

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.4332 of 2007 & 9479 of 2009

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COMMON ORDER:

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Writ Petition No.4332 of 2007 is filed under Article 226 of the Constitution of India by the petitioner-Ganga Shanker Vyas to declare the inaction of the respondents 2 and 3 in not taking action against the respondents 6 to 7, 9 and also the 8th respondent (the writ petitioner in W.P.No.9479 of 2009) as wholly illegal, arbitrary, unconstitutional and violative of the Article 14 of the Constitution of India and to direct the respondents 1 and 2 to remove the encroachments on the land of the 5th respondent-temple and direct the respondents 6 to 9 to pay compensation to the 5th respondent-temple for being in illegal possession and enjoyment of the property of the temple from 1995 onwards.

1.1 Haridas Mundada, the 8th respondent in the before mentioned writ petition, had filed the W.P.No.9479 of 2009 requesting to issue a writ, order or direction, more particularly in the nature of writ of certiorari and call for the records and quash the order dated 21.03.2009 passed by the 1st respondent-the Regional Joint Commissioner, Endowments Department, Multi-Zone-II of Tirupati, Chittoor District in R.P.no.7 of 2008 (Old R.P.No.263 of 2003) and consequently declare him [the writ petitioner in W.P.No.9479 of 2009] as the absolute owner of the property bearing Dr.No.15-7-222 admeasuring 160 square yards situated at Begum Bazar, Hyderabad and pass such other order or orders as the Court may deem fit and proper in the circumstances of the case.

2. At the hearing both the sides stated no objection for allowing WPMP No. 32182 of 2009 in W.P.No.9479 of 2009. The said miscellaneous petition is allowed today and accordingly the 5th respondent is permitted to be impleaded in W.P.No.9479 of 2009. The said 5th respondent is the petitioner

in W.P. No.4332 of 2007.

3. In these writ petitions, the parties shall hereinafter be referred to as they are arrayed in W.P.No.4332 of 2007 as all the concerned are parties to the said writ petition.

4. I have heard the submissions of *Sri Pratap Narayan Sanghi*, the learned counsel for the petitioner in W.P.No.4332 of 2007 and also for the 5th respondent in W.P.No.9479 of 2009, the learned standing counsel for the Endowments appearing for the respondents 1 to 4 and the respondents 1 to 3 in the two writ petitions, *Sri Ch.Satish Kumar*, the learned Standing Counsel appearing for the 5th respondent and for the 4th respondent in the two writ petitions, *Sri T.V.Rajeevan*, the learned counsel for the 8th respondent and *Sri K.Sai Krishna Mohan Rao and Sri Gade Venkateswara Rao*, the learned counsel for the petitioner in W.P.no.9479 of 2009 and *Sri Murali Narayan Bung*, the learned counsel for the 9th respondent. I have perused the material record.

5. The facts leading to filing of these two writ petitions may be stated, in brief, as follows:

The Assistant Commissioner, Endowments Department, Hyderabad and the Single Trustee of Sri Gurudwara Parushuram Mandir, Begum Bazar, Hyderabad together had brought three original applications, viz., O.A.Nos.19, 20 and 21 of 1997 against the respondents 8, 7 and 6 respectively under Section 83(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 ('the Endowment Act', for brevity) *inter alia* alleging as follows: "The respondents 8, 7 and 6 in the said applications had encroached the respective schedule properties bearing Municipal no.15-7-222, Begum Bazar of Hyderabad, which are endowed properties. The entire property originally belonged to Gurudwara Parasuram Mandir, Begum Bazar of Hyderabad. The original owner who is the trustee of the temple by name M.A.Narayana Achary endowed the entire property including the subject property to the Parashuram Mandir Gurudwara in 1315

