

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.11797 of 2002

ORDER:

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

‘...to issue a writ of Mandamus or any other appropriate writ, order or orders or direction declaring the action of the respondents in trying to interfere with the possession and enjoyment of the petitioners land of an extent of Ac.1.64 cents in Sy.no.145 of Avilala village, Tirupathi Rural Mandal, Chittoor District as wholly arbitrary, illegal and void and consequently direct the Respondents not to interfere with the possession and enjoyment of the petitioners property of an extent of Ac.1.64 cents of land in Sy.no.145 of Avilala village of Tirupathi rural Mandal, Chittoor District and pass such other order...’

[Reproduced verbatim]

2 . I have heard the submissions of the learned counsel appearing for the writ petitioners, the learned Standing Counsel appearing for the 1st respondent, and the learned senior counsel appearing for the 2nd and 3rd 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 covering an extent of Ac.7.70 cents, Ac.48.60 cents and Ac.13.35 cents respectively were jointly owned by the Parakala Mutt and Hathiramji Mutt, i.e., the respondents 3 and 2 herein. In the said property, the 3rd respondent-Parakala Mutt is having 1/4th share and the remaining 3/4th share is of the 2nd respondent-Hathiramji Mutt. The 3rd respondent-Parakala Mutt at Mysore owns extensive properties in the States of Karnataka, Andhra Pradesh and Tamilnadu. It was not in a position to manage its properties. Therefore, the 3rd respondent Parakala Mutt executed a registered GPA dated 01.12.1988 in favour of N. Narasimha Reddy and had authorised him to sell the properties in an extent of Ac.17.12 ½ cents of land in all the above said three survey numbers. Subsequently, the said GPA holder had sold parts of the said property to several persons.

Out of Ac.7.70 cents in Sy.no.145, Government had acquired Ac.1.14 cents for Harijan Colony. In the remaining Ac.6.56 cents the Parakala Mutt has got Ac.1.64 cents. The said GPA holder sold the said extent to one C. Narayana Reddy, M. Reddeppa Naidu and P. Meghanadham under a registered sale deed dated 07.02.1990 for a valuable consideration of Rs.30,000/-. The purchasers were also put in possession of the said property. While so, the 1st petitioner herein purchased Ac.0.40 cents of land from the above said three persons under a registered sale deed dated 09.10.1992 for a consideration of Rs.60,000/-and he was put in possession of the said property. Thereafter, the 5th petitioner purchased an extent of 282 Square Yards from the 1st petitioner under a registered sale deed dated 07.09.1996. The 2nd petitioner purchased Ac.0.81 2/3 cents from M. Reddappa Naidu and two others under a registered sale deed dated 27.01.1993. The 3rd petitioner purchased Ac.0.20 5/6 cents from C. Narayana Reddy and two others under a registered sale deed dated 16.05.1992. The 4th petitioner purchased Ac.0.20 cents from C. Narayana Reddy and two others under a registered sale deed dated 18.11.1992. The 5th petitioner purchased 119.7/9 Square Yards from one P. Bharathi under a registered sale deed dated 10.07.1995. The vendors of the said Bharathi purchased the said property from C. Narayana Reddy and two others under a registered sale deed dated 27.01.1993. Since the date of respective purchases, the petitioners have been in peaceful possession and enjoyment of the property. All the petitioners have constructed houses in the plots. Thus, a total extent of Ac.1.64 cents in S.no.145 was purchased by all the 6 petitioners from the 3rd respondent-Parakala Mutt, Mysore through its GPA holder and over the said property, the 2nd respondent-Hathiramji Mutt has no right, title or possession. When the respondents highhandedly tried to demolish the houses and tried to evict the persons who had constructed the houses, about 68 persons have approached this Court and filed WP.no.28010 of 2001. In the said writ petition, this Court granted status quo orders. Some persons, who are said to be the owners of the land in Sy.no.147/1 have filed WP.no.10778 of 2002

when the respondents therein tried to erect wire fencing. While so, the respondents 1 and 2 came to the land on 29.06.2002 and tried to erect barbed wire fencing and enclose the land of the petitioners. The petitioners raised a strong objection for the same. Thereupon, the respondents 1 and 2 sought help of the 4th respondent police officer and brought some pillars in order to erect the same. They had erected the pillars and are trying to fix barbed wire to enclose the land of the petitioners. Admittedly, the 2nd respondent-Hathiramji Mutt has no right over the subject land, which forms part of the 1/4th share of the 3rd respondent-Parakala Mutt in Sy.no.145. The respondents cannot take the law into their hands and do acts, which interfere with the rights of the petitioners by abusing their official position. If the respondents are allowed to carry out such acts, the same will affect the rights of ingress and egress of the residents of the locality as there are no roads in this land connecting the main road. Even if the 2nd respondent-Hathiramji Mutt wants to claim the land, it has to do so by filing a civil suit. The actions of the respondents violate the rights of the petitioners guaranteed under Articles 14, 21 and 300-A of the Constitution of India. Hence, it has become necessary for the petitioners to file the writ petition.

