

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

*** HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ WRIT PETITION Nos.22256 of 2001 & 5847 of 2002

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% 13-04-2016

W.P.No. 22256 of 2001

#Tutta Chinnayya and others

....Petitioners

Vs.

\$ The Executive Officer, Sri Varaha Lakshmi Narasimha

Swamy vari Devasthanam, Simhachalam, Visakhapatnam District

.... Respondents

W.P.No. 5847 of 2002

#The Executive Officer, S.V.L.N.S. Devasthanam,

Simhachalam, Visakhapatnam District.

....Petitioner

Vs.

\$ The Special Tribunal for Land Grabbing (P) Act,

-cum-District Judge at Visakhapatnam and others

.... Respondents

!Counsel for the Appellants : Sri Ch.Murali Krishna

Counsel for the Respondent: Sri M.Adinarayana Raju, G.P for Endowments

<Gist :

>Head Note:

? Cases referred:

1. (2009)9 SCC 447
2. (2003)10 SCC 121
3. 1995(1) ALD 467=1995(1) ALT 371
4. 1997(3) ALD 241
5. 2003(6) ALT 62 (DB)
6. 2007(3) ALT 544 (DB)
7. 2007(1) ALT 76 (DB)
8. 2006(4) ALT 29(SC)
9. (2004)10 SCC 779
10. AIR 1957 SC 314
11. (2005)8 SCC 330
12. (2002)3 SCC 258
13. (2001) 2 SCC 498
14. 1960(1) MLJ 467 at 468
15. 1960(1) MLJ 247

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION Nos.22256 of 2001 & 5847 of 2002

COMMON ORDER: (per the Hon'ble Dr. Justice B.Siva Sankara Rao)

Writ Petition No.22256 of 2001 was filed by writ petitioners more than 25 in number who are all the respondents in L.G.C. No.11 of 1991 against the Executive Officer of Sri Varahalakshmi Narasimha Swamy Devasthanam, Simhachalam, Visakhapatnam District (the petitioner in L.G.C. No.11 of 1991) (for short, 'the temple'). The Prayer in the writ petition is to issue appropriate writ, order or direction, more particularly in the nature of writ of Mandamus to declare the action of respondent not receiving the amounts as directed by the Special Tribunal for Land Grabbing, Visakhapatnam vide order in L.G.C. No.11 of 1991, dated 15.03.1999 as illegal, arbitrary and consequently to direct the respondent (Executive Officer of the Temple) to receive the amounts as passed the judgment supra and to pass such other and further orders as the Court deems fit and proper in the circumstances of the case.

2) Writ Petition No.5847 of 2002 was filed by the Executive Officer of the Temple by showing the Special Tribunal for Land Grabbing-cum-District Judge, Visakhapatnam (for short, 'the Tribunal') as proforma 1st respondent and others who are no other than the petitioners in the Writ Petition No.22256 of 2001. The prayer in the writ petition is to issue appropriate writ, order or direction declaring the direction issued by the 1st respondent-Tribunal in allowing the respondents in L.G.C. No.11 of 1991 dated 15.03.1999 permitting to continue in occupation of the site

measuring 1536 Square Yards on payment of compensation as wholly illegal and without jurisdiction and declaring the said direction as void *ab initio* and to pass such other order or further orders as the Court deems fit and proper in the circumstances of the case.

3) The factual background of the case is that the Temple filed L.G.C. No.11 of 1991 against the said individuals more than 25 in number before the Tribunal for eviction as land grabbers. The averments in the application under Section 7(1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short, 'the Act') and the Rules made thereunder to take cognizance of the case and to enquire and evict the respondents holding as land grabbers, in nutshell is that the land of 1536 square yards in S.No.275 of Adavivaram village belongs to the Temple and the Temple got lands in said village and four other villages and the same is not inam estate under Act 26/48 for the temple inam and the inam Deputy Tahsildar having conducted an enquiry under the A.P. Inams Abolition and Convert into Ryottwari Act, 1956, declared the lands including the land in S.No.275 as inam land in the inam village belongs to the Temple. The land also stands in the name of the temple in the A-register as hill porambok. The respondents grabbed portion of the land within the said survey No.275, Adavivaram village covered by 1536 Square Yards or so and constructed thatched houses or pucca houses without any lawful right or entitlement and thereby to be declared as land grabbers and to be directed to re-deliver vacant possession of the grabbed land to the original owner which is the temple and to award compensation for the wrongful and illegal possession of