Fasli. A Muntakhab was issued vide File No.2718/2. The subject property was entered in the register of endowments maintained under the Hyderabad Endowments Regulations, 1349 Fasli. In the said Register/book of Endowments, the entire endowed property including the subject property was described as the property belonging to the Mandir. In the Muntakhab, the original owner who is the trustee of the temple was described as Mutawalli." While so, M.A.Narayana Achary had partitioned the endowed property amongst his mother M.A.Chokkamma, brother-M.A.Raja Gopal and himself. In that oral partition dated 23.04.1972, 178 square yards each was allotted to each of them. Evidencing the earlier partition, a memorandum of partition was registered on 06.05.1989. Subsequently, Chokkamma had sold her share to the 8th respondent, i.e., the writ petitioner in W.P.No.9479 of 2009 under registered sale deed bearing document no.472 of 1995 registered in the Sub Registrar's office, Doodbowli, Hyderabad. The said Mutawalli, M.A.Narayana Achary had sold his share by virtue of a registered sale deed dated 02.06.1989. The other sharer, M.A.Raja Gopal who is brother of the Mutawalli had sold his share to K.Eshwaramma, the 7th respondent herein by virtue of a registered sale deed dated 27.11.1991. In the eviction proceedings, as the endowed property was partitioned, the three respondents, 8th, 7th and 6th had contended that the property had lost the status of endowed property and that the applicants in the said eviction proceedings are not entitled to question the possession of the respondents 8, 7 and 6. However, all the original applications were consolidated and were disposed of by a common order dated 07.10.2003 passed by the Deputy Commissioner of Endowments, Hyderabad. By the said orders, the Deputy Commissioner of Endowments, Hyderabad had held that the respondents 8, 7 and 6 in the three original applications 19 to 21 of 1997 are encroachers of the endowed property and had, hence, directed them to vacate the respective OA schedule properties. Feeling aggrieved of the said common orders, the 6th respondent alone had preferred the C.M.A.No.399 of 2003 before the Court of the learned Chief Judge, City Civil Court, Hyderabad assailing the common orders insofar as it related to his original application in O.A.No.21 of

1997. The learned Additional Chief Judge by his orders dated 19.06.2006 passed in C.M.A.No.399 of 2003 had confirmed the orders of the learned Deputy Commissioner of Endowments and had dismissed the said appeal. In view of the alienation made by the Mutawalli, the Assistant Commissioner of Endowments, suspended him, by his orders dated 17.10.1995. On 01.09.1995, a Single Trust was appointed to maintain the temple. The archakas of the temple had filed a writ petition in W.P.No.23545 of 1995 questioning the order appointing the Single Trustee. The said writ petition was dismissed by this court. However, the 8th respondent had preferred a revision petition no.263 of 2003 before the Regional Joint Commissioner, Endowments Department, Multi Zone II, Tirupati assailing the common orders dated 07.10.2003 of the Deputy Commissioner of Endowments, Hyderabad, insofar as the said orders related to the eviction orders against him in O.A.No.19 of 1997. The said revision petition R.P.No.7 of 2008 (old No.263 of 2003) was dismissed by an order dated 21.03.2009 by confirming the common orders of the Deputy Commissioner of Endowments dated 07.10.2003 passed in O.A.No.19 of 1997 and other two original applications. Now, the 8th respondent had filed the other writ petition in W.P.No.9479 of 2009 requesting to call for the records and quash the order dated 21.03.2009 passed by the Regional Joint Commissioner of Endowments passed in R.P.No.7 of 2008 (old No.263 of 2003). On the other hand, the writ petitioner in W.P.No.4332 of 2007 had filed writ petition questioning the inaction of the respondents 2 and 3, i.e., the Commissioner of Endowments and the Joint Commissioner of Endowments in not removing the encroachments inspite of the eviction orders passed against the encroachers. He had further requested to direct the removal of encroachments on the lands of the temple and award compensation.

