

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 19502 of 2015

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Revenue, learned Government Pleader for Endowments, learned counsel for respondent No.3 and learned Standing Counsel for TTD.

2. With the consent of both the parties, the Writ Petition is disposed of at the admission stage.

3. The present Writ Petition came to be filed seeking issuance of writ of Mandamus declaring the action of the first respondent in issuing G.O.Ms.No.224 Revenue (Endts.II) Department, dated 25.06.2015, canceling G.O.Ms.No.275, dated 29.03.1993, as illegal, arbitrary, violative of principles of natural justice and contrary to Section 3 of the Government Grants Act, 1895.

4. The facts which lead to filing of the writ petition are as under:

The land in Survey No.275/F, admeasuring Acs.7.04 cents of Adavivaram Village, Visakhapatnam Rural Mandal, Visakhapatnam District, was once part of Vizianagaram Samsthanam (Estate) and was notified under the provisions of the A.P.(Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956. The Inamdar in relation thereto was S.V.L.N.S.V.Devasthanam, in whose favour a ryotwari patta had been granted by an order dated 10.07.1989. The averments in the affidavit would show that when a statutory

enquiry was conducted, the M.R.O., Visakhapatnam recognized the right of the petitioner over the land in question and the husband of the petitioner was given permanent occupancy rights vide patta No.243, dated 10.07.1942. The ownership rights were transferred to the petitioner vide G.O.Ms.No.275, dated 29.03.1993, having collected the amount towards value of the land. While things stood thus, the Government issued Memo No.3587/E/IV/(2)/2003-4, dated 05.02.2004, rejecting the representations dated 08.12.2002 and 29.09.2003 seeking withdrawal of G.O.Ms.No.275, dated 29.03.1993. Further, W.P.No.15513 of 2010 came to be filed against the second and third respondent seeking various reliefs. By an order dated 06.10.2010, the said writ petition was disposed of observing as under:

“It is evident from the above noticed rival contentions that the absolute rights of ownership claimed by the petitioner are very much in dispute. Such disputed question relating to title cannot be enquired into and adjudicated upon by this Court in a writ petition under Article 226 of the Constitution of India. As the title disputes in respect of any immovable property cannot be resolved in the summary proceedings under Article 226 of the Constitution of India. I am not inclined to express any opinion on the rival claims made by the writ petition and the first respondent and therefore, the declaration as sought by the petitioner with regard to her title/absolute rights of ownership to the land in question cannot be granted.”

Further, in the said writ petition, it was directed as under:

“(1) The first respondent shall not interfere with the possession and enjoyment of the petitioner in respect of the land in question in any manner whatsoever without following due process of law.

(2) The second respondent shall receive the documents relating to the land in question as and when

presented by the petitioner/her successors-in-title and register the same in accordance with law.”

Against the above said writ petition, W.A.No.776 of 2010 came to be filed by the Devasthanam, which was disposed of on 16.10.2014 holding as under:

“Now the situation has changed as the right of permanent occupancy is de-recognised by law in relation to inam lands of religious and charitable institutions. This amendment has been given retrospective effect. So the learned counsel for the appellant says that taking note of the subsequent development this Court should pass appropriate orders de-recognizing the right of permanent occupancy of the first respondent. We are informed by the learned counsel for the first respondent that registration has taken place in terms of the order of the learned Single Judge and the transferee is in possession and occupation.

In our considered view, the appeal is a continuation of the writ proceedings so the Court will grant relief as prayed for in the writ petition by the petitioner and to by the respondents unless a counter claim is filed in the writ petition separately. This is not the case here. We are of the view that the impugned judgment is quite justified on the basis of the provisions of law then applicable and prevailing. However, even if we go by the right, as determined by the learned Single Judge, this right of occupancy is not an absolute one and rather, it is vulnerable to occupancy is not an absolute one and rather, it is vulnerable to eviction in certain situations as mentioned in Section 8(2) of the Act. therefore, it is always open for the appellant to take recourse to law as may be advised and for this purpose, it would be open for the appellant to enforce the amended provisions of law, if such action is taken. It will also be open for the appellant to take steps for cancellation of the registered document, which is said to

have been effected pursuant to the decision of the learned Single Judge.

We accordingly clarify the order and judgment of the learned Single Judge. The writ petitioner's permanent occupancy right will not stand in the way, if fresh action is lodged before the appropriate forum. For the ends of justice and in order to avoid multiplicity of judicial proceedings, we allow the interim order of status quo to be continued for a period of one month from the date of receipt of a copy of this order. All questions including the question of applicability of the amendments are kept open".

5. As seen from the record, while disposing of the appeal, the Bench left open all questions, including the question of applicability of the amendment to Section 8 of the Inams Abolition Act. Pursuant thereto G.O.Ms.No.224, dated 25.06.2015 came to be issued, which concludes as under:

"After careful examination of the proposal of the Commissioner, Endowments Department and Orders of the High Court in W.A.No.776 of 2010, dated 16.10.2014 and as per amendment(I.A) Act, 16/2013 of the A.P.(Andhra Area) Inams (Abolition and Conversion in Ryotwari) Act, 1956, Government conclude that protecting the long term interests of the sacred historic shrine of Simhachalam is paramount and accordingly hereby cancel the following G.Os. pertaining to conveyance of Melivaram rights to the persons cited in this order:

- i) G.O.Ms.No.189, Revenue (Endts.IV) Dept., Dt.27.02.1993.
- ii) G.O.Ms.No.275, Revenue (Endts.IV) Dept., Dt.29.03.1993.
- iii) G.O.Ms.No.319, Revenue (Endts.IV) Dept., Dt. 06.04.1993."

6. The only ground urged by the learned counsel for the petitioner is that without issuing any notice, the impugned G.O.

came to be passed canceling the earlier G.O.Ms.No.275, dated 29.03.1993 issued in favour of the petitioner. The said fact of issuing the impugned G.O. without putting the petitioners to notice is not seriously disputed by the learned counsel appearing for the respondents.

7. Having regard to the above, since the impugned G.O. came to be issued violating the principles of natural justice and as the petitioner would be put to great hardship by virtue of the subsequent G.O., the Writ Petition is allowed setting aside G.O.Ms.No.224 Revenue (Endts.II) Department, dated 25.06.2015. However, the respondent-authorities are always at liberty to initiate fresh proceedings in accordance with law.

8. Miscellaneous petitions, pending if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE C.PRAVEEN KUMAR

01.11.2016,
vhh

Hon'ble Sir, G.O.Ms.No.275, dated 29.03.1993 reads as under:

"In the circumstances reported by the Commissioner, Endowments Department, Hyderabad in his letter first read above, the Government after careful consideration of the matter and in exercise of the powers conferred by Section 75 of the A.P.Charitable and Hindu Religious Institution and Endowments Act, hereby accord permission to the Executive Officer, Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam for conveyance of Malvaram rights in respect of land measuring an extent of Acs.7.04 cents in Survey No.275/F of Adivivaram Village, Visakhapatnam District belonging to Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam in favour of Smt.M.Jaya Satyavathi Devi(petitioner), W/ o.Late Sri Venkanna Dora on the receipt of 1/3rd of sale value or basic register, whichever is higher."

Further, as per pg. No. 24, NOC was issued duly conveying ownership rights in favour of the petitioner.