the land as per the prevailing market rate of the land of 1536 Square yards at Rs.1,26,912/- in each of the respondents possession of the extents ranging from 30 Sq. yards to 50 Sq. yards each. The 1st respondent, main team leader, Tutta Chinnayya filed counter and others adopted and some of them remained even exparte, contending that the total extent in the occupation of Respondent Nos.1 to 16 is 18,500 square links which is occupied in the year 1977 and made constructions therein leave about the occupation of the others they do not know and they are in possession in the land over 12 years prior to the filing of the Land Grabbing Case and perfected title by adverse possession since paying property tax in their name to the Adavivaram Panchayat from the year 1987 and municipal corporation also laid cement/concrete road and electricity supply and water supply also provided to their houses as colony and the Temple is not the owner and at any rate it has no locus standi to file the Land Grabbing Case and the same is liable to be dismissed.

4) In the course of enquiry on behalf of the temple, the Superintendent of the Revenue Section of the Temple Sri T.P.N.Murthy was examined as P.W-1 and placed reliance Exs.A-1 to A-4 and on behalf of the respondent Nos.1, 2 and 4 of the Land Grabbing Case were examined as R.Ws 1 to 3 and the Court Commissioner appointed was examined as R.W-4 and they relied upon Exs.B-1 to B-9 and through the Commissioner work memo commission report and plan were exhibited as Exs.C-1 to C-3. Among Exs.A-1 to A-4 and Exs.B-1 to B-9, Ex.A-1 is the Photostat copy of the patta granted in favour of the

Temple and rough sketch showing encroachments made by the respondents to the Land Grabbing Case and Survey Land Register extract of Adavivaram village and certified copies of the order in T.A. No.15/67 on the file of High Court of Andhra Pradesh at Hyderabad and among Exs.B-1 to B-9 are the Photostat copies of ration cards of Respondent Nos.1 to 3, house tax demand notice or payment receipts issued by Adavivaram panchayat in the name of Respondent Nos.1 to 3 and electricity bill/receipt in the name of respondent Nos.1 to 3. It is after conducting the enquiry covered by the evidence supra, for answering, three points were formulated by the Tribunal viz., (1) Whether the applicant temple established its ownership over 1536 Square Yards which is under the occupation of R-1 to R-25, (2) whether the respondents perfected their title over the site occupied by them and (3) Whether the respondents are Land Grabbers and liable to be evicted?

5) In answering the point Nos.1 and 2, it is observed that as per the evidence of P.W-1 in the cross-examination, the land in S.No.275 of Adavivaram village is a hill porambok and the total extent is Ac.5275.00 cts and the Mandal Revenue Officer, Visakhapatnam granted patta in favour of the Temple only in respect of Ac.2,567.53 cents for part of S.No.275. It is suggested by the respondents in support of their counter in saying they raised the huts in the schedule land and formed as colony known as Shramik Nagar with about 100 houses and there are cement roads and the site belongs to the Government and they are prepared to pay the prevailing market rate for their respective occupation to whomsoever the owner. R.W-2 in his evidence

