

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.22248 of 2001

ORDER:

This writ petition is filed seeking the following relief/s:

‘...to issue a writ, order or direction particularly one in the nature of writ of mandamus declaring the proposed action of the respondents in threatening to evict the petitioners and demolish the structures/houses erected by them in S.no.147/1, Avilala village, Lingeshwar Nagar, Sai Nagar Gram Panchayat, Tirupathi, Chittoor District as illegal, arbitrary and violative of Art.14 and 300A of Constitution of India and consequently to direct the respondents not to evict the petitioners and demolish the structures/houses erected by them in S.No.147/1, Avilala village, Lingeshwar Nagar, Sai Nagar Gram Panchayat, Tirupathi, Chittoor District and pass such other order...’

[Reproduced verbatim]

2 . I have heard the submissions of the learned senior counsel appearing for the writ petitioners, the learned Standing Counsel appearing for the respondents 1 and 2, and the learned senior counsel appearing for the 3rd and 4th respondents. I have perused the material record.

3 . The case of the writ petitioners, as stated in the affidavit of the 1st writ petitioner, in brief, is as follows:

The lands in Survey nos.145, 147/1 and 148/2 in Lingeshwar Nagar, Sai Nagar Gram Panchayat, Tirupathi of Chittoor District cover an extent of Ac.7.70 cents, Ac.48.60 cents and Ac.13.35 cents respectively. The 4th respondent/Parakala Mutt (hereinafter referred as ‘the Parkala Mutt’) held 1/4th share in the above said extents of land. One E.V. Subba Reddy and his father Muthayala Reddy purchased the remaining 3/4th extent from one Chinthala Swamy Chetty, Chinthala Srinivasulu Chetty, Shamba Muneppa and Karala Lakshmi Narasimaiah under registered sale deeds dated 01.12.1914, 15.07.1915, 11.07.1914, 15.03.1915 and 25.03.1916 respectively. The said E.V. Subba Reddy, S/o. Muthayala Reddy obtained 1/4th share of the above lands on lease under a registered lease deed dated 26.11.1915 from the then Parakala Mutt authorities. The said E.V. Subba Reddy in turn had sold away his 3/4th extent (share) along with his father in

favour of Sri Prayoga Dossji varu of Sri Swamy Hathi Ramjee Mutt under a sale deed dated 20.12.1916 along with the leasehold rights in 1/4th share of Parakala Mutt. Thus, the above said lands stand jointly in the names of Sri Parakala Swamy Mutt and Sri Swamy Hathi Ramjee Mutt, that is, the 3rd respondent Mutt. Parakala Mutt is having its head office in Karnataka State and is not registered under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 ('the Act 30 of 1987', for short) whereas Hathi Ramjee Mutt is registered under the said Act. Both the Mutts have not partitioned the lands in the above said survey numbers by metes and bounds and no steps have been taken till now for partition. Ryotwari patta was granted on 30.11.1960 by the Government of Andhra Pradesh under the A.P. (Andhra Area) Inams Abolition Act, 1956 for the above extent in favour of both the above Mutts according to their shares. Later in the year 1982, the Government of AP initiated land acquisition proceedings to acquire an extent of Ac.1.14 cents in Sy.No.145 out of Ac.7.70 cents and the Land Acquisition Officer had deposited the compensation under Section 30 of the Land Acquisition Act in LAOP.no.33 of 1981. The learned Principal Subordinate Judge, Tirupati, after enquiry, had apportioned the compensation in 1:4 ratio between the Mutts *vide* his judgment dated 25.11.1982. The said facts clearly establish that Sri Srimad Abinava Ramanaja Brahmathantha Swathanthra Parakala Swamiji Mutt i.e., Parakala Mutt has got 1/4th share in all the above said lands in the above said survey numbers. The authorities of Sri Swami Hathi Ramjee Mutt sold away an extent of 23.35 acres in favour of different persons without division of the property between Hathi Ramjee Mutt and Parakala Mutt. The Mathadipathi of Parakala Mutt felt it difficult to hold the said lands as the income from the lease is very nominal and had decided to sell away 1/4th share in all the above said survey numbers. Hence, the said Sri Srimad Abinava Ramanaja Brahmathantha Swathanthra Parakala Swamiji had executed a registered general power of attorney in favour of N. Narasimha Reddy, S/o. N.Muni Reddy on 30.11.1988 authorising him to sell away the entire extent. The said Narasimha Reddy several times approached the authorities of Hathi Ramjee

Mutt for partition of the lands, but, in vain. At last Narasimha Reddy had also got issued a legal notice demanding partition and stating that if there is no reply within 30 days to his notice from Hathi Ramjee Mutt, he will sell away the share of the Parakala Mutt. Accordingly, Narasimha Reddy sold the 1/4th share of the property in Sy.No.147/1 i.e., Ac.12.15 cents under various registered sale deeds dated 01.03.1989, 02.03.1989, 11.09.1995, 12.06.1996, 05.07.1996 etcetera. He sold Ac.1.50 cents to one P. Meganadham; Ac.1.50 cents to M. Reddaiah Naidu, Ac.1.50 cents to N. Chenchu Ratnamma, Ac.1.50 cents to C. Narayana Reddy, Ac.1.00 cent to C. Narayana Reddy and M. Reddaiah Nadu, Ac.0.55 cents to C. Muni Krishna Reddy, Ac.0.80 cents to C. Muni Krishna Reddy, Ac.0.80 cents to Y. Rama Chandraiah, Ac.1.00 cents to C. Muni Krishna Reddy and an extent of Ac.1.00 cent to Y. Rama Chandraiah. The above persons, in their turn, had sold away their respective holdings in favour of some of the writ petitioners and third parties and those third parties in their turn had again sold the properties purchased respectively by them to the rest of the writ petitioners under different sale deeds. Some of the writ petitioners had obtained loans from Nationalised banks for the purpose of constructing buildings over the vacant sites purchased from the above mentioned persons and had completed constructions. Sai Nagar Gram Panchayat assessed the houses of such writ petitioners for the purpose of property tax. Unless the lands are partitioned by metes and bounds, Hathi Ramjee Mutt cannot assert that it has got any title in any specific item or portion of the land and it is the duty of the respondents to allot the share of the Parakala Mutt. The lands sold by Parakala Mutt through its GPA are to be allotted to the writ petitioners. The respondents 1 to 3 cannot seek to evict the petitioners and demolish the structures erected by them in the meantime. While so, the respondents 1 to 3 without any notice entered into the locality on 12.10.2001 and demolished some of the houses in the other survey numbers under the pretext that the entire land belongs to Hathi Ramjee Mutt and that nobody got any manner of right whatsoever and wanted the petitioners to vacate the buildings in a day or so and that otherwise they will come again with much police force and demolish all the buildings in the locality. No notice was

