

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.3222 of 2006

ORDER :

In this Writ Petition the petitioners have questioned the order dt.17.05.2005 in File No.F1/7195/2004 of 2nd respondent in Appeal under Section 24 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 **(for short, 'the Act')**, setting aside the order dt.21.08.2004 of the Revenue Divisional Officer, Vikarabad Division in File No.D/135/2004, in respect of lands admeasuring Acs.12.29 guntas in Survey No.405, Acs.4.02 guntas in Survey No.406, Acs.17.19 guntas in Survey No.407 and Acs.26.04 guntas in Survey No.491 of Chittigadda Village, Nawabpet Mandal, Ranga Reddy District.

2. The Revenue Divisional Officer, Vikarabad granted Occupancy Rights certificate under Section 4 (1) of the Act in exercise of powers under Section 10 of the Act to petitioners. The said order does not indicate that any enquiry was conducted by the said official as provided in Section 10 of the Act read with Rule 6 of the Rules framed under the said Act vide G.O.Ms.No.870 Revenue (G) dt.27.06.1975.

3. This was questioned by 1st respondent before 2nd respondent who is the Appellate Authority under Section

24 of the Act on 03.11.2004.

4. In the said appeal, 1st respondent contended that Sri Nambi Guru Swamy Math is constituted at Chittigadda Village of Nawabpet Mandal and falls within his administrative control and jurisdiction and that the above lands belong to it; that the lands are Inam lands meant for services rendered and to meet puja expenses of the Institution; that prior to establishment of the Endowment Department in 1967, administration of Religious and Charitable Institutions was looked after by the Collectorate through a separate section as Collector, Endowments; that these lands were entered in the Inam Register, which were prepared and maintained by the Collectorate in 1965, and in the Pahanies also as against the said land, the name of Nambi Guru Swamy was mentioned; that on 01.05.1997, a claim petition was filed before the Revenue Divisional Officer, Vikarabad by the then Assistant Commissioner for issuance of Occupany Rights certificate in favour of the Institution and one Sri Raghavacharyulu on 14.08.2004, during enquiry, gave in writing that he and his brothers are in possession of the lands and that the lands are Inam lands belonging to the Math. Reliance was also placed on Amendment Act 19 of 1994 introducing the proviso to Section 4 of the Act. Apart from the Inam Register maintained by the Collectorate during 1965, reliance was also placed by 1st respondent on the

claim petition dt.01.05.1997 filed by the then Assistant Commissioner, before the Revenue Divisional Officer, Vikarabad, pahanies for the year 2003, petition of villagers with endorsement of the District Revenue Officer, Ranga Reddy District, and the written statement of Sri Raghavacharyulu on behalf of petitioners, who are his family members, stating that the land is Inam land belonging to the Math.

5. Counter-affidavit was filed before 2nd respondent by 10th petitioner, i.e., Sri Raghavacharyulu, opposing the claims made by 1st respondent on behalf of the Institution. In the affidavit filed by the 10th petitioner before the 2nd respondent, it is stated that at the instance of vested interests, the 1st respondent conducted inspection on 24.08.2004 and obtained an undertaking from him on the same day that he will not alienate the property based on the Occupancy Rights issued by the Revenue Divisional Officer, and that he would apply for cancellation of the Occupancy Rights certificate issued by the Revenue Divisional Officer. It was denied that there was in existence any temple as Nambi Guru Temple, but it was contended that petitioners' ancestors were performing annual festivals and enjoying the lands given to them by cultivating the lands for their survival. The petitioners claim to be cultivators since 1973-74, and contended that the Revenue Divisional Officer had rightly granted

Occupancy Rights certificate to them. They also contended that the Assistant Commissioner of Endowments/1st respondent had no *locus standi* to file the application for cancellation of the Occupancy Rights certificate granted to petitioners.

6. In the impugned order dt.17.05.2005, the 2nd respondent referred to the pahanies extracted from 1955 to 1958 and held that the land is classified as Inam in the name of Nambi Guru and is not patta land. He also relied on the Register of Inams, prepared and maintained by the Collectorate in 1965 prior to the establishment of the Endowments Department, and held that the lands belong to the Institution. He then applied the proviso to Section 4 introduced by Amendment Act 19 of 1994 and set aside the Occupancy Rights certificate granted to petitioners.

7. According to petitioners, the land in question is a *Mafi Inam* and one Nambi Guru has been mentioned as Inamdar of this land as per *Sethwar*. The petitioners contend that the *Munthakab* granted by Jagirdar also indicates that the land in question was given as a gift or *Inam* to Nambi Guru Swamy subject to rendering of services of the temple of the Nambi Guru Swamy. They claim that they are the successors of the said Nambi Guru Swamy, and contend that there is no temple at all there, that it is only a *samadhi* open to sky where devotees come to pay respects at annual festivals, that they

approached the Revenue Divisional Officer, Vikarabad Division for grant of Occupancy Right certificate and that such a certificate had been granted to them invoking Section 4 of the Act. They further contended that the said officer had rightly granted Occupancy Rights certificate to them by order dt.21.08.2004 and that the said order has been erroneously set aside by 2nd respondent by order dt.17.05.2005, applying wrongly the 1st proviso added to Section 4 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 with effect from 26.12.1985 by Amendment Act 19 of 1994. According to petitioners, the said proviso cannot nullify an occupancy rights certificate granted under Section 4 of the Act, and would only apply to occupancy rights certificate granted under Sections 5, 6, 7 and 8 of the Act.