4. The case of the 1st respondent as stated in the counter affidavit filed by the then Assistant Commissioner of Endowments, in brief, is this:

Parakala Mutt-3rd 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 2nd 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 2nd 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 1st 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 2nd 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 2nd 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 1st 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 Hathiramji Mutt/the 2nd respondent. One Dr.K. Uma Devi, the 5th petitioner herein, 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 1st and 2nd 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 PWs2 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 2nd respondent-Hathirramji 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 2nd 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 Hathiramji 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 1st 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 2nd respondent Mutt. The 1st respondent had also handed over possession of the land admeasuring Ac.5.00 cents in Sy.no.147/1 to the 2nd respondent Mutt through the panchanama dated 19.10.1997 as per the orders issued in IA.no.36 of 1997 dated 29.03.1997 with the aid of police and revenue officials. The action of the 1st 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 Hathiramji 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 2nd respondent, in brief, is this:

The 2nd respondent-Hathiramji Mutt and the 3rd respondent-Parakala Mutt are having 3/4th and 1/4th shares in the joint lands of the Mutts of a total extent of Ac.74.23 cents i.e., Ac.7.70 cents in S.no.145, Ac.48.60 cents in S.no.147/1, Ac.13.35 cents in S.no.148/2, Ac.2.54 cents in S.no.321 and Ac.2.04 cents in S.no.323 of Avilala village. The 1/4th share of the land of the 3rd respondent-Parakala Mutt has been under the permanent lease of the 2nd respondent-Hathiramji Mutt since 1916, that is, since more than 85 years as per the registered document no.2095/1916 dated 20.12.1916. As per the said document, Hathiramji Mutt has got absolute rights over 3/4th extent and permanent leasehold rights over 1/4th extent of the joint lands of the Mutts. Thus, the 2nd respondent-Hathiramji Mutt is in possession and enjoyment of the entire extent of land, that is 3/4th extent as absolute owner and 1/4th extent as permanent lessee. The 2nd respondent-Hathiramji Mutt leased out the said properties to 30 tenants for a period of six years with periodical renewals. The said lease was granted by the Commissioner of Endowments, Hyderabad for a period of six years from 01.07.1977 to 30.06.1983. The

lease was not renewed thereafter. The ex-tenants of the 2nd respondent-Hathiramji Mutt were treated as encroachers after the expiry of the lease in view of the fact that they are squatting on the property. As such they were subjected to eviction under Sections 83 and 85 of the Act 30/1987. Unless the 2nd respondent relinquishes its permanent leasehold rights and hands over physical possession to the 3rd respondent Parakala Mutt, neither the 3rd respondent Parakala Mutt nor any other third person can claim any rights thereunder or can have right of possession or alienation. After eviction of the erstwhile tenants, the entire extent of joint lands of the Mutts have been in possession and enjoyment of the 2nd respondent-Hathiramji Mutt. In the year 1979, Land Acquisition Proceedings were initiated and an extent of Ac.1.14 cents out of Ac.7.70 cents in S.no.145 out of the undivided joint lands of the Mutts at Avilala village was acquired and the compensation amount was shared between the two Mutts in 3:1 ratio as per the orders dated 25.11.1982 of the learned Principal Senior Civil Judge, Tirupati in LAOP.no.33 of 1981. While so, Ac.23.45 cents in S.no.147/1 and 148/2 was sold by the 2nd respondent-Hathiramji Mutt to its employees and four sitting tenants as per the provisions of the Tenancy Act and as per statutory parameters in a GO issued by the Government of Andhra Pradesh and with the permission of this Court. However, the 1/4th share was not remitted to the 3rd respondent Parakala Mutt under the impression that the entire undivided joint lands of the Mutts belong to the 2nd respondent-Hathiramji Mutt only as the said land was completely under the possession and custody and enjoyment of the 2nd respondent-Hathiramji Mutt. The 3rd respondent Parakala Mutt also did not claim 1/4th share of the sale proceeds having no knowledge of the sale of Ac.23.45 cents out of the undivided joint lands of the Mutts at Avilala village. One N. Narasimha Reddy (original vendor) and his real estate partners, who are natives of Tirupati, colluded with a deceitful intention to grab the lands of the Mutts for selfish and wrongful gain and approached the then Mathadhipathi of the 3rd respondent Parakala Mutt, Mysore through the then Mutt's Manager B. Narasimha Iyyengar and brought to his notice that the 3rd