deposed that his father occupied and raised thatched house in the year 1974 and they are paying taxes to the Adavivaram panchayat with door No.17-42, for which neither the Government nor the temple raised objection and there are about 60 houses and it is a colony and it is only five years back the temple people claimed the site belongs to the temple and they are prepared to pay the market value to the temple. The evidence of R.W-3 is also in same line saying for the past 14 to 15 years to his evidence date having occupied the site by raising a thatched house by paying house taxes to the Adavivaram panchayat and also obtained ration card and residing in that premises. The Tribunal therefrom held the evidence shown from respondents' side no way show possession for the past 12 years and above and no worth evidence produced muchless to dispute the ownership of the temple over the land or to claim that they perfected title by adverse possession, even the applicant/temple established ownership over the schedule property and the orders of the Mandal Revenue Officer, Visakhapatnam dated 18.05.1996 in A.I.A.C. No.1 of 1996 proves the ownership of the temple. In saying keeping the interest of the temple and general public, he declared the area of Ac.656.70 cts + Ac.88.22 Cts + Ac.2557.53 cts in favour of the temple and the remaining area of 2667.20 cts in S.No.275/1A is declared as vested in the Government free from all encumbrances under Section 2(A) of the Inams (Abolition) Act to say the land in S.No.275 entirely belongs to the temple and S.No.275/1A to the Government to so held. In continuation to it, it was observed in answering the point No.3 for consideration by the Tribunal that, the pleadings of respondents and evidence of R.Ws 1 to 3 on their behalf

admittedly show, they did not obtain any permission from the Temple or the Government to raise houses in the schedule land of the Temple situated behind D.L.B quarters. What they claimed is that they are under the impression that it is a Government land and prepared to pay the market value whoever be the rightful owner even to the temple. They are only labourers and in the occupation of small extents of site each less than 50 Square Yards for more than five years to the date of filing of the Land Grabbing Case and the area which they developed is known as Sramik Nagar with roads laid and electricity provided and house tax levied by the Adavivaram Panchayat and though the respondents are with no lawful entitlement, they can be allowed to continue in the respective sites occupied by them covered by the Land Grabbing Case, total extent of 1536 Square Yards at Rs.80/- per square yard from the value mentioned for the total of Rs.1,26,912/- comes to Rs.82.63 Ps per square yard. Accordingly, directed them to pay the compensation at such rate to the temple in 10 equal monthly instalments starting from 2nd May, 1999 and failing which the applicant temple is at liberty to evict them.

6) It is said decretal order/award of the Tribunal having declared the Respondents as land grabbers with no entitlement to occupy, further in allowing them to continue on payment of market value at Rs.80/- per Square Yard in respect of the respective sites in occupation, in 10 monthly instalments commencing from 02.05.1999 and on failure to pay the same, the temple is at liberty to evict them from the petition schedule land is impugned by the temple in their writ petition No.5847 of 2002.

7) Whereas in pursuance of said decretal order/award of the Tribunal, dated 15.03.1999 it is the claim of the petitioners in Writ Petition No.22256 of 2001 (respondents to the L.G.C) to direct the temple authorities to receive the amount in saying they are landless poor having no other shelter to reside and they are residing for the past several years in the respective extents, total covered by land grabbing eviction case schedule of 1536 Square Yards and as they are prepared to pay the amount as directed in the award in saying the Judgment passed by the Tribunal became final.

7(a). Though it is stated in the writ petition No.22256 of 2001 that the temple also not filed appeal or writ petition against the award of the land grabbing Tribunal, same that is not correct as subsequently the temple filed above mentioned writ petition No.5847 of 2002 and both the writ petitions are taken up and heard for common disposal.

7(b). It is averred in fact in the writ petition No.22256 of 2001 that they paid an amount of Rs.46,418/- through demand draft Nos.782063-dated 24.04.1999, 782077-dated 05.05.1999, 782108-dated 11.05.1999, 782146-dated 31.05.1999, 442125-dated 28.07.1999 and 778358-dated 01.07.1999 to the Revenue Divisional Officer, Visakhapatnam under legal advice thinking that the Revenue Divisional Officer is the executing Court. However, the Revenue Divisional Officer advised by letters dated 30.07.1999 and 04.08.1999 to pay to the temple by returning the demand drafts and immediately they made a representation to the temple authorities on 23.08.1999 to intimate whether the

amount is to be paid in cash or demand draft and there is no reply which made them to file the writ petition as they are ready to pay but the temple is not receiving pursuant to the Tribunal award in L.G.C. No.11 of 1991 dated 15.03.1999.

