

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.10778 of 2002

ORDER:

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

‘...to issue a writ of Mandamus or any other appropriate writ, order or orders or direction declaring the action of the respondents in trying to interfere with the possession and enjoyment of the petitioners land of an extent of Ac.5.00 cents in Sy.no.147/1 of Avilala village, Tirupathi Rural Mandal, Chittoor District as wholly arbitrary, illegal and void and consequently direct the Respondents not to interfere with the possession and enjoyment of the petitioners property of an extent of Ac.5.00 cents of land in Sy.no.147/1 of Avilala village of Tirupathi rural Mandal, Chittoor District and pass such other order...’

[Reproduced verbatim]

2 . I have heard the submissions of the learned counsel appearing for the writ petitioners, the learned Standing Counsel appearing for the 1st respondent, and the learned senior counsel appearing for the 2nd and 3rd respondents. I have perused the material record.

3 . The case of the writ petitioners, as stated in the affidavit of the 1st writ petitioner, in brief, is as follows:

The lands in Survey nos.145, 147/1 and 148/2 in Lingeshwar Nagar, Sai Nagar Gram Panchayat, Tirupathi of Chittoor District which cover an extent of Ac.7.70 cents, Ac.48.60 cents and Ac.13.35 cents respectively were jointly owned by the Parakala Mutt and Hathiramji Mutt, i.e., the respondents 3 and 2 herein. In the said property, the 3rd respondent-Parakala Mutt is having 1/4th share and the remaining 3/4th share is of the 2nd respondent-Hathiramji Mutt. The 3rd respondent-Parakala Mutt of Mysore owns extensive properties in the States of Karnataka, Andhra Pradesh and Tamilnadu. It was not in a position to manage its properties. Therefore, the 3rd respondent Parakala Mutt executed a GPA dated 01.12.1988 in favour of N. Narasimha Reddy and had authorised him to sell the land in an extent of Ac.17.12 ½ cents in all the above said three survey numbers. Subsequently, the said GPA holder had sold parts of the said property to several persons. While so, the 1st petitioner herein purchased Ac.1.50 cents of land; 2nd petitioner

purchased Ac.1.00 cents of land; 3rd petitioner purchased Ac.1.00 cents; and the 4th petitioner purchased Ac.1.00 cents of land in Sy.no.147/1 from the above said GPA holder under registered sale deeds dated 01.03.1989, 12.06.1996, 16.05.1997 and 01.03.1989 for considerations of Rs.30,000/-; Rs.15,000/-, Rs.15,000/- and Rs.20,000/- respectively and all the petitioners were put in possession of the respective properties mentioned in the respective sale deeds. The total extent purchased from the 3rd respondent-Parakala Mutt, Mysore through its GPA holder by all the petitioners herein is Ac.5.00 cents in Sy.no.147/1; and, over the said property, the 2nd respondent-Hathiramji Mutt has no right, title or possession. Some others persons have also purchased the remaining land from the Parakala Mutt. The petitioners and the other purchasers in their turn had sold small bits of lands to several persons and some of them have constructed houses. The petitioners together have sold about Ac.1 - ½ to about ten persons; and about Ac.3 - ½ of land is still vacant; and the same is in their possession. When the respondents highhandedly tried to demolish the houses and tried to evict the persons who had constructed the houses, about 68 persons have approached this Court and filed WP.no.28010 of 2001. In the said writ petition, this Court granted *status quo* orders. While so, the respondents 1 and 2 came to the land on 15.06.2002 and tried to erect a barbed wire fencing and enclose the land of the petitioners. The petitioners raised a strong objection for the same. Thereupon, the respondents 1 and 2 sought help of the 4th respondent police officer and brought some pillars in order to erect the same. They had erected the pillars and are trying to fix barbed wire to enclose the land of the petitioners. Admittedly, the 2nd respondent-Hathiramji Mutt has no right over the subject land in Sy.no.147/1, which is part of the 1/4th share of 3rd respondent-Parakala Mutt. The respondents cannot take the law into their hands and do acts, which interfere with the rights of the petitioners and abuse their official position. If the respondents are allowed to carry out such acts, the same will affect the rights of ingress and egress of the residents of the locality as there are no roads in this land connecting the main road. Even if the 2nd respondent-Hathiramji Mutt wants to claim the

land, it has to do so by filing a civil suit. The actions of the respondents violate the rights of the petitioners guaranteed under Articles 14, 21 and 300-A of the Constitution of India. Hence, it has become necessary for the petitioners to file the writ petition.

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

Parakala Mutt-3rd respondent was published under Section 6(d) of Act 30/1987 as a Mutt *vide* proceedings of the 1st respondent in Rc.No.J3/20386/1990 dated 08.02.1991. As per the provisions under Section 1(3)(a) of Act 30/1987 all the provisions of the said enactment are applicable to the public charitable institutions and endowments, whether registered or not, in accordance with the provisions of the said enactment. The 2nd respondent i.e., Hathi Ramjee Mutt filed OA.nos.5 of 1997, 10 of 1997 and 12 of 1997 before the Deputy Commissioner of Endowments Department, Kurnool seeking eviction of its ex-tenants i.e., the 1st petitioner, C. Ramakrishna and D. Guravaiah from an extent of Ac.6.50 cents in Sy.no.147/1. The same were allowed on 22.06.2002. Assailing the said orders, the 1st petitioner, Guravaiah and C. Ramakrishna preferred AS.nos.44, 45 and 46 of 2002 on the file of the Court of the learned V Additional District Judge, Tirupati against respondents 1 and 2 herein. The said appeals were dismissed on merits on 18.04.2003 and the orders therein have become final. The 2nd respondent-Hathi Ramjee Mutt also filed OA.no.36 of 1997 under Section 85 of Act 30/87 for group eviction of the encroachers in an extent of Ac.38.60 cents in Sy.no.147/1 of Avilala village. The same was allowed on 29.03.1997. Executing the said orders, the 1st respondent handed over possession of Ac.5.00 cents out of Ac.38.60 cents in Sy.no.147/1 of Avilala village under panchanama dated 19.10.1997 to the 2nd respondent. The Government acquired Ac.1.14 cents out of Ac.7.70 cents in Sy.no.145 of Avilala village. The remaining extent of Ac.6.56 cents was under encroachment. Hence, the 2nd respondent Mutt filed OA.no.114 of