8. The counsel for petitioners Sri A.H. Chakravarthi relied upon a Division Bench judgment of this Court dt.01.08.2001 in W.A.No.30640 of 1997, wherein this Court had taken the view that certificates issued under Section 4 of the Act do not become null and void and ineffective by virtue of Act 19 of 1994.

9. On the other hand, the Government Pleader for Endowments contended that the lands are Inam lands of the Institution and that the term "*Mafi Inam*" means that a person, i.e., the Inamdar has to perform services to the

Institution or Temple with earnings of the lands granted to the Institution but he would not have any right over the lands, although he can hold and enjoy the same while rendering service to the Institution. It was disputed that petitioners are successors of Nambi Guru, who is the Inamdar of lands. It was contended that the Revenue Divisional Officer had passed orders on 21.08.2004 granting Occupancy Rights certificate to petitioners without following the procedure and without conducting any enquiry as per law, and that was why the 2nd respondent had set aside the said order. It was categorically stated that as per Inam Register, the lands were Inam lands granted to the Institution and they are not patta lands and that the intention was that services would be rendered in the Temple by the Pujari or custodian of it and he can enjoy the property while maintaining the service to the deity, and he cannot act as if he had a right as an owner in the land. Reliance is also placed on the Inam Register prepared and maintained by the Collectorate in 1965. It was denied that the Inam was personal to the grantee. It was also stated that the Endowments Department need not get a declaration that the properties are themselves Inam granted to an endowment institution and it is pointed out that petitioners themselves admitted that the lands are Inam lands of Nambi Guru Swamy Math and there is no doubt regarding the nature of lands and title of the Institution.

10. Section 4 of the Act states :

“4. Registration of Inamdars as occupants : -

(1) Every Inamdar shall, with effect from the date of vesting, be entitled to be registered as an occupant of all inam lands other than --

(a) lands set apart for the village community, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers;

(b) lands in respect of which any person is entitled to be registered under Sections 5, 6, 7 and 8 of the Act;

(c) lands upon which have been erected buildings owned by any person other than the Inamdar;

Which immediately before the date of vesting, were under his personal cultivation and which, together with any lands he separately owns and cultivates personally are equal to four and a half times the ‘family holding’.

(2) No inamdar shall be registered as an occupant of any land under sub-section (1) unless he pays to the Government as premium an amount equal to twenty-five times the difference between the judi or quit-rent, if any, paid by him and the land revenue payable in respect of such land. The amount of premium shall be payable in not more than ten annual instalments along with the annual land revenue and in default of such payment, shall be recoverable as arrears of land revenue due on the land in respect of which it is payable.

(3) The Inamdar shall be entitled to compensation from the Government as provided for under this Act in respect of inam lands in his possession in excess of the time limits specified in sub-section (1) whether cultivated or not.”

11. No doubt, in the un-reported decision dt.01.08.2001 in W.A.No.30640 of 1997, it was held that

the proviso introduced by Amendment Act 19 of 1994 did not affect the Occupancy Rights certificate granted under Section 4 of the Act, and that it was intended to apply only to certificates granted under Sections 5, 6, 7 and 8, but the Division Bench, while rendering the said judgment failed to note that the language of the proviso which specifically stated that “*where Inams are held by or for the benefit of a charitable and religious institution, the institution alone shall be entitled to be registered as an occupant of all Inam lands*”. Therefore, the view expressed by the Division Bench is *per incuriam* since the specific language in the proviso to Section 4 introduced by Act 19 of 1994 has not been noticed by the Division Bench at all. Therefore, the said judgment of the Division Bench cannot come to the assistance of petitioners.

12. Even according to petitioners, the *Munthakab* granted by the Jagirdar indicates that the land in the above survey numbers was given as Inam/Gift to Nambi Guru Swamy and it is subject to rendering of services to the temple of Nambi Guru Swamy. Therefore, it is clear that the Inam was granted for the benefit of the temple of Nambi Guru Swamy and not to any individual. Merely because the petitioners’ predecessors were in possession of the land, they cannot claim any right to the land in their own right and contend that they are Inamdar and deprive the Institution of the land.

13. Admittedly, the Assistant Commissioner, Endowments on 01.05.1997 itself had applied to the Revenue Divisional Officer, Vikarabad for issuance of Occupancy Right certificate in favour of the Institution. Without deciding the said application and without issuing any notice to 1st respondent, the Revenue Divisional Officer, Vikarabad could not have granted Occupancy Rights certificate to petitioners.

14. Under Rule (6), it was incumbent on the part of Revenue Divisional Officer, Vikarabad to issue notices to all the persons claiming interest or having interest in the land. It was also incumbent on the part of Revenue Divisional Officer, Vikarabad to conduct an enquiry under Section 10 of the Act by ascertaining and examining the nature and history of the land in respect of which application for grant of Occupancy Rights certificate has been made, but he failed to discharge the statutory duty.

15. I am therefore of the opinion that 2nd respondent had rightly considered the evidence placed before him by 1st respondent and set aside the order dt.21.08.2004 of the Revenue Divisional Officer, Vikarabad Division granting Occupancy Rights certificate in favour of the Institution by applying Act 19 of 1994.

16. Therefore, I do not find any error of jurisdiction in the order dt.17.05.2005 passed by 2nd respondent. The

Writ Petition is accordingly dismissed, but in the circumstances without costs.

17. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-03-2016

Ndr/*