6. In this backdrop, the learned counsel for the 8th respondent, i.e., the writ petitioner in W.P.No.9479 of 2009 had contended as follows: "The 8th respondent had purchased the property bearing H.No.15-7-222 admeasuring 160 square yards situated at Begum Bazar, Hyderabad from Chokkamma for a valuable consideration under a registered sale deed dated 21.04.1995. At

the time of purchase, the enquiries that were made had revealed that the property is in T.S.No.41 and Ward No.201, and that it is a private property, i.e., Abadi, as per the entry in column no.10 of the town survey register and that one M.A.Narayanan is the enjoyer as per the entries in column no.20. The vendor of the 8th respondent under the above said sale deed is the wife of one Iyyangar who is the father of the said M.A.Narayana Chary. The said Chokkamma, who is the vendor of the 8th respondent, became the absolute owner of the said property by virtue of an oral partition amongst the members of the family of the said Iyyangar. The said oral partition was reduced into writing in the form of a registered memorandum of partition deed dated 06.05.1989. The Single Trustee under an erroneous impression made a complaint to the Endowments Department falsely alleging that the subject property belongs to Sri Parashuram Mandir even though the property of the temple is located elsewhere. Subsequent to the complaint of the Single Trustee, the Assistant Commissioner, Endowments had filed a report alleging that the 8th, 7th and 6th respondents had encroached the property belonging to the said Parasuram Mandir and had requested the Deputy Commissioner, Endowments Department to initiate proceedings under Section 83 of the Act. Accordingly, the Deputy Commissioner had initiated proceedings in O.A.No.19 of 1997 as against this 8th respondent and two other OAs also against the two others and in the said OAs enquiry was conducted. This 8th respondent having filed a counter had contested the OA filed against him by stating the above facts. The learned Deputy Commissioner without considering the crucial aspects of the matter had declared the 8th respondent and two others (the respondents 7 and 6) as encroachers and had directed the 8th respondent and the said two others to vacate the properties. Feeling aggrieved, the 8th respondent had hence, preferred the CRP in 263 of 2003 (New R.P.No.7 of 2008) before the Regional Joint Commissioner, Multi Zone-III, Endowments Department, Hyderabad as the said officer is having territorial jurisdiction. Since the interim stay was not extended in the revision petition, the 8th respondent had filed W.P.No.4887 of 2004 before this court.

This Court, by orders dated 16.03.2004 had directed the applicants in the OA not to evict the 8th respondent till the disposal of the revision petition before the Joint Commissioner and had directed the Joint Commissioner to dispose of the revision petition within six weeks from the date of the receipt of a copy of the order of this Court. Subsequently, the revision petition was transferred from the file of the Regional Joint Commissioner-Multi Zone III, Hyderabad to the file of the Regional Joint Commissioner of Endowments, Multi Zone II, Tirupati of Chittoor District. This 8th respondent had filed W.P.No.19790 of 2008 questioning the said transfer orders. The said writ petition was disposed of on 16.09.2008 directing the 1st respondent to dispose of the revision petition. Again, without considering the crucial aspects, the Regional Joint Commissioner, Endowments Department, Multi Zone II, Tirupati had dismissed the revision petition and had thus confirmed the erroneous orders of the Deputy Commissioner. Hence, the 8th respondent is constrained to file the W.P.No.9479 of 2009. The orders holding this 8th respondent as an encroacher of the subject property, without looking into the facts and evidence produced, are erroneous. The finding that this 8th respondent had admitted that the property is an endowed property is erroneous. The person who had endowed the property to the temple was not examined; which property was endowed and what are the boundaries of the said property and what is the nature of the said donation was not established by examining the said person. No opportunity was given to cross-examine PW2. This 8th respondent had filed a suit in O.S.No.847 of 1997 on the file of the learned VIII Junior Civil Judge, City Civil Court, Hyderabad for a perpetual injunction against the Commissioner of Endowments, the Assistant Commissioner of Endowments, Tirupati and the Single Trustee to restrain them from evicting him from the property that was purchased by him from Chokkama. The said suit was dismissed by judgment dated 21.12.2000 by the learned Junior Civil Judge. Feeling aggrieved, the 8th respondent had preferred A.S.No.82 of 2001 and the learned XIII Additional Chief Judge, (Judge, Fast Track Court), Hyderabad by his judgment dated 10.03.2003 while allowing the appeal had held as follows:

“Nextly I hold that since plaintiff/appellant has established that he is in possession over the suit property since 1995, I hold that he cannot be dispossessed by force even by the real title holder. Hence in view of the circumstances I hold that the appellant is entitled to be in possession over the suit property till he is dispossessed through due process of law. Hence I allow the appeal and also decree the suit of the plaintiff granting perpetual injunction against the defendants. No costs.”

Thus, the suit for perpetual injunction was decreed in favour of the 8th respondent by a competent civil court. In view of the orders in the aforementioned civil appeal, the petitioner in W.P.No.9479 of 2009 i.e. the 8th respondent cannot be evicted except by filing a regular civil proceeding for declaration of title and eviction. The proceedings for eviction initiated under the provisions of the Act are summary in nature. The 8th respondent had denied the title of the temple in the counter filed in the OA by contending *inter alia* that the allegations that the property belongs to the temple and that the property is an endowed property and is entered in the books of the department and is a part of Muntakhab are all absolutely false. Thus, the title of the Gurudwara Parasuram Mandir in respect of the subject property and the contention that the subject property is an endowed property is specifically denied. Therefore, the complex question of title, which was involved required a detailed investigation. Therefore, initiation of proceedings for eviction under the provisions of the Act and the attempt to evict the 8th respondent from the subject property summarily is illegal. Since the property was purchased by the 8th respondent under a regular registered sale deed and as there is a *bona fide* dispute regarding title of the temple, the 8th respondent cannot be termed as an encroacher. By claiming title unilaterally, the 8th respondent cannot be evicted. The only course open to the official respondents is to seek eviction by filing a suit for eviction or suit for declaration of title and eviction as there is a genuine dispute of title and the question of title requires detailed investigation. The eviction by following summary procedure under the Act is not the proper procedure and that the

said procedure is not a due process of law for evicting the 8th respondent. Therefore, the writ petition of the 8th respondent in W.P.No.9479 of 2009 is to be allowed and the orders in R.P.no.7 of 2008 (Old R.P.No.263 of 2003) passed by the Regional Joint Commissioner are liable to be set aside and as a sequel, the common orders of eviction insofar as O.A.No.19 of 1997 against this respondent are to be set aside directing the respondents to initiate proceedings before a competent civil court for eviction as was held in A.S.No.82 of 2001 by the learned XIII Additional Chief Judge, city Civil Court, Hyderabad. W.P.No.4322 of 2007 filed has become infructuous as already eviction proceedings were initiated by the official respondents and there was no inaction on their part.

7. *Per contra*, the learned counsel for the writ petitioner and the learned Government Pleader while supporting the common orders passed by the Deputy Commissioner in O.A filed against the 8th, 7th and 6th respondents and the orders of the learned Chief Judge, City Civil Court in C.M.A.No.399 of 2003 and the orders in R.P.no.7 of 2008 (Old R.P.No.263 of 2003) passed by the Regional Joint Commissioner, which are impugned in W.P.No.9479 of 2009 had contended as follows: 'The property was endowed by the original owner. The endowed property was entered in the books of endowment, as per the Hyderabad Endowments Regulation, 1349 Fasali. As per the entries in that endowment book, the schedule property in possession of the 8th respondent and the properties in the respective possessions of the 7th and 6th respondents belonged to Gurudwara Parashu Ram Mandir is admitted and established. After the subject property was endowed and a Mutakhab was issued in favour of the temple in respect of the endowed property, M.A. Narayana Chary, the trustee, had functioned as the Mutawalli of the temple. The said Mutawalli had illegally partitioned the subject property amongst his family members viz., his mother, brother and himself equally under an alleged oral partition dated 23.04.1972 and had allegedly allotted 178 square yards to each of the three sharers and later got registered a memorandum dated 06.05.1989 evidencing the alleged earlier partition. Later, Chokkamma, the