issued by the respondents for the proposed action till date. Due to cyclone and strike of RTC staff, the petitioners immediately could not visit Hyderabad and file the writ petition. The petitioners apprehend that the officials of the respondents 1 and 2 may come at any time and demolish the structures erected by them in Sy.no.147/1 of an extent of Ac.12.15 cents. If that is allowed to happen grave and irreparable loss would be caused to the petitioners. The petitioners have no other effective alternative remedy. Hence, the writ petition is filed.

4 . The case of the respondents 1 and 2/Endowments Department as stated in the counter affidavit of the then Assistant Commissioner of Endowments, in brief, is this:

Parkala Mutt-4th respondent was published under Section 6(d) of Act 30/1987 as a Mutt *vide* proceedings of the 1st respondent in Rc.No.J3/20386/1990 dated 08.02.1991. As per the provisions under Section 1(3)(a) of Act 30/1987 all the provisions of the said enactment are applicable to the public charitable institutions and endowments, whether registered or not, in accordance with the provisions of the said enactment. The 3rd respondent i.e., Hathi Ramjee Mutt filed OA.nos.5 of 1997, 10 of 1997 and 12 of 1997 before the Deputy Commissioner of Endowments Department, Kurnool seeking eviction of its ex-tenants i.e., the 1st petitioner, C. Ramakrishna and D. Guravaiah from an extent of Ac.6.50 cents in Sy.no.147/1. The same were allowed on 22.06.2002. Assailing the said orders, the 1st petitioner, Guravaiah and C. Ramakrishna preferred AS.nos.44, 45 and 46 of 2002 on the file of the Court of the learned V Additional District Judge, Tirupati against respondents 1 and 2 herein. The said appeals were dismissed on merits on 18.04.2003 and the orders therein have become final. The 3rd respondent-Hathi Ramjee Mutt also filed OA.no.36 of 1997 under Section 85 of Act 30/87 for group eviction of the encroachers in an extent of Ac.38.60 cents in Sy.no.147/1 of Avilala village. The same was allowed on 29.03.1997. Executing the said orders, the 2nd respondent handed over possession of Ac.5.00 cents out of Ac.38.60 cents in

Sy.no.147/1 of Avilala village under panchanama dated 19.10.1997 to the 3rd respondent. The Government acquired Ac.1.14 cents out of Ac.7.70 cents in Sy.no.145 of Avilala village. The remaining extent of Ac.6.56 cents was under encroachment. Hence, the 3rd respondent Mutt filed OA.no.114 of 2001 before the Deputy Commissioner, Endowments Department, Kurnool seeking group eviction under Section 85 of the Act 30 of 1987 for evicting encroachers in an extent of Ac.6.56 cents in Sy.no.145 of Avilala village and the same was allowed on 21.08.2001. The 2nd respondent herein executed the said orders on 13.10.2001 after duly recording panchanama and handed over possession of Ac.05.00 cents of land in Sy.no.145 of Avilala village to the Hathi Ramjee Mutt/the 3rd respondent Mutt. One Dr.K. Uma Devi (5th petitioner in WP.no.11797 of 2002) alleging to be a purchaser of a piece of land in survey no.145 from the 1st petitioner herein under a sale deed dated 07.09.1996 had filed a suit in OS.no.1463 of 2001 on the file of the Court of the learned Principal Junior Civil Judge, Tirupati against the 2nd and 3rd respondents for permanent injunction and the said suit was dismissed on merits on 26.02.2010 and the decree and judgment in the said suit have become final. In the said suit, the 1st petitioner herein and the said N. Narasimha Reddy were examined as PWs 2 and 3 respectively. In the judgment in the said suit, it was held as follows: 'Then it is clear that the permanent leasehold rights are vested with the Hathiramji Mutt. Then it has to be seen without determination of the said permanent leasehold right whether Parakala Mutt got right to give General Power of Attorney in favour of Narasimha Reddy to deal with 1/4th share of Parakala Mutt. No single document was filed by the plaintiff or PWs 2 to 4 with regard to determination of permanent lease hold rights which are vested with Hathiramji Mutt.' 'But as seen from the General Power of Attorney, nowhere mentioned in the General Power of Attorney that General Power of Attorney holder gave total sale consideration to Parakala Mutt.' 'Even if the case of the plaintiff is correct with regarding to execution of General Power of Attorney in respect of 1/4th share of Parakala Mutt, the General Power of Attorney is not valid

because there is no determination of permanent lease hold rights in respect of 1/4th share.' 'Without partition of the property by metes and bounds if any sale conducted by Narasimha Reddy even prior to revocation deed, it is not a valid sale because there is no division of property by metes and bounds, with specific boundaries the property is not in existence since he cannot sell away and deal with the property.' The 3rd respondent-Hathi Ramjee Mutt is a religious and charitable institution registered under the provisions of Act 30/1987. Therefore, even for relinquishing its permanent leasehold rights, the procedure contemplated under the said enactment has to be followed; as such the taking possession of the land from the ex-tenants of the 3rd respondent Mutt is contrary to the provisions of the Act. The Deputy Commissioner of Endowments, Kurnool exercising the powers vested in him under Section 85 of the Act 30/1987 passed orders on 21.08.2001 in OA.no.114 of 2001 stating that he has every reason to believe that a group of persons without any entitlement and with the common object of occupying the land had encroached upon the land in Sy.no.145 admeasuring Ac.6.56 cents of Avilala village and that the encroachers did not vacate even after the demand made by the custodian of Hathi Ramjee Mutt. Though notices were served to the unauthorised encroachers, they did not vacate the property and again tried to attempt to occupy the balance vacant land of the subject Mutt and that in view of the emergency and to safeguard the properties of the mutt, orders were issued under sub section (1) of Section 85 of Act 30/1987 instructing the then Assistant Commissioner, Endowments Department, Chittoor to take immediate action for removal of encroachers in an extent of Ac.6.56 cents in Sy.no.145. In execution of the said orders, the 2nd respondent evicted encroachers from the land in Sy.no.145 and handed over possession of Ac.5.00 cents out of Ac.6.56 cents of Avilala village under a panchanama dated 13.10.2001 to the 3rd respondent Mutt. The 2nd respondent had also handed over possession of the land admeasuring Ac.5.00 cents in Sy.no.147/1 to the 3rd respondent Mutt through the panchanama dated 19.10.1997 as per the orders issued in OA.no.36 of 1997 dated 29.03.1997 with the aid of police and revenue officials. The action of