8) Heard both parties at length in common disposal of the both the writ petitions in the factual matrix supra and perused the material on record including the provisions and particularly the proposition laid down by the Apex Court in ***Y.Satyanarayana Reddy V. Mandal Revenue Officer, Andhra Pradesh***^[1] (3JB) and the other expression in ***State of Andhra Pradesh V. P.V.Hanumantha Rao***^[2].

9) Now, the common points that arise for consideration in deciding both the writ petitions are:

- (1) Whether the Land Grabbing Tribunal got no jurisdiction to direct payment of compensation for the land by directing not to evict despite holding that the respondents are land grabbers in the Land Grabbing Case No.11 of 1991 dated 15.03.1999 as contended in the W.P.no.5847 of 2002?
- (2) If not whether any direction to the temple authorities as sought in the W.P. No.22256 of 2001 to be given to receive the amounts pursuant to the directions in the Land Grabbing Case No.11 of 1991 supra?
- (3) To what result?

POINT No.1 & 2:

10) The undisputed facts, for the purpose of disposal of both the writ petitions, are that the land is that of the temple who is the writ petitioner in W.P.No.5847 of 2002 and the respondents therein who are the petitioners in W.P. No.22256 of 2001 are in occupation of the land without any lawful entitlement or lawful right of said Temple land. The Land Grabbing (Prohibition) Act is

applicable if the persons are land grabbers including of the religious or charitable institutions or Endowment including Wakf or any other private persons' land, if shown grabbed to take cognizance and to enquire and to give a finding to restore possession to the persons lawfully entitled by eviction through lawful means.

10(A). The Tribunal constituted under Section 7A of the Act is empowered to decide by following the procedure under C.P.C in trial of a civil case and there is a right of appeal to the Special Court against the judgment or order of the Tribunal, if not interlocutory in nature and every finding of the Tribunal with regard to the alleged act of land grabbing shall be conclusive proof of the factum of land grabbing and the Special Tribunal is also empowered under Section 7-A(4) of the Act to determine title and ownership to the land or lawful possession of any land grabbed and such decision shall be binding on the parties including the persons having interest in the land. As per Section 7-A(5) of the Act it shall be lawful for the Special Tribunal to pass an order in any case decided by it awarding compensation in terms of the money for wrongful possession, which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits so awarded and cost of redelivery, if any, shall be recovered as an arrear of land revenue if the Government are the owner and as a decree of a Civil Court, in any other case, after giving opportunity to the land

grabber to make representation or to adduce evidence and to consider the same while opposing such order.

10(B). In both the writ petitions maintainability of the same are not in dispute. In fact on the maintainability both sides placed reliance on the expression in ***P.V.Hanumantha Rao*** supra i.e., on behalf of the temple in saying the very order of the Tribunal is exceeding its jurisdiction in awarding compensation for the land to allow to retain by the land grabbers though it is in addition to eviction and re-delivery to award compensation from the reading of Section 7-A(4) of the Act. In fact, the provision from its reading clearly indicates it is not the power of the Tribunal when once found by it of the person is a land grabber to ask him to retain the land by payment of compensation, apart from there is no criterion given in determining the compensation as to what is the market rate. Further, the Andhra Pradesh Endowments Act, 1987, Sections 80 and 81 clearly speak on invalidation of the same without prior sanction of the Commissioner or Government and the person in possession shall get no right or title pursuant therewith and such person shall be deemed to be an encroacher and the provisions of Sections 84 and 85 of the Act to evict him are applicable. Even for the Commissioner or Government to accord prior sanction it must be after publishing in the State Gazette the particulars relating to the proposed transaction by calling for and notifying objections and suggestions including from the trustee or other persons having interest in the temple or other institution for any gift or sale or exchange or mortgage of its property and that too every such sale etc., even sanctioned by Commissioner, shall be undertaken by tender-cum-public auction

in the prescribed manner, though the Government may for reasons to be recorded and in the interest of the institution or endowment and that too in writing permit sale of such immovable property otherwise than by public auction. This Court in