respondent has got 1/4th share in the undivided joint lands of the Mutts at Avilala village as confirmed in the orders dated 25.11.1982 of the learned Principal Senior Civil Judge, Tirupati in LAOP.no.33 of 1981 and that the compensation amount was shared between both the Mutts according to the said shares. They had further informed the 3rd respondent Mutt that when the 2nd respondent sold Ac.23.45 cents in S.no.147/1 and 148/2 to its employees and four sitting tenants, it had failed to pay 1/4th share of the sale proceeds to the 3rd respondent and thus misguided the previous Mathadhipathi of the 3rd respondent Parakala Mutt. The said Narasimha Reddy (original vendor) projected himself as if he is the real devotee of parakala Swamiji and misrepresented that he would take care of the landed property of the Mutt at Avilala village and collect its 1/4th share of the sale proceeds of Ac.23.45 cents already sold out by the 2nd respondent including the sale proceeds from out of the future sales, if any, and get the 1/4th share out of the undivided joint lands of the Mutts after partition by metes and bounds and handover the same to the 3rd respondent Mutt, if a GPA were to be executed in his favour. Believing the representations of the said original vendor as a great devotee of the then Parakala Swamiji and that he would take care of the lands of the Mutt, the then Swamiji asked the Manager of the Mutt to prepare a GPA. Accordingly, GPA was executed on 30.11.1988 and registered in favour of the original vendor on 01.12.1988 at Sub-registrar's office, Mysore, not with an intention to sell away its properties but only because the 3rd respondent is not in a position to manage its extensive properties at various places in Karnataka, Tamil Nadu and Andhra Pradesh. It is incorrect to state that the original vendor was authorised to sell the undivided joint lands of the Mutts through the GPA. Later, it came to light that while executing the GPA, the alleged original vendor in active collusion and connivance with the then Manager of the Mutt managed to get certain clauses interpolated in the GPA, that is, clauses in regarding to right of selling etcetera, which the previous Mathadhipathi of the 3rd respondent Mutt himself was not empowered to exercise. As the possession of the land in question remained with the 2nd

respondent-Hathiramji Mutt as a permanent lessee, neither the 3rd respondent Parakala Mutt nor its alleged agent have got any right to sell the undivided joint lands of the Mutts until the permanent leasehold rights are relinquished and physical possession is handed over within specific boundaries after partition of the undivided joint lands of the Mutts by metes and bounds. The original vendor submitted an application to the Commissioner of Endowments, who is the higher authority of the 2nd respondent-Hathiramji Mutt on 26.12.1988 for remittance of 1/4th share of sale proceeds of Ac.23.45 cents in S.no.147/1 and 148/2 out of the total extent of undivided joint lands of the Mutts already sold out by the 2nd respondent-Hathiramji Mutt and for partition of the balance undivided joint lands of the Mutts by metes and bounds and handing over physical possession of the 1/4th share to the 3rd respondent Parakala Mutt. Pending consideration of that application, the said Narasimha Reddy, without having any right over the said lands to sell the same, had illegally alienated Ac.08.00 cents in favour of his minor son Dhanunjaya Reddy and real estate partners by executing 6 collusive, nominal and sham documents bearing documents no.933/89 to 938/89 dated 03.03.1989. After knowing the fact that the original vendor was misappropriating and mismanaging the undivided joint lands of the Mutts, the Mathadhipathi of the 3rd respondent Parakala Mutt revoked his GPA through document dated 08.01.1990 under intimation to the original vendor and informed the same to the 2nd respondent-Hathiramji Mutt on 17.01.1990. Thereafter the then Manager of the Mutt was removed from service as he had colluded with the original vendor and had fabricated records detrimental to the interests of the Mutt. The 2nd respondent-Hathiramji Mutt issued notifications in various newspapers on 01.02.1990 and 07.03.1990 stating that the lands of the Mutts in S.no.145 and 147/1 belong to the 2nd respondent Mutt and that they would proceed to take legal action against any persons who might illegally occupy or illegally alienate the lands by showing false documents and that such persons would be held responsible for legal actions. The original vendor before revocation of the

