

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.15138 AND 16400 OF 2009

COMMON ORDER:

Heard Smt.Bobba Vijaya Lakshmi and Si Mohd.Gayasuddin holding for Sri Kowturu Vinay Kumar for petitioners, Sri K.Subba Rao, learned Government Pleader for Revenue and Si K.SGopala Krishnan for Pangaluru Seethammagari Satram (for short 'the Trust')/ Respondent No.5.

The petitioners pray for Mandamus declaring the inaction of 3rd respondent in acquiring the land in Sy.Nos.296 and 302 of Tirupathi Village Accounts, Tirupathi Urban Mandal, M.R.Palle, Chittoor District, where the petitioners have houses and huts under the provisions of the Land Acquisition Act, 1894 (for short 'the Act'), as illegal, arbitrary and violative. The petitioners pray for a consequential direction to the District Collector, Chittoor, to assign house site pattas to petitioners, for houses/huts presently in their occupation.

At the outset, it is noted that the averments by petitioners and the reply of respondents are substantially same and similar in these two writ petitions. The difference in these two cases is in W.P.No.15138 of 2009, the petitioners pray for acquisition of land in Sy.Nos.296 and 302 and in W.P.No.16400 of 2009, the petitioners seek acquisition of land in Sy.No.302 for providing house sites to them.

The circumstances necessary for disposing of the writ petition are stated as follows:

One V.Dhana Lakshmi (Petitioner No.103 in W.P.No.15138 of 2009) filed the affidavit for and on behalf of other petitioners. According to her, as per the entries in Inam B Register of Tirupathi Village, an extent of Acs.78-44 cents dry land and Acs.4-27 cents wet land in Sy.Nos.302 and 296 are covered by inam patta No.2927 and was owned by Pangaluru family. According to petitioners, the total extent is personal inam and the inam was popularly known as 'Kondarajupetada'. It is averred that Sy.No.302 was sub-divided as follows:

Sy.No.302 - Acs.38-25 cents

Sy.No.719 - Acs.14-43 cents

Sy.No.720 - Acs.11-33 cents

Sy.No.721 - Acs.14-43 cents

The petitioners refer to registered partition deed dated 31.12.1907 entered into and executed among the family of Pangaluru and also the shares allotted to each one of the brothers. The petitioners refer to registered sale deed dated 23.01.1933 executed by one Pangaluru Munaswamy Chetty in favour of one Esnakula Krishna Reddy and the sale deed deals with 1/4th of share held by the vendor. It is further stated that there is a serious dispute on the title of land in Sy.Nos.296 and 302 between Pangaluru family and 5th respondent/Trust.

The petitioners refer to O.S.No.280 of 1991, on the file of Additional Senior Civil Judge's Court, Tirupathi, filed against 5th respondent for relief of declaration of title and permanent

injunction. The petitioners also refer to O.S.No.102 of 1992 filed before the same Court for similar reliefs. The learned Additional Senior Civil Judge through common judgment dated 28.07.1999 dismissed both the suits and the unsuccessful plaintiffs filed A.S.No.2734 of 1999 before this Court and at the time of filing the writ petition, it is alleged that A.S.No.2734 of 1999 is pending, however, A.S.No.2734 of 1999 was dismissed vide judgment dated 09.07.2013.

It is averred that through registered Will Deed dated 04.04.1926, Pangaluru Seethamma, wife of Pangaluru Kupparamswamy Chetty created Trust. According to the terms of the Will Deed dated 04.04.1926, Sy.Nos.296 and 302 should be managed, administered by trustees of Sri Kanyakaparameswari Devasthanams, New Street, Tirupathi and discharge duties and objects of the Trust from time to time. The case of petitioners on the registered Will dated 04.04.1926 is that the Will dated 04.04.1926 is not proved in accordance with Section 68 of the Evidence Act. The 5th respondent did not produce pre-abolition record or right on the subject land. The name of 5th respondent was added without orders from competent authority, more particularly subsequent to granting of ryotwari patta in favour of private persons. Thus, according to petitioners, there is serious litigation concerning Sy.Nos.296 and 302 of Tirupathi village between 5th respondent and the heirs of Pangaluru family.