mother of the Mutawalli had sold the subject property to 8th respondent (writ petitioner in W.P.No.9479 of 2009). The Deputy Commissioner in his common orders passed in OA and the learned Chief Judge in the orders passed in the CMA had categorically held that once property is endowed, Mutawalli has no right to claim any right, title and interest in the property and that the encroachers had also failed to establish adverse possession and that therefore, sale deeds of the respondents 8,7 and 6 are void as the title of the Chokkamma and others was not established. The 8th respondent did not pursue the remedies available to him assailing the common orders passed by the Deputy Commissioner in O.A.No.19 of 1997 and batch. The 6th respondent alone had preferred C.M.A.No.399 of 2003 and that CMA was dismissed by the learned Chief Judge, City Civil Court, Hyderabad. The 8th respondent had filed a suit for perpetual injunction and not a suit for declaration of title and he had suppressed in his suit the fact that the other proceedings are pending. The suit filed by him was dismissed. However, the appeal in A.S.No.82 of 2001 though was allowed by the learned XIII Additional Chief Judge, the very judgment of the learned Additional Chief Judge would show that the 8th respondent has no right to remain in possession whatsoever and therefore, it was held that the Commissioner of Endowments, the Assistant Commissioner and the Single Trustee who are the plaintiffs in the said suit are entitled to seek eviction of the 8th respondent from the said property through due process of law. The said very finding itself indicates that the 8th respondent has no right to remain in possession. However, since he was in possession of the property admittedly, an observation was made in the said judgment that the 8th respondent can be evicted under due process of law. The eviction proceedings were initiated as per the provisions under the Act 30 of 1987 and a common order of eviction was passed in OAs. against the respondents 8, 7 and 6 ordering their eviction from the respective immovable properties in their respective possessions; and the R.P.no.7 of 2008 (Old R.P.No.263 of 2003) filed by the 8th respondent was dismissed by the Regional Joint Commissioner

confirming the orders of the Deputy Commissioner. Since admittedly, the property is an endowed property and the property was entered in the book of endowments, there is no title dispute and the defence of the 8th respondent is only a moonshine defence raised for the purpose of squatting on the property. The 8th respondent is an encroacher having purchased the property from a person, who has no right, title and interest over the property. His registered sale deed is void. In the affidavit filed by the 8th respondent before the Deputy Commissioner of Endowments, he had admitted that he had come to know about the facts after the enquiry in the OAs by the Deputy Commissioner and that he understood that the schedule mentioned property was an endowed property belonging to Gurudwara Parasuram Mandir and that the said property was entered in the register of endowment under the Hyderabad Regulation 1349 Fasali. The 8th respondent without expressing any opinion on the merits of the case in the revision petition filed by him, had stated that he is seeking to compromise the issue relating to ratification of the sale in his favour by agreeing to pay reasonable market value so as to put an end to the litigation. In W.P.No.6838 of 2006 filed by the 8th respondent against the Commissioner of Endowments, an order was passed by this Court on 19.02.2007. In the said proceedings, it is stated by the petitioner therein, i.e., the 8th respondent herein, that he is a tenant. In the said writ petition, the 8th respondent had alleged that there was a compromise and that compromise was accepted and that the 8th respondent and the concerned Assistant Commissioner had signed the compromise; but, he was not furnished a copy of the same and that therefore, he had filed writ petition seeking a *mandamus* to furnish a copy of the order of the Deputy Commissioner accepting the compromise. The order in the writ petition shows that at the stage of admission itself, a counter was filed stating that any compromise proposal was not acceptable in view of the objections raised by the public and that no orders accepting the compromise were passed. Therefore, this Court had directed the 1st respondent to pass orders after considering the entire correspondence within a period of two weeks from the

date of the said orders. Thus, the 8th respondent had admitted that property is an endowed property. Hence, there is no title dispute much less a complex title dispute. When a mechanism, which is transparent, was provided under the Act and when a statutory right of appeal is also provided, the 8th respondent without exhausting the alternative statutory mechanism cannot invoke the writ jurisdiction of this Court. Therefore, the writ petition is not maintainable. The orders of eviction have become final with the dismissal of the revision petition filed by the 8th respondent. Hence, the writ petition of the 8th respondent is liable to be dismissed.