2001 before the Deputy Commissioner, Endowments Department, Kurnool seeking group eviction under Section 85 of the Act 30 of 1987 for evicting encroachers in an extent of Ac.6.56 cents in Sy.no.145 of Avilala village and the same was allowed on 21.08.2001. The 1st respondent herein executed the said orders on 13.10.2001 after duly recording panchanama and handed over possession of Ac.05.00 cents of land in Sy.no.145 of Avilala village to the Hathitamji Mutt/the 2nd respondent. One Dr.K. Uma Devi, the 5th petitioner in WP.no.11797 of 2002 alleging to be a purchaser of a piece of land in survey no.145 from the 1st petitioner herein under a sale deed dated 07.09.1996 had filed a suit in OS.no.1463 of 2001 on the file of the Court of the learned Principal Junior Civil Judge, Tirupati against the 1st and 2nd respondents for permanent injunction and the said suit was dismissed on merits on 26.02.2010 and the decree and judgment in the said suit have become final. In the said suit, the 1st petitioner herein and N. Narasimha Reddy were examined as PWs2 and 3 respectively. In the judgment in the said suit, it was held as follows: 'Then it is clear that the permanent leasehold rights are vested with the Hathiramji Mutt. Then it has to be seen without determination of the said permanent leasehold right whether Parakala Mutt got right to give General Power of Attorney in favour of Narasimha Reddy to deal with 1/4th share of Parakala Mutt. No single document was filed by the plaintiff or PWs 2 to 4 with regard to determination of permanent lease hold rights which are vested with Hathiramji Mutt.' 'But as seen from the General Power of Attorney, nowhere mentioned in the General Power of Attorney that General Power of Attorney holder gave total sale consideration to Parakala Mutt.' 'Even if the case of the plaintiff is correct with regarding to execution of General Power of Attorney in respect of 1/4th share of Parkala Mutt, the General Power of Attorney is not valid because there is no determination of permanent lease hold rights in respect of 1/4th share.' 'Without partition of the property by metes and bounds if any sale conducted by Narasimha Reddy even prior to revocation deed, it is not a valid sale because there is no division of property by metes and bounds, with specific boundaries the property is not in existence since he cannot sell away and deal with the

property.’ The 2nd respondent-Hathirramji Mutt is a religious and charitable institution registered under the provisions of Act 30/1987. Therefore, even for relinquishing its permanent leasehold rights, the procedure contemplated under the said enactment has to be followed as such taking possession of the land from the ex-tenants of the 2nd respondent Mutt is contrary to the provisions of the Act. The Deputy Commissioner of Endowments, Kurnool exercising the powers vested in him under Section 85 of the Act 30/1987 passed orders on 21.08.2001 in OA.no.114 of 2001 stating that he has every reason to believe that a group of persons without any entitlement and with the common object of occupying the land had encroached upon the land in Sy.no.145 admeasuring Ac.6.56 cents of Avilala village and that the encroachers did not vacate even after the demand made by the custodian of Hathirramji Mutt. Though notices were served to the unauthorised encroachers, they did not vacate the property and had again tried to attempt to occupy the balance vacant land of the subject Mutt and that in view of the emergency and to safeguard the properties of the mutt, orders were issued under sub section (1) of Section 85 of Act 30/1987 instructing the then Assistant Commissioner, Endowments Department, Chittoor to take immediate action for removal of encroachers in an extent of Ac.6.56 cents in Sy.no.145. In execution of the said orders, the 1st respondent evicted encroachers from the land in Sy.no.145 and handed over possession of Ac.5.00 cents out of Ac.6.56 cents of Avilala village under a panchanama dated 13.10.2001 to the 2nd respondent Mutt. The 1st respondent had also handed over possession of the land admeasuring Ac.5.00 cents in Sy.no.147/1 to the 2nd respondent Mutt through the panchanama dated 19.10.1997 as per the orders issued in OA.no.36 of 1997 dated 29.03.1997 with the aid of police and revenue officials. The action of the 1st respondent in execution of OA orders of the Deputy Commissioner for removal of group of encroachers from the property in Sy.nos.145 and 147/1 belonging to Hathirramji Mutt with the aid of police and revenue officials is done under the provisions of Act 30/1987. The writ petition is devoid of merit.