While the uncertainty subsisted, a few Harijan families of Pedda Madigawada occupied a portion of land in Sy.Nos.296

and 302 by raising huts and staying for the past forty years. The occupation of subject land by Harijans enhanced due to influx of migrant of population coming and settling in Tirupathi. The petitioners claim to be in occupation of Acs.20-00 of land in Sy.No.302 for the past forty years. The petitioners state that all of them are white card holders and are eligible for allotment of houses under the welfare schemes implemented by the State Government. In support of petitioners' enjoyment of various extents of the subject land, the petitioners rely on electricity bills, house tax receipts, ration card etc.

The petitioners refer to the order in O.A.No.23 of 2003 under the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'Act 30 of 1987'). Neither the 4th respondent nor the 5th respondent at any point of time, demanded the petitioners to vacate from Sy.Nos.296 and 302.

The order of the Deputy Commissioner, Endowments Department, Kurnool, in O.A.No.23 of 2003 since is not under challenge, the averments made against the legality or otherwise of the order in O.A.No.23 of 2003 are not adverted to.

The case of petitioners is that they are in settled possession and respondents 1 to 5 are aware of possession of petitioners. The petitioners in support of writ prayers rely on letter dated 30.06.2006 of the District Collector, Chittoor-3rd respondent and also the letter addressed by the Tahsildar, Tirupathi Urban Mandal, dated 08.10.2004.

The excerpts of letters dated 30.06.2006 and 08.10.2004 are necessary for appreciating and disposing of the writ petitions which read thus:

Letter dated 30.06.2006:

“I send herewith the representation received in the reference cited and requested you to enquire into the matter and take necessary action of the land in question for provision of House Sites to Weaker Sections, if necessary”.

Letter dated 08.10.2004:

“I invite kind attention to the reference cited in which the residents of Setthamma Nagar, M.R.Palle, Tirupati requested for issue of house site pattas under Homestead Act or on payment of Market value.

I submit that I have inspected the land in S.Nos.296 and 302 of Tirupati. There are 230 houses raised in the Survey Numbers in question. There are around 150 SC families. 70 BC families and 10 other castes were raised huts, semi permanent house such as asbestos roofed houses and some pucca buildings over the part of the land and the Houses are existing since 10 to 20 years and 5 to 10 years and they are residing with all the amenities such as electricity, water etc.

Further, the land in question is patta ryoti land (Inam Dry) and the Dy. Commissioner, Endowment Department, Kurnool in I.A.No.23/03 dt.9.7.03 the Assistant Commissioner, Endowment Department, Chittoor has proposed to evict the encroachers on 7.8.2004 at 9 a.m. While the weaker section Housing and Welfare Society represented by Sri T.Gunasekhar, approached the High Court of A.P. vide W.P.No.76320/2004 and the High court posted the W.P. for admission on 9.8.2004 in motion list and ordered that pending further orders STATUS QUO obtaining as on today as to the nature and possession of the land i.e., A.350 cents in S.No.302 of M.R.Palle Village shall be maintained till 10-8-2004 and further orders are awaited.

I further submit that most of the occupiers are poor persons mostly belongs to OC, BC and weaker sections. They are frequently approaching the Government for regularization of

their occupation duly purchasing the land in question under the provisions of land acquisition Act. Hence, the grievances of the petitioners can be redressed by acquiring the land in question under land acquisition Act keeping in view of their long standing occupation etc.”

Therefore, the petitioners pray for Mandamus as already noted above.