8. I have carefully gone through the pleadings and the material papers. I have given earnest consideration to the submissions. Dealing first with the claim of the petitioner-Haridas Mundada in W.P.No.9479 of 2009 that he is the absolute owner of the subject property of an extent of 160 square yards bearing Door No.15-7-222 at Begum Bazar, Hyderabad and his entitlement to the relief of quashment of the order dated 21.03.2009 passed by the Regional Joint Commissioner/1st respondent in R.P.No.7 of 2008 (old R.P.No.260 of 2003), it is necessary to make a reference to the history, the chronology of events and the orders in the earlier legal proceedings. Original Applications, viz., O.A. Nos.19 to 21 of 1997 were filed by the Assistant Commissioner, Endowment, Hyderabad and the Single Trustee of Parashuram Mandir against the above said 8th respondent-writ petitioner-Haridas Mundada and others seeking their eviction under Section 83 of the Act by pleading that they are the encroachers of the endowed property bearing municipal No.15-7-222 at Begum Bazar, Hyderabad. The 8th respondent herein and others resisted the said original applications. By a detailed common order, the learned Deputy Commissioner of Endowments declared the 8th respondent and others as encroachers and directed them to vacate the properties in their respective occupations. Feeling aggrieved, K.Venkateswara Rao/one of the respondents who had suffered the said orders of the Deputy Commissioner had alone preferred C.M.A.No.399 of 2003 before the Court of the learned Chief Judge, City Civil Court, Hyderabad. The learned Chief Judge, by his

order dated 19.06.2006 having held that he does not find any reasons to reach a different conclusion than that was reached by the Deputy Commissioner had dismissed the appeal. Be that as it may, the 8th respondent-Haridas Mundada without preferring a civil miscellaneous appeal had preferred a revision petition in R.P.No.7 of 2008 (old R.P.No.263 of 2003); and the learned Regional Joint Commissioner, Endowments, by his order dated 01.03.2009 had dismissed the said revision petition confirming the common order dated 07.10.2003 of the learned Deputy Commissioner made in O.A.No.19 of 1997 and other OAs by recording a finding that the said revision petition is not maintainable. In the said orders made in the revision petition, the Regional Joint Commissioner had also noted that Haridas Mundada, the 8th respondent had also filed O.S.No.847 of 1997 on the file of the learned VII Junior Civil Judge's Court, City Civil Court, Hyderabad. Nevertheless, the undisputed fact is that the suit was dismissed by a decree and judgment dated 21.12.2000 and the further first appeal in A.S.No.82 of 2001 was allowed by the decree and judgment dated 10.03.2003, however, holding that the appellant-Haridas Mundada cannot be dispossessed by force even by the real title holder and that therefore, he is entitled to be in possession over the subject property till he is dispossessed by following the due process of law. The only relief granted by the appellate Court is that the petitioner-Haridas Mundada cannot be dispossessed except in accordance with the procedure established by law. The 8th respondent-Haridas Mundada had also filed W.P.No.4887 of 2004 before this court to declare the action of the 3rd respondent therein, i.e., the Deputy Commissioner, Endowments in passing the orders dated 07.10.2003 in O.A.No.19 of 1997 as illegal and arbitrary and without jurisdiction. This Court having noted that the revision petition filed by him against the said orders of the Deputy Commissioner is pending before the Regional Joint Commissioner had disposed of the writ petition with a direction to the respondents 3 and 4 therein not to evict the petitioner pending disposal of the revision petition filed by him; and, had further directed the Regional Joint Commissioner to dispose of the revision petition within six weeks from the date of the receipt of a copy