5. The case of the 2nd respondent, in brief, is this:

The 2nd respondent-Hathiramji Mutt and the 3rd respondent-Parakala Mutt are having 3/4th and 1/4th shares in the joint lands of the Mutts of a total extent of Ac.74.23 cents i.e., Ac.7.70 cents in S.no.145, Ac.48.60 cents in S.no.147/1, Ac.13.35 cents in S.no.148/2, Ac.2.54 cents in S.no.321 and Ac.2.04 cents in S.no.323 of Avilala village. The 1/4th share of the land of the 3rd respondent-Parakala Mutt has been under the permanent lease of the 2nd respondent-Hathiramji Mutt since 1916, that is, since more than 85 years as per the registered document no.2095/1916 dated 20.12.1916. As per the said document, Hathiramji Mutt has got absolute rights over 3/4th extent and permanent leasehold rights over 1/4th extent of the joint lands of the Mutts. Thus, the 2nd respondent-Hathiramji Mutt is in possession and enjoyment of the entire extent of land, that is, 3/4th extent as absolute owner and 1/4th extent as permanent lessee. The 2nd respondent-Hathiramji Mutt leased out the said properties to 30 tenants for a period of six years with periodical renewals. The said lease was granted by the Commissioner of Endowments, Hyderabad for a period of six years from 01.07.1977 to 30.06.1983. The lease was not renewed thereafter. The ex-tenants of the 2nd respondent-Hathiramji Mutt were treated as encroachers after the expiry of the lease, in view of the fact that they are squatting on the property. As such they were subjected to eviction under Sections 83 and 85 of the Act 30/1987. Unless the 2nd respondent relinquishes its permanent leasehold rights and hands over physical possession to the 3rd respondent Parakala Mutt, neither the 3rd respondent Parakala Mutt nor any other third person can claim any rights thereunder or can have right of possession or alienation. After eviction of the erstwhile tenants, the entire extent of joint lands of the Mutts have been in possession and enjoyment of the 2nd respondent-Hathiramji Mutt. In the year 1979, Land Acquisition Proceedings were initiated and an extent of Ac.1.14 cents out of Ac.7.70 cents in S.no.145 out of the undivided joint lands of the Mutts at Avilala village was acquired and the compensation amount was

shared between the two Mutts in 3:1 ratio as per the orders dated 25.11.1982 of the learned Principal Senior Civil Judge, Tirupati in LAOP.no.33 of 1981. One N. Narasimha Reddy and his real estate partners, who are natives of Tirupati approached the then Mathadhipathi of the 3rd respondent Parakala Mutt, Mysore through the then Mutt's Manager B. Narasimha Iyyengar and obtained a GPA as if it were to protect the lands at Avilala village in the interest of the Mutt and the said GPA was registered on 01.12.1988 at Sub-registrar's office, Mysore. The said GPA holder submitted an application on 26.12.1988 to the Commissioner of Endowments, who is the higher authority of the 2nd respondent-Hathiramji Mutt for partition of the total extent of the joint lands of the Mutts and for obtaining physical possession of the 1/4th share of the Parkala Mutt. Pending consideration of that application, the said GPA holder Narasimha Reddy, had illegally alienated Ac.08.00 cents in favour of his minor son Dhanunjaya Reddy, the 4th petitioner herein, and his real estate partners by executing 6 collusive, nominal and sham documents bearing documents no.933/89 to 938/89 dated 03.03.1989. After knowing the fact that the said GPA holder was misappropriating and mismanaging the undivided joint lands of the Mutts, the Mathadhipathi of the 3rd respondent Parkala Mutt revoked his GPA through document dated 08.01.1990 under intimation to the original vendor and informed the same to the 2nd respondent-Hathiramji Mutt on 17.01.1990. The 2nd respondent-Hathiramji Mutt issued notifications in various newspapers i.e., on 01.02.1990 in Andhra Jyothi daily; on 07.03.1990 in Eenadu daily putting the unwary people on notice as to the malpractices indulged in by the unscrupulous elements. The said GPA holder before revocation of the GPA as GPA holder filed OS.no.318 of 1989 against the 2nd respondent Mutt and others for partition of the undivided joint lands of the Mutts and for handing over 1/4th share of the 3rd respondent Mutt and had obtained *ex parte* injunction. While that case was pending, the GPA was cancelled by the 3rd respondent Mutt on 08.01.1990 for illegally alienating the joint lands of the Mutts. As such, the question of selling any extent of the joint lands of the Mutts to the 2nd and 3rd

petitioners does not arise. The petitioners 1 and 4 filed a comprehensive suit in OS.no.57 of 1990 before the learned Principal Subordinate Judge's Court, Tirupati for declaration of title to the subject property and the same is pending. Pending finalisation of the said suit, the petitioners 1 and 4, by suppressing the filing of the said suit and the proceedings in OA.no.36 of 1997 under Section 83 of the Act, approached this Court under Article 226 and obtained an interim order and under the guise of the said interim order, they are trying to trespass upon the subject land and are trying to alienate the property to third parties, which acts if allowed will lead to multiplicity of proceedings. The allegation that the respondents high handedly tried to demolish the houses and are trying to evict the petitioners is absolutely incorrect and false. The proceedings of the Deputy Commissioner, Kurnool in OA.no.36 of 1997 dated 29.03.1997 declared that a group of persons encroached the land admeasuring Ac.38.50 cents, in which the subject land is a part. Therefore, the petitioners, in view of Section 83 of the Act are encroachers and they are not entitled to hold the land. Pursuant to the order of the Deputy Commissioner, the respondents 1 and 4, under a panchanama delivered possession of the subject land to the 2nd respondent on 19.10.1997. A report to the said effect was also submitted to the Commissioner, Endowments. In turn the commissioner of Endowments by his orders dated 13.11.2001 permitted the 2nd respondent to fix up the boundary stones, pillars and barbed wire for the Mutt's land, which includes the subject land. Basing on the directions of the Commissioner, with police assistance, the 2nd respondent arranged the fencing around the subject land on 15.06.2002. After coming to know of that, the petitioners herein had approached this Court on 17.06.2002 and had obtained interim direction by suppressing the material facts. The allegation that the respondents high handedly tried to demolish the houses and are trying to evict the persons, who constructed the houses in the said land, is absolutely incorrect and false as the petitioners themselves admitted that they have jointly sold one and a half acre to about ten persons and remaining three and a half acre is lying vacant. The modus operandi of the petitioners as is obvious is that they file

cases before various judicial fora, obtain interim orders and illegally alienate the properties showing the orders to the unwary public and retreat by way of not pressing the proceeding or through some other stratagem. With full knowledge, the petitioners colluded with the alleged vendors and brought into existence nominal, sham and collusive documents without any manner of right. In the facts and circumstances, the writ petition may be dismissed.