the 2nd respondent in the matter of execution of the OA orders of the Deputy Commissioner for removal of group of encroachers from the property in Sy.no.145 and 147/1 belonging to Hathi Ramjee Mutt with the aid of police and revenue officials is done under the provisions of Act 30/1987. The writ petition is devoid of merit.

5. The case of the 3rd respondent, in brief, is this:

The petitioners are encroachers on the lands of the 3rd respondent- Hathi Ramjee Mutt and the action for eviction of the petitioners from the respective lands in their possession is perfectly correct. It is neither illegal nor arbitrary. They have no right to remain in possession of the lands of this respondent. The inam title deed no.2938 clearly shows that the land in question belongs to Hathi Ramjee Mutt and Parakala Mutt. The land originally was in the name of Sannappa Panthulu and subsequently the same was purchased by the two Mutts. The total extent of land admeasuring Ac.74.23 cents in Survey Nos.145, 147/1, 148/2, 321 and 323 situate at Avilala village belongs to both the Mutts as per document no.2095/1916 dated 20.12.1916. In the said land, the 3rd respondent Mutt is having 3/4th share and the 4th respondent Mutt is having 1/4th share as per document no.2088/1917 dated 20.09.1917. Parakala Mutt handed over possession of 1/4th share of land to Hathi Ramjee Mutt on permanent lease. Accordingly, the entire extent of Ac.74.23 cents has been in possession and enjoyment of Hathi Ramjee Mutt and it has been leased out to 30 tenants for a period of six years and the said lease period expired on 30.06.1983. Later, the leases were not renewed and the lessees were asked to surrender possession of the said lands to Hathi Ramjee Mutt. They have not done so. The lands in question are situate within the State of Andhra Pradesh and are being managed by Hathi Ramjee Mutt, which is registered under Act 30/1987. Hence, the 3rd respondent is fully entitled and authorised to evict the petitioners. The land acquisition proceedings were initiated and compensation was paid at the rate of 1:4 ratio to both the Mutts by the Government in respect of the lands covered by Sy.no.145 in an extent of

Ac.8.84 cents *vide* proceedings in LAOP.no.33/1981 on the file of the Court of the learned Principal Subordinate Judge, Tirupati. Thus, it is evident that the lands belong to both the Mutts. The Government after thorough enquiry issued GO assigning the land of an extent of Ac.23.45 cents in Sy.no.147/1 and 184/2 of Avilala village to the employees of the Hathi Ramjee Mutt and to 4 sitting tenants. Accordingly, part of the land was assigned by the Government to the employees of Hathi Ramjee Mutt. The 1st petitioner along with others started doing real estate business and manipulated and misled the Mathadhipathi of Parakala Mutt and had obtained GPA dated 30.11.1988 in favour of one

N. Narasimha Reddy with a *mala fide* intention to alienate the lands of Parakala Mutt and got it registered as document no.704/1988 dated 01.12.1988. Basing on the said power of attorney, Narasimha Reddy, the GPA holder, submitted an application to the Commissioner of Endowments (AP) for partition of 1/4th share of Parakala Mutt and for fixation of boundaries and also to handover possession of the said 1/4th share of lands of Parakala Mutt from the undivided joint lands at Avilala village to him to manage the same. Pending finalisation of the said application, the said Narasimha Reddy, without having any right over the said lands to sell the same, had alienated Ac.08.00 cents to his minor son Dhanunjaya Reddy, Narayana Reddy, P. Meganatham and Reddayya Naidu by executing documents no.933/89 to 938/89 dated 03.03.1989. In turn the said Meganatham had alienated Ac.0.45 cents and Ac.0.55 cents totalling one acre in Survey no.147/1 to P.Lingamurthy/1st petitioner herein through sale deed bearing document nos.8/90 and 9/90 dated 03.01.1990. The said alienees converted the said lands into plots and illegally alienated the same to third parties including the other petitioners herein. After coming to know about the illegal alienations the Mathadhipathi of Parakala Mutt cancelled the GPA by executing registered revocation deed dated 08.01.1990. Hence, the transactions amongst the petitioners and others are not valid and are void. Even after cancellation of the GPA, the said Narasimha Reddy went on alienating the lands of Parakala Mutt. Basing on the same, the petitioners

now approached this Court. The alienations are invalid also under the provisions of the Endowments Act. Therefore, the proceedings were initiated under Section 85(1) of Act 30/1987 after issuing notice to persons concerned who are in possession of the lands by declaring them as encroachers. Houses constructed in certain lands were demolished. At that juncture, the petitioners approached this Court. Hence the writ petition may be dismissed.