said GPA as the GPA holder filed OS.no.318 of 1989 against the 2nd respondent Mutt and others for partition of the undivided joint lands of the Mutts and for handing over 1/4th share of the 3rd respondent Mutt and had obtained *ex parte* injunction. While that case was pending, the GPA of the original vendor was cancelled by the 3rd respondent Mutt for illegally alienating the joint lands of the Mutts. Even after cancellation of the GPA, the said GPA holder/original vendor without following any rule or rhyme and without getting the land partitioned by metes and bounds illegally alienated the 1/4th share of land i.e., Ac.3.34 cents in S.no.148/2 in favour of his own brother and close relatives of his real estate partners, that is, to total four persons through nominal collusive and sham document bearing no.20/90 dated 08.02.1990 by creating an antedated agreement to show as if the lands were under his physical possession. He had instigated his illegal alienees to file IA.no.586 of 1990 for their impleadment as plaintiffs 2 to 5 in OS.no.318 of 1989 which was pending in the Court. The trial Court in its orders dated 16.06.1990 in IA.no.1969 of 1989 held that in view of the permanent lease in favour of the 2nd respondent-Hathiramji Mutt, which has not yet been rescinded, the 3rd respondent-Parakala Mutt has no subsisting interest in the property and that the GPA of the alleged original vendor was cancelled by the principal, that is, the 3rd respondent and as such the erstwhile agent can no longer represent the 3rd respondent. Having filed AAO.no.1083 of 1990, the original vendor had not pressed the same. IA.no.1767 of 1989 in the said suit was also not pressed on 14.08.1991 as he had already achieved his object of selling the properties under the cover of the *ex parte* interim injunction. The 3rd respondent Mutt vide letter dated 21.03.1990 intimated the 2nd respondent-Hathiramji Mutt that it transferred its rights over 1/4th share in the joint lands of the Mutts without physical possession to one M. Kuppuswamy Naidu and four of his family members after receiving valid consideration through bank drafts in view of the illegal alienations of the undivided joint lands of the mutts made by the alleged original vendor/Narasimha Reddy in favour of his minor son, his real estate partners and his close relatives

through collusive, nominal and sham documents and in view of the declaratory suits in OS.nos.51, 55 and 57 of 1990 filed by them on the instigation of the alleged original vendor and as the said Mutt is finding it difficult to manage their land and affairs at Avilala village which is 400 K.M away from Mysore and as it is also finding it difficult to attend to the litigation pending in various courts at Tirupati. Thereafter, Kuppuswamy Naidu and four others through protracted correspondence with the Commissioner of Endowments, Hyderabad for nine years since 1990 for partition of the undivided joint lands of the Mutts had obtained orders. The Commissioner after taking legal opinion issued orders dated 14.06.1996, 26.06.1997 and 08.01.1990 directing the 2nd respondent Hathiramji Mutt to implement the orders of partition of the undivided joint lands of the Mutts and handover 1/4th share to third party Kuppuswamy Naidu and four others through the 3rd respondent. The 2nd respondent also issued orders dated 19.01.1999 and 17.04.1999 to the 3rd respondent and Kuppuswamy Naidu and four others for execution of partition deed at their cost and accordingly the partition deed was executed on 23.04.1999 and was registered as document no.2656/1999 at the Sub-Registrar's Office, Tirupati subject to handover physical possession after evicting the encroachers, if any. In terms of the partition deed, the 2nd respondent Mutt has to handover physical possession of Ac.18.27 ¼ cents, that is, Ac.4.97 ¾ cents in S.No.145 and Ac.13.29 ½ cents in S.no.147/1 to Kuppuswamy Naidu and four others as specified in the 'B' schedule of the deed of partition through the 3rd respondent and retain the balance land, that is Ac.1.58 ¼ cents in S.no.145 and 35.30 ½ cents in S.no.147/1 for the share of the 2nd respondent Mutt. Thus, Kuppuswamy Naidu and four of his family members have become the absolute owners through the above said partition deed in respect of the 1/4th share of the 3rd respondent-Parakala Mutt in the undivided joint lands of the Mutts and no other person/s including the alleged original vendor or his illegal vendees or the ex tenants of the 3rd respondent have got any right in the said land. Hence, it is enjoined upon the 2nd respondent to get the encroachers evicted

first from the said land and handover physical possession of 1/4th share of the 3rd respondent to Kuppuswamy Naidu and four others through the 3rd respondent and retain balance 3/4th extent for the 2nd respondent after survey and sub division as per correct measurements. Even after the revocation of power of attorney the alleged original vendor had illegally alienated undivided joint lands of the Mutts of Ac.1.64 cents out of Ac.6.56 cents in S.no.145 to the same real estate partners viz., C. Narayana Reddy, M. Reddaiah Naidu and P. Meghanadham jointly without any right or title vide nominal, collusive and sham documents dated 07.02.1990 by creating ante dated agreement and instigated them to file a declaratory suit in OS.no.134 of 1990 on the file of the Court of the learned I Additional District Munsif, Tirupati against the 3rd respondent and obtained temporary injunction. They, in turn illegally alienated the suit lands, that is Ac.0.40 cents in favour of the 1st petitioner vide collusive, nominal and sham document dated 09.10.1992; an extent of 81 2/3 Square yards to the 2nd petitioner on 27.01.1993, Ac.0.20 5/6 cents to the 3rd petitioner on 16.05.1992 and Ac.0.20 cents to the 4th petitioner on 18.11.1992 and the remaining land to others. The 1st petitioner in his turn had illegally alienated 282 Square yards to the 5th petitioner *vide* collusive, nominal and sham document. The 6th petitioner allegedly purchased 119 7/9 Square yards from P. Bharathi, who is an illegal vendee of Narayana Reddy and two others. Later the suit was not pressed by them saying that they have no subsisting interest in the suit schedule property since they already sold out to third parties. In view of the fact that the original vendor himself is not competent to sell the undivided joint lands of the Mutts to his real estate partners and in turn they had no right to alienate the property to others including the petitioners herein, all of them have been treated as encroachers and were subjected to group eviction. The alienations are made pending litigation and are only *lis pendens* purchases. In view of the illegal alienations and unauthorised occupations/constructions in the undivided joint lands of the mutts of Ac.6.56 cents in S.no.145, the 2nd respondent-Hathiramji Mutt filed a petition before the Deputy Commissioner, Endowments, Kurnool