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

The 2nd and 3rd respondents have 3/4th and 1/4th extents of shares in the subject joint lands of Ac.74.23 cents of the Mutts. 1/4th share of the 3rd respondent has been under permanent lease to the 2nd respondent since 1916 onwards as per registered document dated 20.12.1916. The 2nd respondent Mutt has got absolute right over 3/4th extent and leasehold rights over 1/4th extent of the joint lands of the Mutts. The 2nd respondent leased out the property to about 30 tenants for a period of 6 years with periodical renewals. The last lease was granted by the Commissioner, Endowments, Hyderabad for a period of 6 years from 01.07.1997 to 30.6.1983. The leases were not renewed thereafter. The ex-tenants, the 1st petitioner herein and some others were treated as encroachers as they are squatting on the property. As such, they were subjected to eviction proceedings under Sections 83 and 85 of Act 30/1987. Unless the 2nd respondent relinquishes permanent leasehold rights and hands over possession of 1/4th share of the 3rd respondent, neither the 3rd respondent nor any other 3rd person claiming under the 3rd respondent have got any rights of alienation or possession. After eviction of the erstwhile tenants, the entire extent of the joint lands of the Mutts is in possession of the 2nd respondent Mutt only. Even if the 3rd respondent Mutt desired to sell its 1/4th share of the above said land to third parties for any reason, it can only transfer rights without physical possession of the lands. The property of the 3rd respondent Mutt in question is situated in Andhra Pradesh and the same is being managed by the 2nd respondent Mutt

as a permanent lessee of the 3rd respondent Mutt. The entire property is thus in possession of the 2nd respondent Mutt. Hence, the 2nd respondent Mutt is empowered and entitled to evict the encroachers, whoever they may be, as per the provisions of Act 30/1987. One Narasimha Reddy pretending himself to be a devotee of Parakala Swamiji, with his real estate partners, approached the then Mathadhipathi of Parakala Mutt through the then Manager of the Mutt and represented that he would take care of the Mutt lands and accordingly a deed of General Power of Attorney was prepared on 30.11.1988. However, in collusion with the then Manger of the Mutt, in the said GPA registered on 01.12.1988, certain clauses were interpolated regarding right of selling etcetera which right the 3rd respondent Mutt's Mathadhipathi was himself not empowered to exercise. An application was submitted to the Endowment Commissioner for remittance of 1/4th share of sale proceeds of Ac.23.45 cents sold by the Hathi Ramjee Mutt and for division of the remaining lands and for obtaining physical possession of the remaining 1/4th share of land of Parakala Mutt. Even before such partition, as pre-planned, in collusion with real estate partners and the 1st petitioner herein, the said GPA holder alienated properties viz., an extent of Ac.8.00 cents out of Ac.38.50 cents in Sy.no.147/1 at Avilala village to his minor son Dhanunjaya Reddy and his three real estate partners

C. Narayana Reddy, M. Reddaiah Naidu and P. Meghanadham vide collusive documents nos.933/89 to 938/89 all dated 30.03.1989. After knowing the fact that the original vendor was misappropriating and mismanaging the undivided joint lands of the Mutts, the Mathadhipathi of the 3rd respondent Parkala Mutt revoked his GPA through document dated 08.01.1990 under intimation to the original vendor and informed the same to the 2nd respondent-Hathiramji Mutt on 17.01.1990. Thereafter, the then Manager of the Mutt was removed from service as he had colluded with the original vendor and had fabricated records detrimental to the interests of the Mutt. The 2nd respondent-Hathiramji Mutt issued notifications in various newspapers on 01.02.1990 and 07.03.1990 stating that the lands of the Mutts

in S.no.145 and 147/1 belong to the 2nd respondent Mutt and that they would proceed to take legal action against any persons who illegally occupy or illegally alienate the lands by showing false documents and that such persons will be held responsible for legal actions. The original vendor, before revocation of the GPA, as GPA holder filed OS.no.318 of 1989 against the 2nd respondent Mutt and others for partition of the undivided joint lands of the Mutts and for handing over 1/4th share of the 3rd respondent Mutt and had obtained *ex parte* injunction. While that case was pending, the GPA of the original vendor was cancelled by the 3rd respondent Mutt for illegally alienating the joint lands of the Mutts. Even after cancellation of the GPA, the original vendor without following any rule or rhyme and without getting the land partitioned by metes and bounds had illegally alienated the 1/4th share of land i.e., Ac.3.34 cents in S.no.148/2 in favour of his own brother and close relatives of his real estate partners, that is, to total four persons through nominal collusive and sham document bearing no.20/90 dated 08.02.1990 by creating an antedated agreement to show as if the lands were under his physical possession. He had instigated his illegal alienees to file IA.no.586 of 1990 for their impleadment as plaintiffs 2 to 5 in OS.no.318 of 1989 which is still pending in the Court. The trial Court in its orders dated 16.06.1990 in IA.no.1969 of 1989 held that in view of the permanent lease in favour of the 2nd respondent-Hathiramji Mutt, which has not yet been rescinded, the 3rd respondent-Parakala Mutt has no subsisting interest in the property and that the GPA of the alleged original vendor was cancelled by the principal, that is, the 3rd respondent, and as such the erstwhile agent can no longer represent the 3rd respondent. Having filed an appeal against the said order, the original vendor had not pressed the same. IA.no.1767 of 1989 in the said suit was also not pressed on 14.08.1991 as he had already achieved his object of selling the properties under the cover of the *ex parte* interim injunction. In view of the multiple litigations, a proposal was made to Kuppuswamy Naidu, the 4th defendant in OS.no.318/89 that instead of selling lands in piecemeal complete rights of 1/4th share in the undivided joint lands of the Mutt would be

