent of Ac.6.29 cents in Sy.No.313, ac.4.39 cents in Sy.No.317, Ac.3.21 cents in Sy.No.359 and Ac.9.68 cents in Sy.No.361 of Chinnapasupula Village on the ground that the same are classified as endowments land as per the entries in RSR, as illegal, arbitrary and contrary to the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act").

2) The petitioners claim that the above mentioned lands belong to their ancestors and are in their possession from time immemorial. It is averred that after the demise of their ancestors, the subject land devolved on them being their legal heirs. Respondent Nos.3 and 4, who are the Revenue Divisional Officer and Tahsildar having recognized their possession and enjoyment over the said land, issued pattadar passbooks and title deeds in their favour. It is said that the revenue records including their properties got washed away in the year 2004 when the District of Kurnool was in floods. It is averred that though the pattadar passbooks were issued, they could not produce the same but however asserts that

they are in possession and enjoyment of the property. It is stated that when the petitioners approached respondent No.4 for issuance of fresh pattadar pass books and title deeds basing on the entries in 1-B Register, respondent No.4 refused to issue the same basing on the entry in R.S.R. Register wherein it was mentioned in pattadar column as Manager for the time being-Chennakesava Swamy Temple. It is averred that instead of issuing fresh pattadar passbooks and title deeds in favour of the petitioners, respondent No.4 cancelled the entries in R.S.R. and Form 1-B without putting the petitioners on notice. It is stated that basing on the cancelled entries, respondent No.5 tried to grant leasehold rights of the subject land to the third parties, but could not do so due to strong protest made by the villagers. Hence, he again started interfering with the rights of the petitioners over the subject lands. It is alleged that on 09.06.2016 respondent Nos.4 and 5 came to the subject land and tried to prevent the petitioners from carrying out their agricultural operations. Challenging the same the present writ petition came to be filed.

3) A counter came to be filed by respondent No.5 denying the averments made in the affidavit filed in support of the writ petition except to the extent to which they are admitted. In Para No.3 of the counter it has been averred that the lands referred to in the writ affidavit belong to respondent No.5, which is evident from the revenue records. The averments in the affidavit filed in support of the writ petition that the property belongs to the ancestors of the petitioners was denied and the averment that the names of the

petitioners were mutated in the revenue records, pattadar passbooks and title deeds were issued is also denied. As per the counter, the lands are in the name of respondent No.5 and the revenue records such as R.S.R. and 1-B reflects the name of the diety. It is averred that once the temple was handed over to the endowments department by the then trustee in the year 2013, the temple was managed by the Executive Officer, who inturn auctioned the subject lands in the year, 2014 for three years and one M.Vishnuvardhan Reddy being the highest bidder was given the land on lease on a rent of Rs.2,08,500/- per year. It is also said that the subject lands were also entered in the registers maintained under Section 43 of the Act. The list of the properties of the temple was communicated to the Sub-Registrar through proper channel and all steps have been taken to protect the lands in question. It is also said that if there is any dispute over the title, the appropriate remedy for the petitioners is to approach the Endowments Tribunal under the relevant provision of law.

4) A reply came to be filed by the petitioners clarifying the averments made in the counter. It is said that under Section 43 of the Act the entries in the register have to be made after following the procedure laid down therein and the register has to be maintained by the Assistant Commissioner of Endowments. It is said that before making any entry, an enquiry has to be conducted and then pass an order directing the registration of Religious and Charitable Institution as required under sub-section 5 of Section 43 of the Act. It is the case of the petitioners that a perusal of the

order dated 06.04.2013 issued by the Assistant Commissioner of Endowment would only disclose that an order passed under sub-section 5 of Section 43 of the Act, but there is nothing on record to show that the subject land is ordered to be registered as an endowment property. It is urged that mere ordering of registration of charitable and religious institution does not mean registration of the endowment, as the institution and the endowment are different. The gist of reply affidavit is that the Inspector of Endowment is not the competent authority to maintain the list under Section 43 of the Act and as such the question of making claim over the said land stating that it is an endowment land and belongs to respondent No.5 basing on a report prepared by him, would not arise.