Counter of 1st respondent:

Smt.Pangaluru Seethamma has endowed a house and Ac.42.52 cts. in Sy.No.296 & 302 in Tirupathi Pilgrim town while constituting a Charitable Institution namely “Smt.Pangaluru Seethamma Arya Vysya Dharma Satram” (5th respondent herein) by way of Will dated 04.04.1926. The petitioners cannot take shelter under the litigation pending between choultry and a 3rd party. The said property was registered in the name 5th respondent by the Assistant Commissioner, Endowments Department, Chittoor. The records of revenue and endowment department establish the title of Smt.Pangaluru Seethamma. The petitioners are not in occupation of Acs.20.00 in Survey No.302, but they are in possession of about Acs.3.00 only. The 5th respondent filed O.S.No.132 of 1986 on the file of Senior Civil Judge, Tirupati against the encroachers and obtained injunction.

The 2nd respondent, on the representation of 5th respondent, had taken up proceedings in O.A. No.23/2003 under Section 85(1) of Act 30 of 1987 and issued eviction orders on 09.07.2003. The orders in O.A.No.23 of 2003 have attained finality.

Counter of 3rd respondent:

The subject land, which belongs to 5th respondent, is encroached by the petitioners. So far, no steps have been initiated by the Revenue Authorities. The 5th respondent is a Public Trust declared by this Court in W.A.No.1 of 1996 and that the provisions of Act 30 of 1987 are applicable. The 2nd respondent by exercising the powers under Section 85 of Act 30 of 1987 passed orders of eviction of encroachments on the land belonging to 5th respondent. In pursuance of the said order, the 5th respondent initiated steps for eviction of petitioners.

On the writ prayer or entitlement of petitioners, the counter affidavit of 3rd respondent/District Collector reads thus:

“It is submitted that mere issuance of a ration card to the petitioners would not give them any right or title over the land, which they have encroached. The ration cards are issued only to provide the essential commodities at concessional rates and therefore, the issuance of ration cards have no nexus with the encroachments made by the petitioners over the land belonging to the 5th respondent. There is no vested right to the petitioners to claim patta for the land, which is encroached by them. If the petitioners make individual applications for assignment of house site pattas, each application will be examined and considered subject to availability of the Government land and subject to eligibility of such applicants. The petitioners are seeking a Writ of Mandamus for acquisition of the land belonging to the 5th respondent and to assign the said land to them by way of house site patas. The prayer sought for is misconceived and the said land cannot be acquired, as the said land belongs to the Charitable Institution, since in W.A.No.1/1996, the said property is declared as a public trust property. Apart from this the Honourable High Court in another batch of writ petitions granted stay of acquisition of Endowment/Charitable Properties for

providing house sites to the weaker sections or for any other purpose and therefore, the writ petitions are not maintainable and they are liable to be dismissed.

It is respectfully submitted that the petitioners cannot choose a particular land and seek for a Writ of Mandamus for acquisition of the same. To acquire a particular property, necessary preliminary enquiry will have to be conducted before initiating the proceedings under Land Acquisition Act. As already states supra, the land now claimed by the petitioners belongs to the 5th respondent, which is a public trust and therefore, the provisions of the Act 30 of 1987 would apply and in view of the stay of acquisition of such lands by this Honourable High Court, it is not possible to acquire the said lands. Apart from the same, the said land is very valuable land and it may have a market value of nearly 4 crores per acre and it would be a heavy burden on the Government, if the said land is to be acquired. Therefore, if the petitioners make an individual applications, each application will be considered in accordance with the existing housing policy of the Government and it is not possible to give house sites in the land in question, which is encroached by the petitioners and which land belongs to the 5th respondent and there is an order of eviction under the statutory provisions of Act 30 of 1987.”

Counter of 5th respondent:

The members of the 5th respondent made representation to the Government of A.P. complaining of illegal transactions and requesting them to protect the properties of the Satram. Since no action was taken, the 5th respondent filed W.P.No.11271 of 1993 in this Court and the W.P. was disposed on 10.08.1993 with a direction to consider the representation. In spite of order, no action had been taken and 5th respondent filed another W.P.No.14484 of 1993 and the same was disposed of on 04.12.1995 upholding the