sold. He had agreed for the same. Then the previous Mathadhipathi as per resolution no.10 dated 11.03.1990 transferred rights of 1/4th share in the undivided joint lands of the Mutts without physical possession to M. Kuppuswamy Naidu and four others after receiving valid consideration through bank drafts. Thereafter, Kuppuswamy Naidu and four others through protracted correspondence with the Commissioner of Endowments, Hyderabad for nine years since 1990 for partition of the undivided joint lands of the Mutts had obtained orders. The Commissioner after taking legal opinion issued orders dated 14.06.1996, 26.06.1997 and 08.01.1990 directing the 2nd respondent Hathiramji Mutt to implement the orders of partition of the undivided joint lands of the Mutts and handover 1/4th share to third party Kuppuswamy Naidu and four others through the 3rd respondent. The 2nd respondent also issued orders dated 19.01.1999 and 17.04.1999 to the 3rd respondent and Kuppuswamy Naidu and four others for execution of partition deed at their cost and accordingly the partition deed was executed on 23.04.1999 and was registered as document no.2656/1999 at the Sub-Registrar's Office, Tirupati subject to handing over physical possession after evicting the encroachers, if any. In terms of the partition deed, the 2nd respondent Mutt has to handover physical possession of Ac.18.27 ½ cents, that is, Ac.4.97 ¾ cents in S.No.145 and Ac.13.29 ½ cents in S.no.147/1 to Kuppuswamy Naidu and four others as specified in the 'B' schedule of the deed of partition through the 3rd respondent and retain the balance land, that is Ac.1.58 ¼ cents in S.no.145 and 35.30 ½ cents in S.no.147/1 for the share of the 2nd respondent Mutt. Thus, Kuppuswamy Naidu and four of his family members have become the absolute owners through the above partition deed for 1/4th share of the 3rd respondent-Parakala Mutt in the undivided joint lands of the Mutts and no other person/s including the alleged original vendor or his illegal vendees or the ex tenants of the 3rd respondent have got any right in the said land. Hence, it is enjoined upon the 2nd respondent to get the encroachers evicted first from the said land and handover physical possession of 1/4th share of the 3rd respondent to Kuppuswamy Naidu and

four others through the 3rd respondent and retain balance 3/4th extent for the 2nd respondent after survey and sub division as per correct measurements.

The GPA holder had illegally alienated Ac.4.00 cents in S.no.147/1 in favour of the petitioners 1 and 4 vide three collusive, nominal and sham documents bearing nos.934/89, 936/89 and 937/89 dated 03.03.1989 and Ac.4.15 cents in the same survey number in favour of the petitioners 2 and 3 vide five collusive, nominal and sham documents bearing document nos.285/94, dated 02.02.1994, 4402/95 dated 14.09.1995, 2779/96 and 2780/96 dated 16.06.1996 totalling Ac.8.15 cents but not Ac.5.00 cents as mentioned in the petition. In fact the petitioners are the illegal alienees and the real estate partners of the alleged GPA. The above *lis pendens* alienations are collusive and nominal and not valid transactions as the alleged GPA is not competent to sell the undivided joint lands of the Mutts. The petitioners illegally alienated the land to more than 114 persons but not 10 persons without any right, title and physical possession. Hence, all of them are treated as encroachers and were subjected to group eviction. Suppressing the above facts, the writ petition is filed and interim orders were obtained by misguiding this Court in order to enable the illegal alienees to raise huts and construct buildings. After obtaining the interim orders the petitioners have demolished the fencing erected by the 2nd respondent. In view of the illegal alienations and unauthorised occupations/constructions in the undivided joint lands of the Mutts, the 2nd respondent-Hathiramji Mutt filed a petition before the Deputy Commissioner, Endowments, Kurnool for group eviction of all the encroachers in the undivided joint lands of the Mutts of Ac.38.50 cents in S.no.147/1 under Section 85(1) of the Act 30/87. The Deputy Commissioner after due enquiry passed orders dated 29.03.1997 in OA.no.36 of 1997 for group eviction of encroachers and demolition of unauthorised constructions from the said land. Accordingly, possession of an extent of Ac.5.00 cents which includes the plaint schedule land out of Ac.38.50 cents in S.no.147/1 was handed over to the 2nd respondent in the presence of the MRO and other prominent local people vide panchanama dated 19.10.1997. The subject land of Ac.5.00 cents forms part of the schedule land in the declaratory suit-

OS.no.57 of 1990. In view of the further illegal alienations and unauthorised constructions, a report was submitted to the Commissioner of Endowments. In turn the commissioner of Endowments by his orders dated 13.11.2001 permitted the 2nd respondent to fix up the boundary stones, pillars and barbed wire for the Mutt's lands, which includes the subject land. Basing on the directions of the Commissioner, with police assistance, the 2nd respondent arranged the fencing around the subject land on 15.06.2002. After coming to know of that, the petitioners herein approached this Court on 17.06.2002 and had obtained interim direction by suppressing the material facts, with a view to remove the fencing laid by the 2nd respondent. The modus operandi of the petitioners as is obvious is that they file cases before various judicial fora, obtain interim orders and illegally alienate the properties showing the orders to the unwary public and retreat by way of not pressing the proceedings or through some other stratagem. With full knowledge, the petitioners colluded with the alleged vendors and brought into existence nominal, sham and collusive documents without any manner of right. The petition may be dismissed.

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

8 . I have gone through the pleadings and also the written submissions. The learned counsel appearing for the parties advanced submissions in line with the pleadings and reiterated the submissions in the written submissions.