for group eviction of the encroachers including the 1st petitioner herein and his illegal vendees and for demolition of unauthorised constructions thereon. The Deputy Commissioner after due enquiry passed orders dated 21.08.2001 in OA.no.114 of 2001 for group eviction of encroachers and demolition of unauthorised constructions from the said land and authorised the 1st respondent to take action for immediate eviction of the encroachers if necessary by force by taking such police assistance as provided under Section 85(1) of the Act 30/1987 and take possession of the land and handover the same to the 2nd respondent-Hathiramji Mutt. Accordingly, eviction took place on 13.10.2001 in regard to Ac.5.00 cents in S.no.145 which includes Ac.0.40 cents illegally purchased by the 1st petitioner and other petitioners herein who in turn illegally alienated to third parties. The 1st respondent took physical possession of Ac.5.00 cents in S.no.145 and handed over to the 2nd respondent Mutt in the presence of MRO of Tirupati Rural, SI of Police, Tiruchanoor and SI of Reserve Police and others through Panchanama dated 13.10.2001 and a report was submitted to the Commissioner of Endowments. In turn the commissioner of Endowments by his orders dated 13.11.2001 permitted the 2nd respondent to fix up the boundaries stone, pillars and barbed wire along with Mutt's lands, which includes the subject lands. Basing on the directions of the Commissioner, the 2nd respondent arranged the fencing with police assistance around the subject land on 15.06.2002. After coming to know of that, the petitioners herein approached this Court on 02.07.2002 and obtained interim direction by suppressing the material facts with a view to remove the fencing laid down by the 2nd respondent. The 5th petitioner-Uma Devi after eviction on 13.10.2001 had filed OS.no.1463 of 2001 in the Court of the learned Principal Junior Civil Judge, Tirupati against the Mahant of Hathiramji Mutt as first defendant and the 2nd respondent herein. In the said suit, she had also filed IA.no.2421 of 2001 for temporary injunction. No *ex parte* injunction was granted in favour of the 5th petitioner. That application was not pursued by her. The suit is still pending. By way of eviction proceedings in OA.no.114 of

2001 dated 21.08.2001 an extent of Ac.5.00 cents out of Ac.6.56 cents in S.no.145 was recovered by the 1st respondent and was handed over to the 2nd respondent Hatiramji Mutt and the same was secured by fencing it on 15.06.2002. The allegations in the writ petition contrary to the said facts are false. The house of the 5th petitioner which was under construction had been demolished at the initial stage itself by orders in OA.no.114 of 2001 dated 21.08.2001, but, not high handedly. The modus operandi of the petitioners as is obvious is that they file cases before various judicial fora, obtain interim orders and illegally alienate the properties showing the orders to the unwary public and retreat by way of not pressing or through some other stratagem. With full knowledge, the petitioners colluded with the alleged vendors and brought into existence nominal, sham and collusive documents without any manner of right. The petition may be dismissed.

6 . The case of the 3rd respondent-Parakala Mutt, as stated in the counter affidavit of the then Mathadhipathi of the Mutt, in brief, is this:

The 2nd and 3rd 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 3rd respondent has been under permanent lease to the 2nd respondent since 1916 onwards as per registered document dated 20.12.1916. As per the said document, the 2nd 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 2nd 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 the 2nd respondent relinquishes permanent leasehold rights and hands over possession of 1/4th share of the 3rd respondent, neither the 3rd respondent

nor any other 3rd person claiming under the 3rd respondent have got any rights of alienation or possession. After eviction of the erstwhile tenants, the entire extent of the joint lands of the Mutts is in possession of the 2nd respondent Mutt only. Even if the 3rd 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 3rd respondent Mutt in question is situated in Andhra Pradesh and the same is being managed by the 2nd respondent Mutt as a permanent lessee of the 3rd respondent Mutt. The entire property is thus in possession of the 2nd respondent Mutt. Hence, the 2nd respondent is empowered and entitled to evict the encroachers, whoever they may be, as per the provisions of Act 30/1987. One Narasimha Reddy, pretending himself to be a devotee of Parakala Swamiji, 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 was prepared on 30.11.1988. 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 3rd 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. After knowing the fact that the original vendor was misappropriating and mismanaging the undivided joint lands of the