V.Narasimhacharyulu V. State of Andhra Pradesh^[3] held categorically that every disposal of the immovable property owned by a Religious and Charitable Institution should be only by way of public auction and disposal by private negotiations by the Government were allowed only under compelling circumstances in setting aside for no compelling circumstances of the permission granted to sell the property of the temple by private negotiations and the same was reiterated in

Meka Kondaiah V. State of Andhra Pradesh^[4] of sale of temple land without following the procedure under Section 80 of the Act cannot be validated in any manner. Further in ***Secretary to Government, Revenue Endowments Department, Andhra Pradesh V. Sri Swamy Ayyappa Co-operative Housing***

Society Limited^[5] it was held that from the clear legislative declaration by Section 81 of the Act any alienation which has been even made prior to the Act 30/87 came into force equally as made after the Act came in force is null and void and consequently no rights shall be accrue in favour of so called vendee even. Thus any sale contrary to the provisions of Sections 80 and 81 of the Act are invalid and void *ab initio*.

10(C). In fact as referred supra from reading of Sections 2, 7, 7A, 8 and 12-B of the Land Grabbing (Prohibition) Act, no way those empower the Land Grabbing Tribunal to alienate the

property of the temple in favour of the land grabber either directly or indirectly by awarding compensation to the temple. In the three Judge bench expression of the Apex Court in ***Y.Satyanarayana Reddy*** supra in this regard it is held in categorical terms that the Tribunal or Special Court has no power even in moulding of a relief in the claim for eviction of the land grabber, to allow the land grabber to continue on the land by awarding compensation to the land owner as neither Tribunal nor Special Court can hold that land grabber could remain in possession of the land on payment of its market value as compensation even as it would defeat the whole purpose and object of the Act. The interpretation of the words 'compensation' from land grabber for his wrongful possession of the land grabbed does not mean the compensation is for future continuation of the possession of the land already grabbed by him.

11) Coming to the contention of adverse possession, the Division Bench of this Court in ***Telaga Mahajana Sangham V. Registrar, Special Court under A.P. Land Grabbing (Prohibition Act, Hyderabad***^[6] held that even a registered society under A.P. Society Registration Act comes within the definition of person and as in the case of land belonging to any other private person, application made by the Society for eviction of the land grabbers is held maintainable. It was also observed that the Special Court and Civil Court are equally competent to adjudicate any dispute on the title and ownership and possession of any such land in dispute by referring to several expressions including of the Apex Court. In another Division

Bench expression of this Court in ***M.Shiva Kumar V. A.Bal Reddy***^[7] it was held that once jurisdiction is conferred on Special Court or Tribunal under the Land Grabbing (prohibition) Act, it is an exclusive one with no right of Civil Court to entertain and the exclusive jurisdiction of Special Court or Tribunal under the Act, since ousts the jurisdiction of a regular civil Court, the Special Court got jurisdiction to consider and adjudicate any plea of adverse possession. For that conclusion, to substantiate it referred several expressions including by explaining the earlier expression of the Apex Court in ***N.Srinivasa Rao V. Special Court under A.P. Land Grabbing (prohibition) Act***^[8].

11(A). Here, it is further observed in ***Shiva Kumar*** supra referring to the expression of the Apex Court in ***Karnataka Board of Wakf V. Government of India***^[9] that the burden is always on the person who takes the plea of prescriptive title by means of adverse possession to prove the same. Mere possession of the land, for however length of time it may be, unaccompanied by adverse possession will not ripe into a prescriptive title. The person holding the land must have the requisite animus to possess the same hostile to the real owner, besides having the actual possession. That possession shall be adequate in continuity, in publicity and in extent. The classical requirement in this regard is *nec vi, nec clam* and *nec precario* meaning thereby that the possession required must be adequate in continuity, in publicity and in extent, to show that it is the possession adverse to the competitor vide ***P.Lakshmi Reddy V. L.Lakshmi Reddy***^[10].

11(B). In ***Karnataka Wakf Board*** supra, it was further held that the person who takes up the plea of adverse possession has no equities in his favour, inasmuch as he is trying to defeat the rights of the true owner. Therefore, it is for him to clearly plead and establish all facts which are essential to bring home the plea of adverse possession. He must show before the Court unequivocally the date on which he came into possession, the nature of his possession, whether the factum of his possession is known to the real owner, how long his possession has continued and whether his possession was open notorious and undisturbed.