9. I have bestowed my attention to the facts and given earnest consideration to the submissions.

10 . In the well considered view of this Court, this writ petition need not detain this Court for long and can be disposed of adverting to the following aspects: **(1) whether or not writ jurisdiction is exercisable in a matter of this nature; (2) whether or not the remedy provided under Article 226 of**

the Constitution of India can be permitted to be invoked to supersede the modes of obtaining the relief before a civil Court or a competent forum; (3) application of doctrine of parallel proceeding; and (4) suppression of material facts in the original pleadings in the writ petition and the subsequent events.

11. Having regard to the fact that the discussion on the first three aspects involves advertence to common facts and submissions and as the said aspects can be determined by a common discussion coupled with reasons, the said three aspects are taken up together for determination, for convenience.

12. To begin with, be it noted that on an analysis of the original pleading in the writ petition it is evident that nothing is elaborately stated and it is only stated that under a threat of forceful eviction, the writ petition is being filed. However, in the additional pleadings of the petitioners, which are filed in response to the detailed pleadings of the contesting respondents, a wide variety of contentions are raised. Be that as it may.

12.1.1 From the pleadings, which are purposely extracted supra, in detail, and the contentions which are advanced in line with the pleadings and additional pleadings, it emerges that the realm of adjudication being sought in the writ petition covers complex factual issues, mixed questions of fact and law and pure questions of law including jurisdictional issues. To emphasise the same, it is necessary to refer to certain facts and issues raised in this *lis*.

12.1.2 Firstly: It is admitted that the property is the joint property of the two Mutts and that the total extent of the property is Ac.74.23 cents and that in that total extent, the Hathiramji Mutt is having $\frac{3}{4}$ th share and the Parakala Mutt is having $\frac{1}{4}$ th share. It also emerges from the contentions that earlier for quite a long time the $\frac{1}{4}$ th joint share of the Parakala Mutt was under the permanent lease of Hathiramji Mutt. The existence of such permanent lease in favour of Hathiramji Mutt *vide* document no.2095/1916 dated 20.12.1916 is undisputed. Therefore, at-least at one point of time, the Hathiramji Mutt is in

physical possession of the entire property either personally or through its tenants. It is urged on behalf of the respondents that as per settled law, each joint owner will have right, title and interest in every inch of the entire joint property, till partition is affected between the joint owners and that it is so irrespective of the extent of share of such joint owner. It is the contention of the writ petitioners that the then Mathadhipathi of Parakala Mutt by executing a General Power of Attorney dated 30.11.1988 bearing no.704 of 1988 and registered on 01.12.1988 had appointed one N. Narasimha Reddy as an agent to deal with its property. The truth and the validity of the said GPA is being seriously disputed by the said Mutt on the grounds that it was obtained by fraud and misrepresentation with oblique motives. It is also being contended by the said Mutt that the said GPA in favour of the said agent was cancelled or revoked by executing a deed of revocation dated 08.01.1990. The said aspect is being seriously disputed by the 1st writ petitioner and it is being contended that the GPA in favour of the GPA holder is valid, irrevocable and was subsisting. Be that as it may. The said GPA holder, having issued a notice and demanded for partition, without waiting for partition and without suing for partition had made alienations from the share of Parakala Mutt out of the entire joint property. He having filed a suit OS.no.318 of 1989 on the file of the Court of the learned Additional Senior Civil Judge, Tirupathi for partition made further alienations during the pendency of the said suit. Such sales are not made in respect of joint undivided share but were made in respect of distinct properties within specific boundaries, though there was no partition of the property between the two Mutts and the share of Parakala Mutt was not ascertained by the dates of such sales. It is pointed out by the respondents that the law is well settled that a purchaser of a joint share cannot directly enter into the property and his only remedy is to sue for partition and then obtain possession of the purchased share/extent of property. During the course of hearing, it is also brought to the notice of this Court that a partition deed dated 23.04.1999 was executed between Hathiramji Mutt and Parakala Mutt and some others including Manikonda Kuppuswamy Naidu. Under the said deed of partition, the entire property was divided and it is stated that Hathiramji Mutt (1st party)

is the absolute owner of the lands mentioned in 'A' schedule land and that the 3rd parties, who are parties to the said partition deed, that is, the 3rd party therein is the absolute owner of the 'B' schedule land and that Parakala Mutt (2nd party) cannot claim any interest in the said 'A' & 'B' schedule properties and that the 3rd party was the purchaser of the ¼th share belonging to the Parakala Mutt (2nd party). Whether the 3rd party can be a party to the partition deed to which the joint owners are parties and whether under such a partition deed, absolute rights can be conferred on a 3rd party, who is not a sharer, is one of the questions raised before this Court. Since at the instance of Hathiramji Mutt Original Petitions for eviction and group eviction petitions are filed in respect of certain portions of the entire property and eviction orders are passed in such petitions by the Endowment Commissioner concerned in favour of the Hathiramji Mutt and as in some matters, the appeals against such orders are dismissed by regular civil Courts and as in some of the matters original suits are filed for declaration of title by the unsuccessful parties/occupants after dismissal of such appeals and as in some of the matters no further proceedings are taken after the dismissal of the appeals by the District Courts and as in regard to some of the matters it is being contended by the respondents that possession of certain extents of the properties covered by the original eviction petitions were taken by executing the orders and as such original petitions are filed before the Endowment Tribunal even before the institution of this writ petition, it is *inter alia* being contended by the contesting respondents that the writ petition is not maintainable; and on the other hand, the writ petitioners are contending that as the property being claimed by them belongs to Parakala Mutt and not Hathiramji Mutt, the eviction proceedings before the Endowment Tribunal are not competent proceedings as Parakala Mutt is not registered in the State of Andhra Pradesh. The above said aspects and the contentions bring to the fore one more set of complex questions of fact and law, which deserve a detailed examination by a competent forum. Be it noted that Hathiramji Mutt is contending that since these contentions regarding jurisdiction of the Endowment Tribunal are raised in the original petitions before it and were