Mutts, the Mathadhipathi of the 3rd respondent Parakala Mutt revoked his GPA through document dated 08.01.1990 under intimation to the original vendor and informed the same to the 2nd respondent-Hathiramji Mutt on 17.01.1990. Thereafter the then Manager of the Mutt was removed from service as he had colluded with the original vendor and had fabricated records detrimental to the interests of the Mutt. The 2nd respondent-Hathiramji Mutt issued notifications in various newspapers on 01.02.1990 and 07.03.1990 stating that the lands of the Mutts in S.no.145 and 147/1 belong to the 2nd respondent Mutt and that they would proceed to take legal action against any persons who might illegally occupy or illegally alienate the lands by showing false documents and that such persons will be held responsible for legal actions. The original vendor before revocation of the GPA, as GPA holder filed OS.no.318 of 1989 against the 2nd respondent Mutt and others for partition of the undivided joint lands of the Mutts and for handing over 1/4th share of the 3rd respondent Mutt and had obtained ex parte injunction. While that case was pending, the GPA of the original vendor was cancelled by the 3rd respondent Mutt for illegally alienating the joint lands of the Mutts. Even after cancellation of the GPA, the original vendor without following any rule or rhyme and without getting the land partitioned by metes and bounds illegally alienated the 1/4th share of land i.e., Ac.3.34 cents in S.no.148/2 in favour of his own brother and close relatives of his real estate partners, that is, to total four persons through nominal collusive and sham document bearing no.20/90 dated 08.02.1990 by creating an antedated agreement to show as if the lands were under his physical possession. He had instigated his illegal alienees to file IA.no.586 of 1990 for their impleadment as plaintiffs 2 to 5 in OS.no.318 of 1989 which is still pending in the Court. The trial Court in its orders dated 16.06.1990 in IA.no.1969 of 1989 held that in view of the permanent lease in favour of the 2nd respondent-Hathiramji Mutt, which has not yet been rescinded, the 3rd respondent-Parakala Mutt has no subsisting interest in the property and that the GPA of the alleged original vendor was cancelled by the principal, that is, the 3rd

respondent and as such the erstwhile agent can no longer represent the 3rd respondent. Having filed AAO.no.1083 of 1990, the original vendor had not pressed the same. IA.no.1767 of 1989 in the said suit was also not pressed on 14.08.1991 as he had already achieved his object of selling the properties under the cover of the *ex parte* interim injunction. The 3rd respondent Parakala Mutt intimated the 2nd respondent-Hatiramji Mutt vide letter dated 21.03.1990 that the 3rd respondent- Parkala Mutt transferred its rights of their 1/4th share in respect of the joint lands of the Mutts without physical possession to one M. Kuppuswamy Naidu and four of his family members after receiving valid consideration through bank drafts in view of the illegal alienations of the undivided joint lands of the mutts made by the alleged original vendor in favour of his minor son, his real estate partners and his close relatives through collusive, nominal and sham documents and in view of the declaratory suits in OS.nos.51, 55 and 57 of 1990 filed by them on the instigation of the alleged original vendor and as it is finding it difficult to manage its lands and affairs at Avilala village which is 400 K.M away from Mysore and also as it is finding it difficult to attend to the litigation pending in various courts at Tirupati. Thereafter, Kuppuswamy Naidu and four others through protracted correspondence for nine years since 1990 with the Commissioner of Endowments, Hyderabad for partition of the undivided joint lands of the Mutts had obtained orders. The Commissioner after taking legal opinion issued orders dated 14.06.1996, 26.06.1997 and 08.01.1990 directing the 2nd respondent Hathiramji Mutt to implement the orders of partition of the undivided joint lands of the Mutts and handover 1/4th share to third party Kuppuswamy Naidu and four others through the 3rd respondent. The 2nd respondent also issued orders dated 19.01.1999 and 17.04.1999 to the 3rd respondent and Kuppuswamy Naidu and four others for execution of partition deed at their cost and accordingly the partition deed was executed on 23.04.1999 and was registered as document no.2656/1999 at the Sub-Registrar's Office, Tirupati subject to handover physical possession after evicting the encroachers if any. In terms of the partition deed, the 2nd