contention of the 1st respondent that the writ petition did not survive. Then 5th respondent had preferred W.A.No.1 of 1996 against the orders in W.P.No.14484 of 1993 and this Court passed the order restraining the Sub-Registrar, Registration Department, Tirupati from registering the sale deeds while directing the 2nd respondent to submit a report to the Court within 3 months on initiation of proceedings under Section 87 of Act 30 of 1987. During the pendency of W.A.No.1 of 1996, the 5th respondent filed O.A. No.39 of 1996 before the 2nd respondent. The 2nd respondent passed order dated 06.07.1996 holding that the 5th respondent institution is a public charitable institution and the same is governed by the provisions of the Endowment Act. In the meanwhile, this Court allowed W.A.No.1 of 1996 holding that Dharma Satram is a Public Charitable Institution and sales effected by the then Chairman of 5th respondent are all null and void while ordering refund of sale consideration amounts to the purchasers. Further, it is held that it is the statutory duty of the Government to protect the properties of Public Charitable Institution/5th respondent. The issuance of household cards or assessment of house tax by Panchayat etc., in the light of judgment in W.A.No.1 of 1996 is of no significance. The writ petitions filed by the petitioners are subsequent to the orders in W.A.No.1 of 1996. The Government in utter disregard to the orders in W.A.No.1 of 1996 began to act adverse to the interest of 5th respondent and recognizing the encroachments. Individual encroachers resorted to approaching this Court and civil Courts time and again and obtaining *status quo*

orders preventing the eviction order. Ultimately, the 2nd respondent considered the representation of 5th respondent and taken up proceedings in O.A.No.23 of 2003 under Section 85(1) of Act 30 of 1987 and issued eviction orders dated 09.07.2003 and this order was passed pursuant to the directions in W.A.No.1 of 1996. The 3rd respondent contrary to orders in W.A.No.1 of 1996 addressed letters to his subordinates for acquisition of land.

Briefly reiterated, the contesting respondents are opposing the prayer on all fours and before taking up the rival submissions, the gist of the case of parties is stated thus:

The Chairman of 5th respondent Trust filed counter affidavit explaining various orders of this Court and also the order passed by Deputy Commissioner in O.A.No.23 of 2003. The petitioners are treated as illegal encroachers and the 5th respondent submits that the prayer for acquiring the land is unavailable and the writ petitions are liable to be dismissed. The Additional Commissioner states that the 5th respondent is an institution as published under Section 6 (c)(1) of Act 30 of 1987 at Serial No.274 in Gazette dated 26.11.1993. Therefore, the 5th respondent is a charitable institution as per the provisions of Act 30 of 1987. According to 1st respondent, in the records maintained by the Revenue Department, Endowment Department etc., the title of Pangaluru Seethamma is established. The Will executed by Pangaluru Seethamma cannot be questioned by the petitioners who are encroachers of Trust property. On the representation filed by 5th respondent, proceedings in O.A.No.23 of 2003 under Section 85(1) of the Act 30

of 1987 have been taken up and eviction orders dated 09.07.2003 have been passed. He refers to the directions issued by this Court dated 04.10.1996 in W.A.No.1 of 1996. It is stated that there are only five pucca buildings, and by the time writ petitions were filed, as many as 70 temporary structures with compound walls were dismantled. Majority of writ petitioners requested five days' time for taking away their belongings and they have taken away the same. On the day the interim order was passed, only a few sheds and tenants are in existence. In view of the *status quo* granted by this Court, further eviction order in O.A.No.23 of 2003 was not completed. He prays for dismissing the writ petitions.

Smt. Bobba Vijaya Lakshmi and Sri Gayasuddin for petitioners contend that the petitioners are in possession and enjoyment of respective extents occupied by them for over four decades. The District Collector as well as the Tahsildar accepted the reasonableness of the claim of occupants resulted in recommending for acquisition. The letter written by Tahsildar, Tirupati Urban Mandal supports the case of petitioners, therefore, though the writ prayer is not a prayer routinely made, but according to them the writ prayer is not prohibited in law for considering and granting relief by this Court. The petitioners occupied the land, for the land was lying vacant; and the petitioners come under below the poverty line; accepting the possession, ration cards are issued; electricity payments and house taxes are being collected by respondents and if, at this stage of the

matter, the authorities if dispossess the petitioners, they will lose the shelter that they have been enjoying all these years.