negated, the said questions cannot be raised once again either in this writ petition or even in the execution petitions that even if any such contentions are open, they shall be raised in the execution proceedings, provided possession is not already taken by executing the orders, but not by way of a writ petition of this nature. Therefore, all these above stated issues and other issues, which were raised in the pleadings of the parties and during the course of hearing, and which are complex issues of fact and mixed questions of fact and law need determination after full fledged trial in a competent and appropriate proceeding, which the law permits, but, not in a writ proceeding of the present nature, in the well considered view of this Court. Further, it is an undisputed fact that a civil Court at Mysore, had already passed a decree in favour of the Parakala Mutt and a civil Court is seized of the matter.

12.1.3 Secondly: The specific contention of the writ petitioners is that they are concerned with the share of Parakala Mutt and that Parakala Mutt is not registered in the State of Andhra Pradesh and under the provisions of the Act 30/1987 and that therefore, though the property is situate within the territory of the State of Andhra Pradesh, the jurisdiction to adjudicate the disputes in regard to the property of Parakala Mutt vests with the Courts/fora situate in the State of Karnataka. However, the contest of the Endowment Department is that the said Mutt is published under Section 6(d) of the Act 30/87 vide proceedings of the Commissioner, Endowments, Andhra Pradesh and that as per the provision of Section 1(3)(a), the provisions of the said Act are applicable to all public and charitable institutions and endowments whether registered or not under the provisions of the said Act and, therefore, the Deputy Commissioner of Endowments is having jurisdiction to entertain and deal with the eviction petitions filed in respect of the joint property of the two Mutts. The Hathiramji Mutt contends that since it is in exclusive physical possession of its share and also the share of Paraklala Mutt by virtue of permanent lease and that as it is the possessor/custodian of the entire property, the Courts and Endowment Tribunal, as the case may be, of Andhra Pradesh are having jurisdiction to resolve the disputes in respect of the entire property. It is also urged on its behalf that since it is having right in every

inch of joint property till the partition is affected and as it is registered admittedly in the State of Andhra Pradesh and the provisions of Act 30/1987 are applicable to the Mutts in Andhra Pradesh, it is entitled to seek eviction by initiating proceedings before the Endowment Tribunal for eviction of the occupant of any part of the entire property. Admittedly, the Endowment Act which is in force in the State of Karnataka does not cover within its ambit the Mutts, which are within the territory of the said State and the properties of such Mutts. It is also not in dispute that a comprehensive civil suit (OS.no.455 of 2004) is filed by Parkala Mutt in the Court of the learned Principal Judge, Small Causes and Senior Civil Judge, Mysuru. It is indubitable that some of the issues raised in this writ petition are also the issues that fell for consideration in the said suit. The said suit was filed for declaration that the two GPAs viz., GPA dated 30.11.1988 (registered on 01.12.1988 as document bearing no.704/1988) and GPA dated 28.07.1989 executed by the then Mathadhipathi in favour of the 1st defendant therein, that is, N. Narasimha Reddy, are all null and void *ab initio* having been executed without the authority of law and, therefore, all the transactions entered into by the said GPA holder with third parties are illegal, void and not binding on the plaintiff – Parkala Mutt. It is not in dispute that after full fledged trial the said suit was decreed with costs by a judgment and decree dated 20.04.2016. In that suit, the copies of the said GPAs and the copy of the revocation deed are exhibited as exhibits P1 to P3. Some of the writ petitioners are parties to the said suit. Particularly, the GPA holder from whom the writ petitioners had purchased the respective properties is a party to the said suit and he had suffered a decree whereby a declaration is granted that not only the GPAs executed in favour of the said GPA holder by the then Mathadhipathi but also the transactions entered into by him are illegal and void and not binding on the Parakala Mutt. It is undisputed that the writ petitioners had purchased the respective extents being claimed by them directly from the said GPA holder - Narasimha Reddy. Therefore, by the decree granted in the said suit, the transactions on which the writ petitioners are placing reliance are declared as illegal and void and not binding on the Parakala Mutt. It is not stated before this Court as to whether any appeal is preferred and pending or whether there

is any contemplation to file an appeal by anyone of the defendants therein, particularly, the GPA holder Narasimha Reddy. Thus, a competent civil Court, which according to the writ petitioners is having jurisdiction, having been seized of the matter rendered a judgment against the interests of the writ petitioners. Even assuming for a moment that an appeal has been preferred and is pending, it follows that a competent civil Court is having seisin over the matter and that, therefore, the said parallel comprehensive civil proceeding precludes the entertainment of this writ petition any longer. Therefore, in view of the decree in the said suit or alternatively on the assumption that an appeal against the decree in the said suit is filed and pending, no relief can be granted in this writ petition by entering into the realm of adjudication of complex factual, legal and jurisdictional issues, which are the subject matter of the said *lis*. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. (**Vide C.R.Reddy Law College Employees' Association, Eluru, West Godavari District v. Bar Council of India, New Delhi**)^[1]. Viewed thus, this court finds that the writ petitioners could not make out a case for exercising the discretionary jurisdiction under Article 226 of the Constitution of India.