6 . The case of the 4th respondent-Parakala Mutt, as stated in the counter affidavit of the then Mathadhipathi of the Mutt, in brief, is this:

The 3rd and 4th respondents have 3/4th and 1/4th extents of shares in the total joint lands of Ac.74.23 cents of the Mutts. 1/4th share of the 4th respondent has been under permanent lease to the 3rd respondent since 1916 onwards as per registered document dated 20.12.1916. As per the said document, the 3rd respondent Mutt has got absolute right over 3/4th extent and leasehold rights over 1/4th extent of the joint lands of the Mutts. The 3rd respondent leased out the property to about 30 tenants for a period of 6 years with periodical renewals. The last lease was granted by the Commissioner, Endowments, Hyderabad for a period of 6 years from 01.07.1977 to 30.6.1983. The leases were not renewed thereafter. The ex-tenants, the 1st petitioner herein and some others were treated as encroachers as they are squatting on the property. As such, they were subjected to eviction proceedings under Sections 83 and 85 of Act 30/1987. Unless 3rd respondent relinquishes permanent leasehold rights and hands over possession of 1/4th share of the 4th respondent, neither the 4th respondent nor any other 3rd person claiming under the 4th respondent have got any rights of alienation or possession. After eviction of erstwhile tenants, the entire extent of the joint lands of the Mutts is in possession of the 3rd respondent Mutt only. Even if the 4th respondent Mutt desired to sell its 1/4th share of the above said land to third parties for any reason, it can only transfer rights without physical possession of the lands within specific boundaries. The property of the 4th respondent Mutt in question is situated in

Andhra Pradesh and the same is being managed by the 3rd respondent Mutt as a permanent lessee of the 4th respondent Mutt. The entire property is thus in possession of the 3rd respondent Mutt. Hence, the 3rd respondent is empowered and entitled to evict the encroachers, whoever they may be, as per the provisions of Act 30/1987. In the year 1977, Government had acquired Ac.1.14 cents out of Ac.7.70 cents in Sy.no.145 being part of the undivided joint lands of the Mutts for construction of houses for Scheduled Caste people. Compensation was proposed to be paid to the 3rd respondent as the land was in possession of the 3rd respondent. When an objection was raised by the 4th respondent, compensation was apportioned amongst the joint owners as per the orders of the learned Principal Senior Civil Judge, Tirupati. The 4th respondent Mutt is entitled to 1/4th share of sale proceeds from the sales of properties out of joint lands of the Mutts. The 3rd respondent sold Ac.23.45 cents but not Ac.23.35 cents to its Mutt employees and to four sitting tenants of the 3rd respondent Mutt after obtaining orders of the Commissioner of Endowments and permission of A.P. High Court. Narasimha Reddy, pretending himself to be a devotee of Parakala Swamiji, along with his real estate partners approached the then Mathadhipathi of Parakala Mutt through the then Manager of the Mutt and represented that he would take care of the Mutt lands and accordingly a deed of General Power of Attorney dated 30.11.1988 was prepared. However, in collusion with the then Manager of the Mutt, in the said GPA registered on 01.12.1988, certain clauses were interpolated regarding right of selling etcetera, which right, the 4th respondent Mutt's Mathadhipathi was himself not empowered to exercise. An application was submitted to the Endowment Commissioner for remittance of 1/4th share of sale proceeds of Ac.23.45 cents sold by the Hathi Ramjee Mutt and for division of the remaining lands and for obtaining physical possession of the remaining 1/4th share of land of Parakala Mutt. Even before such partition, as pre-planned, in collusion with real estate partners and the 1st petitioner herein, the said GPA holder alienated properties viz., an extent of Ac.8.00 cents out of Ac.38.50 cents in

Sy.no.147/1 at Avilala village to his minor son Dhanunjaya Reddy and his three real estate partners C. Narayana Reddy, M. Reddaiah Naidu and P. Meghanadham vide collusive documents nos.933/89 to 938/89 all dated 30.03.1989. In turn the said Reddaiah Naidu and Narayana Reddy illegally alienated Ac.0.45 cents and Ac.0.55 cents (Ac.1.00 cent) to the 1st petitioner through nominal and sham documents no.8/90 and 9/90 dated 30.01.1990 under the pretext that there was no reply within thirty days to the notice demanding partition. All the alienations are sham and nominal. After knowing the misappropriation by the GPA holder, the Mathadhipathi of the 4th respondent Mutt revoked the GPA by revocation document dated 08.01.1990. The ex-manager and others fabricated records detrimental to the interests of the 4th respondent Mutt. The 3rd respondent Mutt issued notifications in various newspapers in regard to illegal sale transactions of lands in Sy.no.145 and 147/1. The persons who purchased Ac.08.00 cents in Sy.no.147/1 were instigated to file declaratory suits in OS.no.51/90, 55/90 and 57/90 against the 4th respondent. Thereafter, alienations were made during the pendency of the suits and collusive and nominal sale deeds were brought into existence; and the said transactions are hit by the rule of lis pendens. Out of vengeance, despite revocation of the GPA, Ac.1.64 cents out of Ac.6.56 cents in Sy.no.145 was alienated to the same real estate partners jointly *vide* document dated 07.02.1990 by creating antedated agreement and instigated them to file a declaratory suit OS.no.134 of 1990 on the file of Additional District Munsif's Court, Tirupathi. Alienations were made during the pendency of the said suit and Ac.0.40 cents in Sy.no.145 was alienated on 09.10.1992 to 3rd parties. The suit was later not pressed. The GPA holder as agent of the 4th respondent Mutt filed OS.no.318 of 1989 against 3rd respondent Mutt as 1st defendant and others for partition of the undivided joint lands of the Mutts. While the suit was pending, the GPA was revoked. Out of vengeance and even after cancellation of the GPA and without getting the land partitioned by metes and bounds, illegal alienations out of the 1/4th share of the 4th respondent Mutt were made in favour of the

kith and kin (brother and close relatives) of the real estate partners by creating antedated agreement and showing as if the land is in physical possession. In IA.no.1969/89 in OS.no.318/89 the Court held that in view of the permanent lease in favour of the 3rd respondent, which has not yet been rescinded, the 4th respondent Mutt has no subsisting interest in the properties and that the GPA was cancelled by the principal and as such erstwhile agent could no longer represent the 4th respondent Mutt. In the appeal in AAO.1083 of 1990 it was contended that GPA is irrevocable. Anticipating adverse orders the suit OS.no.318/89 was not pressed after achieving the illegal object of selling the properties. In view of the multiple litigations, a proposal was made to Kuppuswamy Naidu, the 4th defendant in OS.no.318/89 that instead of selling lands in piecemeal complete rights of 1/4th share in the undivided joint lands of the Mutt would be sold. He had agreed for the same. Then the previous Mathadhipathi as per resolution no.10 dated 11.03.1990 transferred rights of 1/4th share in the undivided joint lands of the Mutts without physical possession to M. Kuppuswamy Naidu and four others after receiving valid consideration through bank drafts. The said purchasers through protracted correspondence for nine years with the 1st respondent had made the 3rd respondent to relinquish its permanent leasehold rights in view of multiple litigation and prying eyes of unscrupulous land grabbers and got partitioned the 1/4th share i.e., Ac.18.27 ½ cents from out of the undivided joint lands of the Mutts by adjusting the equities. The 1st respondent after verifying all the relevant records and after obtaining legal opinion of the Endowments Counsel had issued orders dated 08.01.1990 directing the 3rd respondent to implement the orders for partition of the undivided joint lands of the Mutts and to handover 1/4th share to Kuppuswamy Naidu. Accordingly, the 3rd respondent issued orders dated 19.01.1999 and 17.04.1999 to the 4th respondent Mutt and M. Kuppuswamy Naidu and four others for execution of partition deed at their cost and accordingly a registered partition deed was executed on 23.04.1999 subject to handing over of physical possession after evicting the