of the order. After the said revision petition is disposed of by the said authority, the present writ petition is filed to quash the orders in the revision petition and to declare the 8th respondent-Haridas Mundada as the absolute owner of the subject property. Be it also noted that the other writ petition is filed by Ganga Shankar Vyas, an Advocate feeling aggrieved of the inaction on the part of the respondents 2 and 3, i.e., the Commissioner and the Joint Commissioner, Endowments and to direct them to take action against respondents 6 to 10, i.e., 8th respondent-Haridas Mundada and others who are encroachers of the land of the 5th respondent temple-Sri Gurudwara Parashuram Mandir.

9. Therefore, the vital question is – ‘whether the subject property involved in these two writ petitions is an endowed property or not?’

In the backdrop of the facts, the chronology of events and the contentions of the parties, what is to be first noted is that the subject property was entered in 1359 Fasali, in the book of endowments/Register of Endowments that was being maintained under the Hyderabad Endowment Regulation, 1349 Fasali. The entry in the said book makes it manifest that the subject property is the property of the Sri Parashuram Mandir. A finding was recorded by the learned Deputy Commissioner and the learned Chief Judge, City Civil Court that the said entry was made in the book of endowments after following the due procedure contemplated under the Regulations. Originally, M.A.A. Ayangar was the Mutawalli of the subject temple, is not in dispute. He left behind him his wife-Chokkamma and two sons-M.A.Narayana Chary and M.A.Raja Gopal. Though the property was already endowed, the subsequent Mutawalli-M.A.Narayana Chary had allegedly orally partitioned the entire property amongst his family members, i.e., himself, his mother-M.A. Chokkamma and his brother-M.A Raja Gopal and that in that oral partition made on 23.04.1972, each of them had got 178 square yards and that subsequently, a memorandum of partition reducing into writing the past partition was registered on 06.05.1989. Now, the 8th respondent claims that later, the said Chokkamma had sold her share, i.e.,

the subject property to 8th respondent (i.e., the writ petitioner in W.P.No.9479 of 2009. The 6th, 7th and 8th respondents *inter alia* contend that in view of the said partition by the Mutawalli, the property had lost the status of endowed property, and therefore, the department and the temple are not entitled to question the right, title, interest and possession of the said contesting respondents including the 8th respondent, i.e., the writ petitioner in W.P.No.9479 of 2009 and that they cannot be termed as encroachers. However, since the said Mutawalli, who had no right to affect partition of the endowed property, had indulged in the illegal act of partition of the endowed property, he was suspended from the office of Mutawalli by proceedings dated 17.10.1995 and a Single Trustee was appointed to the temple by proceedings dated 01.09.1995. When the Archakas challenged by a writ the appointment of a Single Trustee, the said writ petition was dismissed by this Court. It is apt to note that the order in the revision petition R.P.No.7 of 2008 passed by the learned Regional Joint Commissioner would show that the 8th respondent-Haridas Mundada filed a memo dated 27.11.2004 in the said revision petition admitting the schedule property as endowed property and *inter alia* stating that he had filed a compromise petition under Section 89 of the Act on 12.03.2004 for purchasing the property at market value. However, indubitably, no compromise was affected in that direction. There is one more facet, which requires to be adverted to. The 8th respondent-Haridas Mundada had filed W.P.No.6838 of 2006 before this Court. The order in the said writ petition dated 19.02.2007, on a perusal, would show that in the said writ petition, he had claimed that he is a tenant of the subject premises and that during the pendency of the revision, he had entered into a compromise under Section 89 of the Act and that the compromise in regard to purchase of property by him was accepted and that the compromise was signed on behalf of the institution by the concerned Assistant Commissioner along with him and others, but, in spite of a request, a copy of the compromise was not furnished to him and that therefore, he had filed the writ petition seeking mandamus to furnish a copy of the orders of the Deputy Commissioner in that regard. The said order also would show that the Assistant Commissioner