12.1.4 Thirdly: Dealing with the third aspect viz., application of doctrine of parallel proceeding, it is to be first noted that even by the time of the institution of this writ petition, the OA.no.36 of 1997, which is a group eviction proceeding, filed by the Hathiramji Mutt for eviction in respect of Sy.no.147/1 was disposed of on 29.03.1997; hence, the present writ petition is nothing but a parallel proceeding, and, therefore, the writ petition is not maintainable. It is also relevant to state that suits viz., OS.no.51, 55 and 57 of 1990 were filed by two of the writ petitioners herein. The first of the said suits is filed by C. Narayana Reddy and Meghanadham. The second of the said suits is filed by, M. Reddaih Naidu and C. Narayana Reddy. The third of the said suits is filed by N. Dhananjay Reddy and P. Meghanadham. On the disposal of the above said three suits after full fledged trial, three appeal suits in AS.no.127 of 2008, AS.no.128 of 2008 and AS.129 of 2008 were preferred

and the said appeal suits are pending. In view of the institution of this writ petition after the filing of the said suits and the continuation of this writ petition during the pendency of the said appeal suits arising from the said suits is nothing but prosecution of a parallel proceeding. Further, even according to the writ petitioners, though the property is situate within the territory of the State of Andhra Pradesh, since the property is that of the Parkala Mutt, which is not registered in the State of Andhra Pradesh under the provisions of the Act 30/1987, the Courts in the State of Karnataka are only vested with jurisdiction to resolve the disputes in regard to the properties of the said Mutt. During the pendency of this writ petition, as already noted, the Parakala Mutt has filed a comprehensive civil suit and the said suit was decreed in favour of the said Mutt and against N. Narasimha Reddy, the GPA holder of the said Mutt and others. The writ petitioners are claiming title/rights in the respective extents of the properties being claimed by them either under the sale deeds directly executed by the said GPA holder in favour of some of them or in favour of their predecessor purchasers. In that view of the matter also, the writ petition is liable for dismissal leaving the matter to attain finality in the afore-said civil proceeding. The law is well settled that the remedy provided under Article 226 of the Constitution of India is not intended to supersede the modes of obtaining reliefs before a civil Court or to deny defences legitimately open in such actions. The view of this court finds support from the decision of the Supreme Court in **Ghan Shyam Das Gupta v. Anant Kumar Sinha**^[2]. As a Tribunal and competent civil Courts had rendered judgments in favour of the two Mutts, it follows that the writ petition is nothing but a parallel proceeding and that, therefore, the filing of the writ petition and the continuation of the same is an abuse of process of law and therefore, the writ petition is liable to be dismissed.

12.1.5 Lastly: For the reasons afore-stated, the three aspects are accordingly answered against the writ petitioners.

13. Dealing now with the last aspect of suppression of material facts, a plain reading of the writ petition as originally filed by the petitioners would

show that the petitioners suppressed certain material facts. It is pertinent to note that the subject matter of the writ petition is Ac.05.00 cents in Sy.no.147/1. Even before this writ petition is instituted in the year 2002, the 3rd respondent herein had initiated legal proceedings for eviction of various occupants even by the year 1997. In-fact OA.no.36 of 1997 is particularly filed as a group eviction proceeding in respect of Ac.38.60 cents in Sy.no.147/1 of Avilala village and the same was allowed on 29.03.1997. Further, executing the said orders, the 2nd respondent handed over possession of Ac.5.00 cents out of Ac.38.60 cents in Sy.no.147/1 of Avilala village under a panchanama dated 19.10.1997 to the 3rd respondent as per the defence of the contesting respondents. This fact about the filing of the said group eviction proceeding before the Deputy Commissioner, Endowments Department, Kurnool is suppressed by the writ petitioners. It is pertinent to note that according to the contesting respondents, the present subject matter of the present writ petition is the very said extent of Ac.5.00 cents, which was already taken over possession by the 3rd respondent. It is also relevant to restate that suits viz., OS.no.51, 55 and 57 of 1990 were filed by two of the writ petitioners herein. The first of the said suits is filed by C. Narayana Reddy and Meghanadham. The second of the said suits is filed by, M. Reddaih Naidu and C. Narayana Reddy. The third of the said suits is filed by N. Dhananjay Reddy and P. Meghanadham. Further, OS.no.134 of 1990 was filed by all the writ petitioners for declaration; however, the said suit was later not pressed after having sold the property to third parties during the pendency of the suit. The filing of the said suits is also suppressed in this writ petition. No explanation much less valid explanation is forthcoming for suppressing the material fact in regard to the institution of the aforementioned OA filed for eviction before the Deputy Commissioner of Endowments under the provisions of Act 30 of 1987 and the other above mentioned proceedings, which were instituted even before the filing of this writ petition. Therefore, in the absence of valid explanation for not mentioning about the material facts, the writ petition is liable to be dismissed as the remedy under Article 226 of the Constitution of India is an equitable one and suppression of a material

fact disentitles the writ petitioners to such a relief.

14. Having regard to the discussion coupled with reasons and the findings recorded, this Court finds that the writ petition is devoid of merit and is liable to be dismissed.

15. Accordingly, the Writ Petition is dismissed. Be it noted that this writ petition is dismissed holding eventually that the writ petition is not entertainable and that in a matter of this nature, the writ jurisdiction cannot be permitted to be invoked and that this writ petition is a parallel proceeding and that the filing and continuation of the same is an abuse of process of law and that a writ of this nature involving complex questions of fact and mixed questions of fact and law is not maintainable and that the remedy provided under Article 226 of the Constitution of India is not intended to supersede the modes of obtaining relief before a civil Court or to deny defences legitimately open for such actions and that, therefore, the writ petition is liable for dismissal. Thus, it is made clear that this Court did not express any opinion on the merits of the issues raised in this *lis*. Since this Court did not deal with the merits of the issues raised and the veracity of the contentions related to the issues, no reference is made to the decisions cited on both the sides as it is felt that such reference is not necessary.

No costs.

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

M. SEETHARAMA MURTI, J

11.07.2016

Vjl

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

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