The counsel to the pointed query of the Court on the jurisdiction of this Court to issue writ of Mandamus directing authorities to issue a notification for acquiring the land in possession of the petitioners, has replied that it has to be worked out within the fold of Article 21 read with Article 226 of the Constitution of India. The submissions of Smt. Bobba Vijaya Lakshmi are substantially adopted by the learned counsel appearing for the petitioners in W.P.No.16400 of 2009, and in addition, he contends that the petitioners cannot be faulted for occupying the land of Trust, for the land is lying vacant for decades and Trust is not in a position to protect it. Therefore, the petitioners are justified in entering into the land belonging to 5th respondent and constructing the houses/huts.

Smt. Bobba Vijaya Lakshmi alternatively contends that the possession by individuals of property belonging to Trust is not disputed by the contesting respondents, including 5th respondent Trust. The counter affidavit filed by the District Collector excerpted already gives jurisdiction to this Court to direct considering the cases of eligible candidates for assignment of house or house plot under a welfare scheme, subject to the individual making the application for assignment of house or house plot. Therefore, she prays for appropriate directions to the District Collector to consider the cases of petitioners and allot house-site pattas.

Sri K.S.Gopala Krishnan for Pangaluru Seethammagari Satram/5th respondent opposes the writ prayers with vehemence. He firstly contends that the petitioners who do not have iota of interest with the Trust or its properties, have encroached or trespassed a portion of valuable land and do not have *locus standi* to challenge the recitals in the Will executed by Pangaluru Seethamma. He further contends that the judgment in A.S.Nos.421 & 2734 of 2013 gives quietus to the doubts on the entitlement of Trust to subject land, for this Court accepted the entitlement of Trust to the properties covered by Will deed. He relies on the directions issued by this Court in W.A.No.1 of 1996 and contends that the writ prayers are completely misconceived. This Court does not exercise the jurisdiction to issue directions for land acquisition to finally assign to encroachers as prayed for in the writ petitions. He relies on Sections 14, 83, 84, 85 and 143 of Act 30 of 1987 to contend that the procedure under the Act is followed. Section 143 of the Act 30 of 1987 is relied on to contend that the possession which is disputed does not confer right on petitioners and secondly the Limitation Act has no application to charitable properties and reads as follows:

143. Property of Charitable or religious institution or endowment not to vest under the law of limitation after commencement of this Act:

Nothing in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any charitable or religious institution or endowment which have not vested in such person or his predecessor in title before the 30th

September, 1951, in the Andhra Area of the State and the 26th January, 1967 in the remaining area of the State.

The procedure followed for eviction of petitioners by respondents conforms to the requirement of law and no exception either in law or fact can be taken against the steps taken by respondent Nos. 1 to 4 and 6. He contends that this Court in exercise of its discretion or jurisdiction under Article 226 of the Constitution of India keeps in view the mandate of Article 300-A of the Constitution of India and also gives effect to the right recognised under Article 300-A. In the name of protecting or enforcing a non-existing right of petitioners discretion ought not to be exercised in favour of petitioners. The petitioners, according to him, are liable for eviction and any relief, if given against the 5th respondent, would defeat the objects of the Trust, the scheme of Act 30 of 1987 and Article 300A of the Constitution of India. He prays for dismissing the writ petitions.

Learned Government Pleader for Endowments submits that the steps so far taken are in pursuance of the orders or directions issued by this Court from time to time. The Assistant Commissioner, Endowments is under obligation to discharge functions and duties under the Act and obey the directions issued by this Court. He relies on the stand taken in the counter affidavit and submits that the petitioners do not have *bona fides* and the writ prayers are liable to be rejected.

Heard the learned counsel, noted the contentions raised on behalf of the respective parties and perused the record, including the decision in O.A.No.23 of 2003 on which respondents are relying upon.