11(c). The period of limitation does not commence from the date when the right to ownership arises to the plaintiff, but commences from the date when the defendant's possession becomes adverse to the real owner. Animus Possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. ***Vide Saroop Singh V. Banto***^[11].

11(D). In ***Konda Lakshmana Bapuji V. Government of A.P.***^[12], the Apex Court considered the plea of adverse possession under the provisions of the Act. In Para 62, the Apex Court held that possession in assertion of one's own title was animus of adverse possession and that passing an adverse order against the appellant or the appellant himself filing an application to any statutory authorities for occupancy certificate would not interrupt his adverse possession of the land. However,

in Para 64 the Court held thus:

“There can be no doubt that passing of adverse order against the appellant would not cause any interruption in his possession (See: ***Balkrishan V. Satyaprakash***^[13]). So also filing of application before statutory authority under the Inams Abolition Act for occupancy rights, in our view, causes no interruption in the continuity of possession of the appellant but it does abrogate his animus to hold the land in derogation of the title of the State and breaks the chain of continuity of the animus.”

11(E) The requirement, therefore is that the possession must be adequate in its continuity, publicity and extent has thus been explained.

12) From the above, so far as the L.G.C respondents in possession of the land concerned what they claimed of they are in possession for nearly 12 years apart from as rightly concluded by the Tribunal of nothing could be proved but for shown from the residential houses constructed and house tax with electricity charges paid only for the past five years or so and thereby they could not make out any case of animus possessendi to acquire title by adverse possession of required period of 12 years.

12(A). In fact, it is not the 12 years period prescribed by the general provisions of the Limitation Act, 1963 particularly under Articles 64 & 65; but under the Special Law covered by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowment Act, 1987 that is what is required to consider as rightly concluded by the Tribunal in its finding from the evidence on record proved of the land in question belongs to the temple and it is an inam land and the Temple is also granted the patta for the land as proved by the Temple. Once it is an inam land of the Temple, to perfect title by adverse possession of the inam land of the Temple as per the Madras Hindu Religious

Endowments Act 2 of 27 which repeals the earlier Act 1 of 1925 that repeals the first legislation covered by Act 20 of 1863 that repeals the earlier Endowment and Escheats Regulation 7 of 1817, and more particularly from the Act 2/27 amended by Act 11/1934, it must be proved and established that by the time the amended Act 11/34 came into force, the person claiming adverse possession for such temple land has perfected title by adverse possession 60 years prior to that to say as long as before 1874 and the same is also reiterated by the expression of the Madras High Court in ***Visweswara Swamy and Veera Raghava Perumal Devasthanam of Tirupur Vs. Collector of Coimbatore***^[14] and ***Ganapathi Pandaram V. Collector, Coimbatore***^[15].

12(B). For more clarity the law right from the regulation 7/1817 till date to be summarized as follows:

(i). The place where the property is situated in Visakhapatnam District was covered by the composite state of Madras and the deity is under control of the Madras Endowments Board and the legislations there under viz., The Endowments and Escheats Regulation, 7/1817 was later replaced by the 1st legislation in the Madras Presidency known as the Religious Endowments Act, 20/1863, that was later repealed and replaced by the Madras Hindu Religious Endowments Act, 1/1925 which later again by the Madras Hindu Religious Endowments Act, 2/1927 and the same was amended many a time including by the amended by Act, 11/1934 and the subsequent legislation to it was the Madras Hindu Religious and Charitable Endowments Act, 19/1951 and thereafter by the

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act,17/1966 that again was repealed and in its place the present Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act,30/1987 came into force from 28.5.1987 that govern. The A.P Act, XVII of 1966 came into force and the same provision incorporated even in the Act, XXX of 1987 covered by Sec.143 which provides that nothing in the law of limitation for the time being in force shall be deemed to vest in any person the property governed by the Act which has not vested before 30.9.1951.