encroachers, if any. In terms of the partition deed, the 3rd respondent Mutt had handed over physical possession of Ac.18.27 $\frac{1}{4}$ cents i.e., Ac.4.97 $\frac{3}{4}$ cents in Sy.no.145 and Ac.13.29 $\frac{1}{2}$ cents in Sy.no.147/1 to Sri M. Kuppuswamy Naidu and 4 others as specified in 'B' schedule of the deed of partition through 4th respondent and the balance land i.e., Ac.1.58 $\frac{1}{4}$ cents in Sy.no.145 and 35.30 $\frac{1}{2}$ cents in Sy.no.147/1 for the share of 3rd respondent Mutt. Thus, Kuppu Swamy Naidu and four others have become the absolute owners of the above said extents of $\frac{1}{4}$ th share of 4th respondent Mutt in the undivided joint lands of the Mutts and no other persons including the original vendor or his illegal alienees including the petitioners herein or the ex-tenants of 3rd respondent Mutt have got any right in the said land. A duty is enjoined upon 3rd respondent to get the encroachers evicted first from the said land and handover the $\frac{1}{4}$ th share of the 4th respondent to Kuppuswamy Naidu and four others through the 4th respondent and retain the balance $\frac{3}{4}$ th extent of the 3rd respondent Mutt after survey and subdivision as per the correct measurements. The illegal transactions made without any manner of right whatsoever and the transactions made during the pendency of the suits and the transactions made after the revocation of the GPA are all invalid. Documents of 60 petitioners are only filed. Documents of 8 other petitioners are not filed. None of the petitioners have constructed houses. There are only five buildings including three buildings constructed by the 1st petitioner. The 1st petitioner instigated the other petitioners and filed this writ petition apprehending that the houses will be demolished. One or two petitioners might have obtained bank loans by producing false and illegal documents and by misleading the bank officials. The first petitioner is one of the ex-tenants of the 3rd respondent Mutt in respect of Ac.4.50 cents in Sy.no.147/1. The final lease was granted to him by the 1st respondent for a period of six years and that lease was not renewed after 30.06.1983. He did not surrender the land after expiry of the lease period. The 3rd respondent issued notice dated 20.07.1995 for arrears towards damages for the period of illegal

possession. The 1st petitioner sent a reply dated 05.08.1995 stating that the land is not in his possession and that nearly 2000 persons have occupied the land and put up thatched houses. The 1st petitioner got number of huts raised in joint lands of the Mutts in Ac.8.90 cents in Sy.no.147/1. He got named the colony as Lingeswara nagar. The 1st petitioner who is an ex-tenant of Ac.4.50 cents in S.no.147/1, without surrendering the land to the 3rd respondent, had illegally alienated Ac.0.50 cents to one V. Narayana Reddy through illegal and sham document dated 02.01.1985 and in collusion with the original vendor and his other real estate partners had conspired to grab the joints lands of the Mutts. The alleged original vendor illegally alienated Ac.4.00 cents in favour of his real estate partners and they in turn alienated Ac.1.00 cents in favour of 1st petitioner through documents nos.8/90 and 9/90 dated 03.01.1990 as a reward of mutual and unlawful benefit. The 1st petitioner has gone on to sell more than Ac.2.00 cents with neither title nor possession. The 3rd respondent Mutt went on issuing paper publications periodically putting the public on notice as to the malpractice being indulged by unscrupulous elements. The 3rd respondent Mutt lodged a police complaint dated 26.06.1996 to avert any demarcations and unlawful constructions. A crime was registered. The 3rd respondent filed petition before Deputy Commissioner of Endowments, Kurnool for group eviction of all the encroachers including the 1st petitioner and others from out of the undivided joint lands of the Mutts of Ac.38.50 cents in Sy.no.147/1. After due enquiry, the said Deputy Commissioner passed orders dated 29.03.1997 in OA.no.36/97 for immediate group eviction of the encroachers and demolition of the unauthorised constructions in the lands of the Mutts, if necessary, through police aid and for handing over the possession of the land to 3rd respondent Mutt. He had authorised the 2nd respondent to take action. The 2nd respondent got the encroachers evicted from Ac.5.00 cents out of the said lands and took possession and handed over to the 3rd respondent on 19.10.1997 in the presence of MRO, Tirupathi (Urban) and SI police control Room, Tirupathi and other prominent persons. While all the encroachers

were about to be evicted, the 1st petitioner stated that status quo orders are granted in WP.no.31488 of 1997. Hence, the 3rd respondent filed OAs against ex-tenants including the 1st petitioner. The 1st petitioner challenged the eviction proceedings in OA.no.5 of 1997 from his leased land of Ac.4.50 cents in Sy.no.147/1 stating that he is an agriculturist cultivating the said land. The 1st petitioner filed WP.no.16749 of 2000 before this Court questioning the eviction proceedings initiated in OA.no.5 of 1997 stating that the Deputy Commissioner has no jurisdiction. The Deputy Commissioner passed orders dated 22.06.2002 in OA.no.5 of 1997 for eviction of the 1st petitioner. OAno.114 of 2001 for group eviction was also initiated in respect of lands in Sy.no.145. The petitioners have no right to approach the High Court under Article 226 and obtain status quo order as they have no legal right over the undivided lands of the Mutts and hence, eviction of all illegal occupants and demolition of structures over the Mutt lands is in order as per orders in OA.no.36 of 1997 and OA.no.114 of 2001. Eviction from balance lands of the Mutts was postponed due to continuous rains. Suppressing all the facts, the writ petition is filed. The modus operandi is to file cases before various judicial fora and obtain interim orders and sell away properties by showing those orders to the unwary public and retreat by way of not pressing the proceedings or through some other stratagem. The writ petition is liable to be dismissed.