respondent Mutt has to handover physical possession of Ac.18.27 $\frac{1}{4}$ cents, that is, Ac.4.97 $\frac{3}{4}$ cents in S.No.145 and Ac.13.29 $\frac{1}{2}$ cents in S.no.147/1 to Kuppuswamy Naidu and four others as specified in the 'B' schedule of the deed of partition through the 3rd respondent and retain the balance land, that is Ac.1.58 $\frac{1}{4}$ cents in S.no.145 and 35.30 $\frac{1}{2}$ cents in S.no.147/1 for the share of the 2nd respondent Mutt. Thus, Kuppuswamy Naidu and four of his family members have become the absolute owners through the above partition deed for $\frac{1}{4}$ th share of the 3rd respondent-Parakala Mutt in the undivided joint lands of the Mutts and no other person/s including the alleged original vendor or his illegal vendees or the ex tenants of the 3rd respondent have got any right in the said land. Hence, it is enjoined upon the 2nd respondent to get the encroachers evicted first from the said land and handover physical possession of $\frac{1}{4}$ th share of the 3rd respondent to Kuppuswamy Naidu and four others through the 3rd respondent and retain balance $\frac{3}{4}$ th extent for the 2nd respondent after survey and sub division as per correct measurements. Even after the revocation of power of attorney, the alleged original vendor illegally alienated undivided joint lands of the Mutts of Ac.1.64 cents out of Ac.6.56 cents in S.no.145 to the same real estate partners viz., C. Narayana Reddy, M. Reddaiah Naidu and P. Meghanadham jointly without any right or title vide nominal, collusive and sham document dated 07.02.1990 by creating ante dated agreement and instigated them to file a declaratory suit in OS.no.134 of 1990 on the file of the Court of the learned I Additional District Munsif, Tirupati against the 3rd respondent and obtained temporary injunction. They, in turn illegally alienated the suit lands, that is Ac.0.40 cents in favour of the 1st petitioner vide collusive, nominal and sham document dated 09.10.1992; 81 $\frac{2}{3}$ Square yards to the 2nd petitioner on 27.01.1993, Ac.0.20 $\frac{5}{6}$ cents to the 3rd petitioner on 16.05.1992 and Ac.0.20 cents to the 4th petitioner on 18.11.1992 and the remaining land to the others. The 1st petitioner in his turn had illegally alienated 282 Square yards to the 5th petitioner vide collusive, nominal and sham document. The 6th petitioner

allegedly purchased 119 7/9 Square yards from P. Bharathi, who is an illegal vendee of Narayana Reddy and two others. Later the suit was not pressed by them saying that they have no subsisting interest in the suit schedule property since they already sold out to third parties. In view of the fact that the original vendor himself is not competent to sell the undivided joint lands of the Mutts to his real estate partners and in turn they had no right to alienate the property to others including the petitioners herein, all of them have been treated as encroachers and were subjected to group eviction. The alienations are made pending litigation and are only *lis pendens* purchases. In view of the illegal alienations and unauthorised occupations/constructions in the undivided joint lands of the mutts of Ac.6.56 cents in S.no.145, the 2nd respondent-Hathiramji Mutt filed a petition before the Deputy Commissioner, Endowments, Kurnool for group eviction of the encroachers including the 1st petitioner herein and his illegal vendees and for demolition of unauthorised constructions thereon. The Deputy Commissioner after due enquiry passed orders dated 21.08.2001 in OA.no.114 of 2001 for group eviction of encroachers and demolition of unauthorised constructions from the said land and authorised the 1st respondent to take action for immediate eviction of the encroachers if necessary by force by taking such police assistance as provided under Section 85(1) of the Act 30/1987 and take possession of the land and handover the same to the 2nd respondent-Hathiramji Mutt. Accordingly, eviction took place on 13.10.2001 in regard to Ac.5.00 cents in S.no.145 which includes Ac.0.40 cents illegally purchased by the 1st petitioner and other petitioners herein who in turn illegally alienated to third parties. The 1st respondent took physical possession of Ac.5.00 cents in S.no.145 and handed over to the 2nd respondent Mutt in the presence of MRO of Tirupati Rural, SI of Police, Tiruchanoor and SI of Reserve Police and others through Panchanama dated 13.10.2001 and a report was submitted to the Commissioner of Endowments. In turn the commissioner of Endowments by his orders dated 13.11.2001 permitted the 2nd respondent to fix up the boundaries stone, pillars and barbed wire along with Mutt's lands, which includes the subject lands. Basing on the directions of the