The points for consideration are:

1. Whether the inaction of 3rd respondent in acquiring land in the alleged occupation of petitioners in Survey Nos.296 and 302 of Tiruplathi Accounts, Tirupathi Urban Mandal, M.R.Palle, Chittoor for providing house-sites to petitioners under the provisions of the Land Acquisition Act, 1984 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) is valid, and tenable, if so the right is enforceable by issuing Mandamus under Article 226 of the Constitution of India?
2. Whether the petitioners are entitled for house-sites in property belonging to a private Trust or alternatively, whether the petitioners are entitled to any other relief?

POINT No.1:

The petitioners admit that one Pangaluru Seethamma executed registered Will deed dated 04.04.1926 concerning subject land. The petitioners at the same time do not have anything to do with the Will deed or the objects of the Trust created by Pangaluru Seethamma. Admittedly, a few cases in this Court, before the Tribunal or in the civil Court were filed by respondent No.5 or against respondent No.5 are *inter se* disputes and a few of these cases have attained finality. The case of petitioners is that on account of

disputes, the properties remained vacant, and the petitioners since are without house or house-sites and are poor people, claim to have occupied the property belonging to the Trust. The petitioners though rely upon a few documents such as house tax receipts, electricity bills, ration cards etc, this Court firstly is not persuaded by the documentary proof filed by the petitioners even for the limited purpose of appreciating the encroachment, period of encroachment etc., and record a finding in this behalf. The petitioners though accept the ownership of Trust still pray for a direction to acquire the land by respondents 1 to 4 for providing house-sites to petitioners. The prayer seeks enforcement of a right either under the Land Acquisition Act, 1984 or Act 30 of 1987. In other words, the petitioners call upon the State to regularize their encroachments or occupation by acquiring the land of a Trust/respondent No.5 and provide house-sites to petitioners. The jurisdiction of this Court to issue a writ of Mandamus is exercised upon satisfying these conditions:

- (a) the petitioners have a legal right.
- (b) the respondents have a legal duty
- (c) the prayer is made in good faith
- (d) the petitioners have no other alternative remedy
- (e) there is demand and refusal by respondent

The writ of Mandamus is not a writ of right and the Court does not grant as a matter of course i.e., *ex debito justitiae*. So much so, the grant or refusal is at the discretion of the Court.

Now, let me advert to the case of petitioners. The petitioners admit the ownership of 5th respondent. The alleged right for Mandamus rests on possession claimed by them.

From the averments in the writ petition, it can be held that the prayer is not based on a right, much less a legal right. So, the first condition is not satisfied by petitioners for Mandamus from this Court.

The Tahsildar as is evident from letter dated 08.10.2004 noted encroachments on subject land and noted that the subject land is valuable land. It is the case of 5th respondent Trust that in the year 2008, the value of land per acre was about Rs.4 crores and the present valuation will be not less than Rs.15 to 20 crores per acre. Further, according to respondent No.5, if the land is directed to be acquired under the new Act (Act 30 of 2013), enormous financial burden will result on exchequer.

Without further discussion, this Court is of the view that the petitioners cannot compel the State to acquire the property of a private individual/institution and provide house-sites to petitioners, as the petitioners are in actual possession. Entitlement for house-site patta under a welfare scheme implemented by the State is one facet and the instant prayer has more than one facet. A party who is entitled for patta under a scheme implemented by the State, if approaches the Court under Article 226 of the Constitution of India and complains discrimination or deprivation or selecting

candidates for any reason, the Court considers issuing appropriate directions for considering the case of such persons under the scheme implemented by the State/respondents. As regards the present situation, this Court presumes the existence of public purpose/obligation of the State to convert the encroachment of private land into lawful possession by acquiring the land and assigning pattas to petitioners. To conform the action of the State to Article 300-A of the Constitution of India, a direction to acquire the land together with paying compensation to institution have to be given. This Court in the fact situation of this case, the prayer is untenable and unenforceable. The above discussion is sufficient for the purpose of holding that not only that this Court cannot and ought not to exercise the discretion or jurisdiction for the purposes referred to above and cannot ignore the huge financial burden on the exchequer, if a Mandamus as prayed for is issued. Matters regulated under an enactment, the primacy of decision is with the authorities conferred jurisdiction by the enactment, but not with this Court. This Court ought not to step into the shoes of the authority and jurisdiction of respondents and issue directions as prayed for. The writ prayer viz., declaring the inaction in acquiring the land is misconceived and liable to be rejected. Accordingly, the point is answered in favour of respondents and against petitioners.