7. Be it noted that the 1st petitioner filed a reply affidavit to the counter of the 4th respondent denying each and every allegation and asserting the petitioners' case. He had also filed an additional affidavit showing the alienations made by the Narasimha Reddy to various persons and the subsequent alienations. The 4th respondent further filed an additional counter affidavit reiterating its stand. The 1st petitioner filed a reply affidavit in answer to the additional counter affidavit of the 4th respondent.

8 . I have gone through the pleadings and also the written submissions. The learned senior counsel advanced submissions in line with the pleadings

and reiterated the submissions in the written submissions.

9. I have bestowed my attention to the facts and given earnest consideration to the submissions.

10. In the well considered view of this Court, this writ petition need not detain this Court for long and can be disposed of advertent to the following aspects: **(1) whether or not writ jurisdiction is exercisable in a matter of this nature; (2) whether or not the remedy provided under Article 226 of the Constitution of India can be permitted to be invoked to supersede the modes of obtaining the relief before a civil Court or a competent forum; (3) application of doctrine of parallel proceeding; and (4) suppression of material facts in the original pleadings in the writ petition and the subsequent events.**

11. Having regard to the fact that the discussion on the first three aspects involves advertence to common facts and submissions and as the said aspects can be determined by a common discussion coupled with reasons, the said three aspects are taken up together for determination, for convenience.

12. To begin with, be it noted that on an analysis of the original pleading in the writ petition it is evident that nothing is elaborately stated and it is only stated that under a threat of forceful eviction, the writ petition is being filed. However, in the additional pleadings of the petitioners, which are filed in response to the detailed pleadings of the contesting respondents, a wide variety of contentions are raised. Be that as it may.

12.1.1 From the pleadings, which are purposely extracted supra, in detail, and the contentions which are advanced in line with the pleadings and additional pleadings, it emerges that the realm of adjudication being sought in the writ petition covers complex factual issues, mixed questions of fact and law and pure questions of law including jurisdictional issues. To emphasise the same, it is necessary to refer to certain facts and issues raised in this *lis*.

12.1.2 **Firstly:** It is admitted that the property is the joint property of

the two Mutts and that the total extent of the property is Ac.74.23 cents and that in that total extent, the Hathiramjee Mutt is having 3/4th share and the Parakala Mutt is having 1/4th share. It also emerges from the contentions that earlier for quite a long time the 1/4th joint share of the Parakala Mutt was under the permanent lease of Hathiramjee Mutt. The existence of such permanent lease in favour of Hathiramjee Mutt *vide* document no.2095/1916 dated 20.12.1916 is undisputed. Therefore, at-least at one point of time, the Hathiramjee Mutt is in physical possession of the entire property either personally or through its tenants. It is urged on behalf of the respondents that as per settled law, each joint owner will have right, title and interest in every inch of the entire joint property, till partition is affected between the joint owners and that it is so irrespective of the extent of share of such joint owner. It is the contention of the writ petitioners that the then Mathadhipathi of Parakala Mutt by executing a General Power of Attorney dated 30.11.1988 bearing no.704 of 1988 and registered on 01.12.1988 had appointed one N. Narasimha Reddy as an agent to deal with its property. The truth and the validity of the said GPA is being seriously disputed by the said Mutt on the grounds that it was obtained by fraud and misrepresentation with oblique motives. It is also being contended by the said Mutt that the said GPA in favour of the said agent was cancelled or revoked by executing a deed of revocation dated 08.01.1990. The said aspect is being seriously disputed by the 1st writ petitioner and it is being contended that the GPA in favour of the GPA holder is valid, irrevocable and was subsisting. Be that as it may. The said GPA holder, having issued a notice and demanded for partition, without waiting for partition and without suing for partition had made alienations from the share of Parakala Mutt out of the entire joint property. He having filed a suit OS.no.318 of 1989 on the file of the Court of the learned Additional Senior Civil Judge, Tirupathi for partition made further alienations during the pendency of the said suit. Such sales are not made in respect of joint undivided share but were made in respect of distinct properties within specific boundaries, though there was no partition of the property between the two Mutts and the share of Parakala Mutt was not ascertained by the

dates of such sales. It is pointed out by the respondents that the law is well settled that a purchaser of a joint share cannot directly enter into the property and his only remedy is to sue for partition and then obtain possession of the purchased share/extent of property. During the course of hearing, it is also brought to the notice of this Court that a partition deed dated 23.04.1999 was executed between Hathiramjee Mutt and Parakala Mutt and some others including Manikonda Kuppaswamy Naidu. Under the said deed of partition, the entire property was divided and it is stated that Hathiramjee Mutt (1st party) is the absolute owner of the lands mentioned in 'A' schedule land and that the 3rd parties, who are parties to the said partition deed, that is, the 3rd party therein is the absolute owner of the 'B' schedule land and that Parakala Mutt (2nd party) cannot claim any interest in the said 'A' & 'B' schedule properties and that the 3rd party was the purchaser of the 1/4th share belonging to the Parakala Mutt (2nd party). Whether the 3rd party can be a party to the partition deed to which the joint owners are parties and whether under such a partition deed, absolute rights can be conferred on a 3rd party, who is not a sharer, is one of the questions raised before this Court. Since at the instance of Hathiramjee Mutt Original Petitions for eviction and group eviction petitions are filed in respect of certain portions of the entire property and eviction orders are passed in such petitions by the Endowment Commissioner concerned in favour of the Hathiramjee Mutt and as in some matters, the appeals against such orders are dismissed by regular civil Courts and as in some of the matters original suits are filed for declaration of title by the unsuccessful parties/occupants after dismissal of such appeals and as in some of the matters no further proceedings are taken after the dismissal of the appeals by the District Courts and as in regard to some of the matters it is being contended by the respondents that possession of certain extents of the properties covered by the original eviction petitions were taken by executing the orders and as such original petitions are filed before the Endowment Tribunal even before the institution of this writ petition, it is *inter alia* being contended by the contesting respondents that the writ petition is not maintainable; and on the other hand, the writ petitioners are contending