had addressed a letter dated 20.01.2005 to the effect that the compromise proposal of the petitioner was not acceptable in view of the objections raised by the public and that no orders were passed by the Commissioner of Endowments on the compromise proposal and that the compromise was accepted was denied by the Department. Therefore, it was directed that the Commissioner shall pass orders within a period of two weeks from the date of receipt of the copy of the writ order, however, after considering the entire correspondence. It is an undisputed fact that the compromise proposal ultimately did not fructify. Thus, it can safely be concluded that subject the property is an endowed property. Challenging the eviction order confirmed in the revision, the 8th respondent now seeks indulgence of this Court. It is not in dispute that the Commissioner or the Regional Joint Commissioner or the Joint Commissioner of Endowments are not having powers to either affect sale or grant lease hold rights in respect of any endowed property otherwise than by a public auction. This Court in a common Order dated 08.06.2010 passed in W.P.Nos.12674, 12686, 12691 of 2010 (unreported) having referred to the precedents and the provisions of law, which are relevant, had held that the persons, who continue to remain in illegal occupation of shops belonging to a charitable trust, cannot be heard to contend that, though they continue to remain in illegal occupation, the respondents can only have them evicted in accordance with the summary procedure prescribed under Section 83 of the Act. In the case on hand, eviction proceedings are initiated as per the provision of Section 83 of the Act, which reads as under:

**“Encroachment by persons on land or building
belonging to charitable or religious institution or
endowment and the eviction of encroachers:**

(1) Where the Assistant Commissioner having jurisdiction, either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this Chapter referred to as ‘encroacher’) any land, building tank, well, spring or water-course or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provisions of this Act the Assistant Commissioner shall report the fact together with relevant particulars to the (Endowments Tribunal) having jurisdiction over the division in which the institution or endowment is

situated”.

In the facts and circumstances of the case, the question *whether this Court is justified in showing indulgence to the petitioner?* 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]. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognised lines and subject to certain self imposed limitations. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case, unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law, which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. (**vide Samgram Singh v. Election Tribunal, Kotah**)^[2].

10. In **Kalinga Mining Corporation v. Union of India and others**^[3], it was held as follows:

“62. It is by now well settled that judicial review of the administrative action/quasi judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be re-appreciated by the court in exercise of its powers of judicial review. The court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the court would be justified to interfere in the decision. The scope of judicial review is limited to the decision making process and not to the decision itself, even if the

same appears to be erroneous.

Having regard to the facts and circumstances of the instant case and the legal position obtaining, this Court finds no reason to exercise the discretion under Article 226 of the Constitution of India in favour of the petitioner.

11. Viewed thus, this Court finds that there is no merit in the Writ Petition in W.P.No.9479 of 2009 filed by the 8th respondent and that the order of the eviction passed by the Deputy Commissioner of Endowment against the said respondent brooks no interference. Since the official respondents are taking steps for eviction of the encroachers and expediting such steps is now possible in view of the disposal of these writ petitions, no directions as sought for in the W.P.no.4332 of 2009 need be given. Accordingly, the said writ petition is disposed of with the observation that the official respondents shall expedite the steps already taken in accordance with the procedure established by law for removal of the encroachments over the subject endowed property in view of the eviction orders in the three OAs passed against respondents 6, 7 and 8.

12. In the result, the W.P.no.9479 of 2009 is dismissed and W.P.no.4332 of 2007 is disposed of with the above observations. No costs.

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

M.SEETHARAMA MURTI, J

20th January, 2016
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[\[1\]](#) 2004 (5) ALD 180 (DB)

[\[2\]](#) AIR 1995 SC 425.

[\[3\]](#) (2013) 5 SCC 252