5) Learned counsel for the petitioners mainly submits that unless and until a particular piece of land is entered in the register maintained under Section 43 of the Act, the same cannot be treated as endowment land. It is his case that till date there is no such entry and the basis for claiming the ownership over the land is due to the entries made in R.S.R. against the pattadar column. Relying upon the judgment of this Court in W.P.No.31851 of 2012, the learned counsel for the petitioners would submit that respondent Nos.4 and 5 have no authority and their interference over the land is quite contrary to the ratio laid down by this Court.

6) From a reading of the affidavit, counter and reply, it is clear that grounds which were not raised in the writ petition are sought to be urged in the reply. Be that as it may, the grievance of the

petitioners is for issuance of writ of mandamus to declare the action of respondent Nos.4 and 5 in interfering with the rights of the petitioners over the lands referred to above, by striking off the entries in R.S.R. and Form 1-B register which were entered in their favour. Learned counsel for the petitioners relied upon the judgment of this Court in W.P.No.29506 of 2013, wherein, the issue that fell for consideration before this Court was as to whether the Sub-Registrar was right in refusing to register the sale deed on the ground that the land in Sy.No.360 is shown as endowment land in revenue records. Relying upon the judgment of this Court W.P.No.31581 of 2012, this Court held as under:

> "The law is well settled that a mere entry in the RSR does not constitute evidence of title to the property. Even otherwise, the said R.S.R. does not show that the temple is the pattadar or inamdar."

7) The learned Judge allowed the writ and directed the Sub-Registrar to receive and process the documents. It is also held that even assuming for a moment that it is an endowment property, the Sub-Registrar could not have refuse to register the document. Subsequently, a Full Bench of this Court in *Vinjamuri Rajagopala Chary v. State of Andhra Pradesh and others*[1] while summing up of the proposition laid down in the said judgment held as under:

> "(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

[1] (2016) 2 ALD 236 (FB)

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) ..xxxxxxx.....

(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."

8) The petitioners were not parties to the W.P.No.31581 of 2012. It is not even their grievance, that their request for registration of land in their favour was rejected. In the present writ petition the learned counsel for the petitioners submits that the lands cannot be declared as Endowment lands without following the procedure contemplated under Section 43 of the Act. *Prima facie* it appears to be a case where the petitioners and the temple authorities are claiming title over the property. The petitioners though claiming themselves to be owners of the property failed to produce the pattadar passbooks and title deeds issued in their favour. The plea taken by them is that the said documents were destroyed/washed away during floods. Learned counsel for the petitioners placed on record the Xerox copy of 1-B register in support of his plea that the names of the petitioners do find place in the records, but at the same time, the learned counsel for respondent No.5 placed on record the proceedings under Section 43 of the Act, which indicate the name of respondent No.5 as the person in possession of the said lands. Though an argument was

sought to be advanced that the Inspector, Endowments Department is not the proper person to give a certificate to that effect but the proceedings dated 29.09.2014 clearly indicate that it was issued basing on a report given by an Inspector. On the other hand, the proceedings dated 29.09.2014 issued by the Assistant Commissioner, Endowments Department clearly show that auction in respect of lands in dispute were conducted and the same were given on lease to one Vishnuvardhan Reddy for a period of three years.

9) As stated above, the judgment of the learned Single Judge relied upon by the learned counsel for the petitioner may not be any helpful to him for the reason that issue in the said case was with regard to refusal by the Sub-Registrar to register the lands on the ground that there were entries in the RSR as endowment property. But fact remains that issue in the present case is with regard to the interference by respondent Nos.4 and 5 in conducting agricultural operations by the petitioners. Therefore, *prima facie* there appears to be a dispute with regard to the title over the property. As observed earlier, even the petitioners did not produce any documents in support of the same except the Xerox copy of the entries in 1-B Model.

10) In view of the dispute with regard to the title over the property and as both the parties are relying on the entries made in 1-B model as well as R.S.R., in respect of which the learned counsel for the petitioners states that the same would not confer any title having regard to the order passed in W.P.No.31851 of 2012, it may not be proper for this Court to decide the ownership over the

property. As there is a dispute with regard to the title over the property it would be appropriate for the parties to avail the remedies availale under law. In view of the interim orders passed by this Court, the petitioners shall not be dispossessed, if they are in possession, for a period of six (06) weeks from today. During which period, the petitioners shall approach the appropriate forum and obtain necessary orders there from.

11) Accordingly, the writ petition is disposed of. There shall e no order as to costs.

12) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.11.2016
gkv