that as the property being claimed by them belongs to Parakala Mutt and not Hathiramjee Mutt, the eviction proceedings before the Endowment Tribunal are not competent proceedings as Parakala Mutt is not registered in the State of Andhra Pradesh. The above said aspects and the contentions bring to the fore one more set of complex questions of fact and law, which deserve a detailed examination by a competent forum. Be it noted that Hathiramjee Mutt is contending that since these contentions regarding jurisdiction of the Endowment Tribunal are raised in the original petitions before it and were negatived, the said questions cannot be raised once again either in this writ petition or even in the execution petitions and that even if any such contentions are open, they shall be raised in the execution proceedings, provided possession is not already taken by executing the orders, but not by way of a writ petition of this nature. Therefore, all these above stated issues and other issues, which were raised in the pleadings of the parties and during the course of hearing, and which are complex issues of fact and mixed questions of fact and law need determination after full fledged trial in a competent and appropriate proceeding, which the law permits, but, not in a writ proceeding of the present nature, in the well considered view of this Court. Further, it is an undisputed fact that a civil Court at Mysore, had already passed a decree in favour of the Parakala Mutt and a civil Court is seized of the matter.

12.1.3 Secondly: The specific contention of the writ petitioners is that they are concerned with the share of Parakala Mutt and that Parakala Mutt is not registered in the State of Andhra Pradesh and under the provisions of the Act 30/1987 and that therefore, though the property is situate within the territory of the State of Andhra Pradesh, the jurisdiction to adjudicate the disputes in regard to the property of Parakala Mutt vests with the Courts/fora situate in the State of Karnataka. However, the contest of the Endowment Department is that the said Mutt is published under Section 6(d) of the Act 30/87 vide proceedings of the Commissioner, Endowments, Andhra Pradesh and that as per the provision of Section 1(3)(a), the provisions of the said Act are applicable to all public and charitable institutions and endowments

whether registered or not under the provisions of the said Act and, therefore, the Deputy Commissioner of Endowments is having jurisdiction to entertain and deal with the eviction petitions filed in respect of the joint property of the two Mutts. The Hathiramje Mutt contends that since it is in exclusive physical possession of its share and also the share of Parakala Mutt by virtue of permanent lease and that as it is the possessor/custodian of the entire property, the Courts and Endowment Tribunal, as the case may be, of Andhra Pradesh are having jurisdiction to resolve the disputes in respect of the entire property. It is also urged on its behalf that since it is having right in every inch of joint property till the partition is affected and as it is registered admittedly in the State of Andhra Pradesh and the provisions of Act 30/1987 are applicable to the Mutts in Andhra Pradesh, it is entitled to seek eviction by initiating proceedings before the Endowment Tribunal for eviction of the occupant of any part of the entire property. Admittedly, the Endowment Act which is in force in the State of Karnataka does not cover within its ambit the Mutts, which are within the territory of the said State and the properties of such Mutts. It is also not in dispute that a comprehensive civil suit (OS.no.455 of 2004) is filed by Parkala Mutt in the Court of the learned Principal Judge, Small Causes and Senior Civil Judge, Mysuru. It is indubitable that some of the issues raised in this writ petition are also the issues that fell for consideration in the said suit. The said suit was filed for declaration that the two GPAs viz., GPA dated 30.11.1988 (registered on 01.12.1988 as document bearing no.704/1988) and GPA dated 28.07.1989 executed by the then Mathadhipathi in favour of the 1st defendant therein, that is, N. Narasimha Reddy, are all null and void *ab initio* having been executed without the authority of law and, therefore, all the transactions entered into by the said GPA holder with third parties are illegal, void and not binding on the plaintiff – Parkala Mutt. It is not in dispute that after full fledged trial the said suit was decreed with costs by a judgment and decree dated 20.04.2016. In that suit, the copies of the said GPAs and the copy of the revocation deed are exhibited as exhibits P1 to P3. The 1st petitioner in WP.no.22248 of 2001 is the 6th defendant in the said suit. Some of the writ

petitioners are parties to the said suit. Particularly, the GPA holder from whom some of the writ petitioners and some of the vendors of the writ petitioners had purchased the respective properties is a party to the said suit and he had suffered a decree whereby a declaration is granted that not only the GPAs executed in favour of the said GPA holder by the then Mathadhipathi but also the transactions entered into by him are illegal and void and not binding on the Parakala Mutt. It is undisputed that some of the writ petitioners and the predecessor in interest of some of the writ petitioners herein had purchased the respective extents being claimed by the writ petitioners from the said GPA holder - Narasimha Reddy. Therefore, by the decree granted in the said suit, the transactions on which the writ petitioners are placing reliance are declared as illegal and void and not binding on the Parakala Mutt. It is not stated before this Court as to whether any appeal is preferred and pending or whether there is any contemplation to file an appeal by anyone of the defendants therein, particularly, the GPA holder Narasimha Reddy. Thus, a competent civil Court, which according to the writ petitioners is having jurisdiction, having been seized of the matter rendered a judgment against the interests of the writ petitioners. Even assuming for a moment that an appeal has been preferred and is pending, it follows that a competent civil Court is having seisin over the matter and that, therefore, the said parallel comprehensive civil proceeding precludes the entertainment of this writ petition any longer. Therefore, in view of the decree in the said suit or alternatively on the assumption that an appeal against the decree in the said suit is filed and pending, no relief can be granted in this writ petition by entering into the realm of adjudication of complex factual, legal and jurisdictional issues, which are the subject matter of the said *lis*. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. **(Vide C.R.Reddy Law College Employees' Association, Eluru, West Godavari District v. Bar Council of India, New Delhi)**^[1]. Viewed thus, this court finds that the writ petitioners could not make out a case for exercising the discretionary jurisdiction under Article 226 of the Constitution of India.