Commissioner, the 2nd respondent arranged the fencing with police assistance around the subject land on 15.06.2002. After coming to know of that, the petitioners herein approached this Court on 02.07.2002 and obtained interim direction by suppressing the material facts with a view to remove the fencing laid down by the 2nd respondent. The 5th petitioner-Uma Devi after eviction on 13.10.2001 had filed OS.no.1463 of 2001 in the Court of the learned Principal Junior Civil Judge, Tirupati against the Mahant of Hathiramji Mutt as first defendant and the 2nd respondent herein. In the said suit, she had also filed IA.no.2421 of 2001 for temporary injunction. No *ex parte* injunction was granted in favour of the 5th petitioner. That application was not pursued by her. The suit is still pending. By way of eviction proceedings in OA.no.114 of 2001 dated 21.08.2001 an extent of Ac.5.00 cents out of Ac.6.56 cents in S.no.145 was recovered by the 1st respondent and was handed over to the 2nd respondent Hatiramji Mutt and the same was secured by fencing it on 15.06.2002. the allegations in the writ petition contrary to the said facts are false. The house of the 5th petitioner which was under construction had been demolished at the initial stage itself by orders in OA.no.114 of 2001 dated 21.08.2001, but, not high handedly. The modus operandi of the petitioners as is obvious is that they file cases before various judicial fora, obtain interim orders and illegally alienate the properties showing the orders to the unwary public and retreat by way of not pressing the cases or through some other stratagem. With full knowledge, the petitioners colluded with the alleged vendors and brought into existence nominal, sham and collusive documents without any manner of right. The petition may be dismissed.

7 . Be it noted that the 1st petitioner filed a reply affidavit to the counter of the 2nd respondent denying each and every allegation and asserting the petitioners' case. The 3rd respondent further filed a rejoinder/additional reply affidavit reiterating its stand.

8 . I have gone through the pleadings and also the written submissions.

The learned counsel appearing for the parties 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 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*.

12.1.1 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 Hathiramji 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 Hathiramji Mutt. The existence of such permanent lease in favour of Hathiramji Mutt *vide* document no.2095/1916 dated 20.12.1916 is undisputed. Therefore, at-least at one point of time, the Hathiramji 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 on behalf of 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 Hathiramji Mutt and Parakala Mutt and some others including Manikonda Kuppuswamy Naidu. Under the said deed of partition, the entire property was divided and it is stated that Hathiramji 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 Hathiramji 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 Hathiramji 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 Hathiramji 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 Hathiramji Mutt is contending that since these contentions regarding jurisdiction of the Endowment Tribunal are raised in the original petitions before it and were negated, 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.

12.1.2 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 Hathiramji Mutt contends that since it is in exclusive physical possession of its share and also the share of Paraklala 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 this writ petition 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 the vendors of some 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 the writ petitioners 1 to 4 purchased the subject land from C. Narayana Reddy, M. Reddeppana Naidu and P. Meghanadham, who in had in their turn purchased the said land from Narasimha Reddy, the GPA holder of the said Mutt. The 5th petitioner purchased some extent of land which was purchased by the 1st petitioner. The 6th petitioner purchased some extent of land from P. Bharathi, who in her turn had purchased the same from the above said three persons. Therefore, by the decree granted by the civil Court at Mysore 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 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.

12.1.3 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.114 of 2001 which is a group eviction proceeding, filed by the Hathiramji Mutt for eviction in respect of Sy.no.145 was disposed of on 21.08.2001; 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 in a civil Court at Mysore 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 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 the 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.

12.1.4 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 the subject matter of the writ petition is Ac.1.64 cents in Sy.no.145. The Government had acquired Ac.1.14 cents out of Ac.7.70 cents in the said Survey number of Avilala village. The extent that remained after such acquisition is Ac.6.56 cents and it was under encroachment. Hence, the 2nd respondent-Hathiramji Mutt filed under Section 85 of Act 30/87 OA.no.114 of 2001 before the Deputy Commissioner, Endowment Department, Kurnool seeking group eviction of the encroachers in the said remaining extent and the said OA was allowed on 21.08.2001. According to the respondents, the 1st respondent herein had executed the said orders on 13.10.2001 and had handed over possession of Ac.5.00 cents of land in Sy.no.145 under a Panchanama to the 2nd respondent Mutt. The respondents are contending that the subject matter of the writ petition is the part of very same property, the possession of which is delivered to the 2nd respondent Mutt. Be that as it may. The fact that the present writ petition is filed by suppressing the fact that the above said application in OA.no.114 of 2001 for eviction was filed before the Endowment Deputy Commissioner and it was disposed of on 21.08.2001 is itself sufficient to *prima facie* hold that the writ petition is liable for dismissal on the ground of suppression of material facts. It is also relevant to mention that One Dr.K. Uma Devi, the 5th petitioner herein, 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 1st and 2nd respondents herein 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. The filing of the said suit is also suppressed in this writ petition. No explanation much less valid explanation is forthcoming for suppressing the material fact in regard to the institution 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 *lis*. 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.

11.07.2016

Vjl

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

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