(ii). As per Sec.76(1) of the Act,1926 (Act,2/1927) the permission was also mandatorily required to be obtained by the Trustees from the competent authority by showing necessity and without which there could be no exchange, sale or mortgage and no lease for a term exceeding 5 years of any immovable property belonging to any Mutt, Temple or Specific endowment. Nothing shall be valid or operate unless it is shown necessary and beneficial to the Mutt, Temple or Specific endowment and same in recognition of such necessity or benefit is sanctioned by the Board.

(iii). Thus, it is not either proof of possession for 12 years with animus possessandi or even 12 years before to the date of the Act,19/1951 came into force, for proof of adverse possession but for the proof of perfecting title by adverse possession even by the year 1874 as per section 44-B of the Act,2/1927(amended by Act,11/1934).

12(C), Therefore, the Respondents to the Land Grabbing eviction case cannot claim any adverse possession over the

subject property of the temple. Even from any possession of the property governed by the Endowments Act by the persons unconnected with the temple(endowment) with animus possessendi for any claim on the ground that such persons acquired an indefeasible title by adverse possession, such possession should have held for 60 years prior to the coming into force of the Madras HRE (Amendment) Act 11/1934 by which Sec.44(b) that was introduced by amendment to the Madras HRE Act,1926(Act 2/1927) which mean no adverse possession can be held by persons unconnected with the services of the temple-vide decisions ***Visweswara Swamy and Veera Raghava Perumal Devasthanam of Tirupur*** and ***Ganapathi Pandaram*** supra.

13) Having regard to the above, when the Land Grabbing Tribunal having no right to ask the respondents-land grabbers to the land grabbing case to retain possession and pay compensation at market value, said direction by the Tribunal to pay at Rs.80/- per Square yard is beyond its jurisdiction for not conferred by the Act and thereby, it is unsustainable and illegal and is liable to be set aside. Accordingly point Nos.1 and 2 for consideration are answered.

POINT No.3:-

14) Accordingly and in the result, the writ petition No.5847 of 2002 is allowed by setting aside the direction of the tribunal in L.G.C. No.11 of 1999 to the respondents-land grabbers therein to retain the temple land in the encroachment subject to payment at Rs.80/- per square yard to the petitioner-temple, owner of the land and by dismissing the writ petition No. 22256

of 2001 for no such direction to the temple authorities can be given to receive the amount and to permit to retain the land as per said unsustainable direction of the Tribunal.

15) Time is granted to the respondents in L.G.C. No.11 of 1999 to vacate the subject property of the petitioner temple within three months from the date of this common judgment, failing which by following the procedure laid down under Section 7A of the Act read with Rule 15B of the Rules, the Revenue Divisional Officer concerned shall cause evict and deliver vacant possession of the land to the petitioner temple-Sri Varahalakshmi Narasimha Swamy Devasthanam, Simhachalam represented by its Executive Officer. There is no order as to costs in these petitions.

16). Consequently, miscellaneous petitions in both the writ petitions pending, if any, shall stand closed.

NOOTY RAMAMOHANA RAO, J

Dr.B.SIVA SANKARA RAO, J

13-04- 2016

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[\[1\]](#) (2009)9 SCC 447

[\[2\]](#) (2003)10 SCC 121

[\[3\]](#) 1995(1) ALD 467=1995(1) ALT 371

[\[4\]](#) 1997(3) ALD 241

[\[5\]](#) 2003(6) ALT 62 (DB)

[\[6\]](#) 2007(3) ALT 544 (DB)

[\[7\]](#) 2007(1) ALT 76 (DB)

[\[8\]](#) 2006(4) ALT 29(SC)

[\[9\]](#) (2004)10 SCC 779

[\[10\]](#) AIR 1957 SC 314

[\[11\]](#) (2005)8 SCC 330

[\[12\]](#) (2002)3 SCC 258

[\[13\]](#) (2001) 2 SCC 498

[\[14\]](#) 1960(1) MLJ 467 at 468

[\[15\]](#) 1960(1) MLJ 247