12.1.4 Thirdly: Dealing with the third aspect viz., application of doctrine of parallel proceeding, it is to be first noted that even by the time of the institution of this writ petition, the OA.no.5 of 1997, which culminated in AS.no.44 of 2002, filed for eviction against the 1st writ petitioner is pending; hence, the present writ petition is nothing but a parallel proceeding, and, therefore, the writ petition is not maintainable. Further, even according to the writ petitioners, though the property is situate within the territory of the State of Andhra Pradesh, since the property is that of the Parkala Mutt, which is not registered in the State of Andhra Pradesh under the provisions of the Act 30/1987, the Courts in the State of Karnataka are only vested with jurisdiction to resolve the disputes in regard to the properties of the said Mutt. During the pendency of this writ petition, as already noted, the Parakala Mutt has filed a comprehensive civil suit and the said suit was decreed in favour of the said Mutt and against N. Narasimha Reddy, the GPA holder of the said Mutt and others. The writ petitioners are claiming title/rights in the respective extents of the properties being claimed by them either under the sale deeds directly executed by the said GPA holder in favour of some of them or in favour of their predecessor purchasers. In that view of the matter also, the writ petition is liable for dismissal leaving the matter to attain finality in the afore-said civil proceeding. The law is well settled that the remedy provided under Article 226 of the Constitution of India is not intended to supersede the modes of obtaining reliefs before a civil Court or to deny defences legitimately open in such actions. The view of this court finds support from the decision of the Supreme Court in **Ghan Shyam Das Gupta v. Anant Kumar Sinha** ^[2]. As a Tribunal and competent civil Courts had rendered judgments in favour of the two Mutts, it follows that the writ petition is nothing but a parallel proceeding and that, therefore, the filing of the writ petition and the continuation of the same is an abuse of process of law and therefore, the writ petition is liable to be dismissed.

12.1.5 Lastly: for the reasons afore-stated, the three aspects are accordingly answered against the writ petitioners.

13. Dealing now with the last aspect of suppression of material facts, a plain reading of the writ petition as originally filed by the petitioners would show that the petitioners suppressed certain material facts. It is pertinent to note that in the writ petition no schedule of the property, which is said to be in the possession of the writ petitioners collectively or severally, is furnished. Though copies of some of the sale deeds of some of the writ petitioners are filed, it is admitted that the copies of the sale deeds of the other writ petitioners are not filed. It is necessary to restate that even before this writ petition is instituted in the year 2001, a proceeding in OA.no.5 of 1997 was instituted before the Deputy Commissioner of Endowments against P. Linga Murthy, the 1st writ petitioner. The said material fact was suppressed. Be it also noted that the said OA.no.5 of 1997 is filed against P. Lingamurti under Section 83 of Act 30/1987 at the instance of the 3rd respondent-Hathi Ramjee Mutt in respect of Ac.4.50 cents out of Ac.38.50 cents of land in Sy.no.147/1. The said OA was disposed of in the year 2002 by the Deputy Commissioner of Endowments, Kurnool. It is an undisputed fact that assailing the orders in OA.no.5 of 1997, the 1st petitioner- P.Lingamurti filed As.no.44 of 2002 on the file of the Court of the learned V Additional District Judge, Tirupati. The said appeal was dismissed by the said learned Additional District Judge *vide* judgment dated 18.04.2003 confirming the order dated 22.06.2002 of the Deputy Commissioner passed in OA.no.5 of 1997. It is not in dispute that the said decree and judgment of the civil Court in AS.no.44 of 2002 have become final insofar as the 1st petitioner-Lingamurti is concerned as he had not filed any suit for declaration of title pursuant to the observations in the judgment in the said appeal suit. Therefore, the eviction order in OA.no.5 of 1997 has become final in view of the confirmation of the said order in AS.no.44 of 2002 and hence, the 1st petitioner herein is liable for eviction from the OA schedule property aforementioned as per the contention of the respondents. Apart from the said subsequent events, the fact that the present writ petition is filed by suppressing the fact that the above said application in OA.no.5 of 1997 for eviction was filed and pending before the Endowment Deputy Commissioner is itself sufficient to *prima facie* hold that

the writ petition is liable for dismissal on the ground of suppression of material facts. In-fact, the OAs for eviction were initiated in respect of various extents of properties in Sy.no.147/1 is not in dispute. It is also not in dispute that the 3rd respondent initiated legal proceedings for eviction of various occupants even by the year 1997 and that OA.no.36 of 1997 is particularly filed as a group eviction proceeding in respect of Ac.38.60 cents in Sy.no.147/1 of Avilala village. Further, the said OA was allowed on 29.03.1997. Executing the said orders, the 2nd respondent handed over possession of Ac.5.00 cents out of Ac.38.60 cents in Sy.no.147/1 of Avilala village under a panchanama dated 19.10.1997 to the 3rd respondent as per the defence of the contesting respondents. Even this fact about the filing of the said group eviction proceeding before the Deputy Commissioner, Endowments Department, Kurnool is suppressed by the writ petitioners. No explanation much less valid explanation is forthcoming for suppressing the material fact in regard to the pendency of the aforementioned OA filed for eviction before the Deputy Commissioner of Endowments under the provisions of Act 30 of 1987 and the other above mentioned proceedings, which were instituted even before the filing of this writ petition. Therefore, in the absence of valid explanation for not mentioning about the material facts, the writ petition is liable to be dismissed as the remedy under Article 226 of the Constitution of India is an equitable one and suppression of a material fact disentitles the writ petitioners to such a relief.

14. Having regard to the discussion coupled with reasons and the findings recorded, this Court finds that the writ petition is devoid of merit and is liable to be dismissed.

15. Accordingly, the Writ Petition is dismissed. Be it noted that this writ petition is dismissed holding eventually that the writ petition is not entertainable and that in a matter of this nature, the writ jurisdiction cannot be permitted to be invoked and that this writ petition is a parallel proceeding and that the filing and continuation of the same is an abuse of process of law and that a writ of this nature involving complex questions of fact and mixed

questions of fact and law is not maintainable and that the remedy provided under Article 226 of the Constitution of India is not intended to supersede the modes of obtaining relief before a civil Court or to deny defences legitimately open for such actions and that, therefore, the writ petition is liable for dismissal. Thus, it is made clear that this Court did not express any opinion on the merits of the issues raised in this */is*. Since this Court did not deal with the merits of the issues raised and the veracity of the contentions related to the issues, no reference is made to the decisions cited on both the sides as it is felt that such reference is not necessary.

No costs.

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

M. SEETHARAMA MURTI, J

11.07.2016

Vjl

[\[1\]](#) 2004(5) ALD 180 (D.B)

[\[2\]](#) AIR 1991 SC 2251