Point No.2: Smt.Bobba Vijaya Lakshmi alternatively contends that the District Collector, Chittoor/respondent in the counter affidavit has stated thus:

“It is submitted that mere issuance of a ration card to the petitioners would not give them any right or title over the land, which they have encroached. The ration cards are issued only to provide the essential commodities at concessional rates and therefore, the issuance of ration cards have no nexus with the encroachments made by the petitioners over the land belonging to the 5th respondent. There is no vested right to the petitioners to claim patta for the land, which is encroached by them. If the petitioners make individual applications for assignment of house site pattas, each application will be examined and considered subject to availability of the Government land and subject to eligibility of such applicants. The petitioners are seeking a Writ of Mandamus for acquisition of the land belonging to the 5th respondent and to assign the said land to them by way of house site patas. The prayer sought for is misconceived and the said land cannot be acquired, as the said land belongs to the Charitable Institution, since in W.A.No.1/1996, the said property is declared as a public trust property. Apart from this the Honourable High Court in another batch of writ petitions granted stay of acquisition of Endowment/Charitable Properties for providing house sites to the weaker sections or for any other purpose and therefore, the writ petitions are not maintainable and they are liable to be dismissed.

It is respectfully submitted that the petitioners cannot choose a particular land and seek for a Writ of Mandamus for acquisition of the same. To acquire a particular property, necessary preliminary enquiry will have to be conducted before initiating the proceedings under Land Acquisition Act. As already states supra, the land now claimed by the petitioners belongs to the 5th respondent, which is a public trust and therefore, the provisions of the Act 30 of 1987 would apply and in view of the stay of acquisition of such lands by this Honourable High Court, it is not possible to acquire the said lands. Apart from the same, the said land is very valuable land and it may have a market value of nearly 4 crores per acre and it would be a heavy burden on the Government,

if the said land is to be acquired. Therefore, if the petitioners make an individual applications, each application will be considered in accordance with the existing housing policy of the Government and it is not possible to give house sites in the land in question, which is encroached by the petitioners and which land belongs to the 5th respondent and there is an order of eviction under the statutory provisions of Act 30 of 1987.”

Therefore, to the extent of eligible persons, the District Collector may be directed to provide house-sites to them in one or the other welfare schemes implemented by respondents in and around Tirupathi town. The Government Pleader for Revenue, Sri K.Subba Rao submits that the respondents are not deviating from the stand taken in the counter affidavit, but this Court ought not to direct the respondents to provide house-sites or houses to all the petitioners without examining the eligibility etc., of applicants for providing a house or house-site under a welfare scheme implemented by the State. Further, according to him, in the schemes now implemented, priorities have to be given to all eligible candidates etc. He, however, submits that each one of the petitioners, if are given liberty to apply for allotment of house/house site to District Collector, Chittoor, Revenue Divisional Officer, Tirupathi and Tahsildar, Tirupathi Urban and Rural Mandals, the respondents will consider and pass appropriate orders.

The Government Pleader for Endowments submits that under Section 85 of Act 30 of 1987, the Assistant Commissioner is entitled to take assistance from Revenue and Police for taking possession from encroachers, therefore, a comprehensive exercise in this behalf if

undertaken, the exercise would enable the Endowments Department to seek possession of property of the institution and the Endowments Department has no objection to take up the issue of petitioners with District Collector etc. This Court keeping in view the alternative submission of all the counsel considers issuing the following directions:

- 1) The prayer to issue Mandamus is rejected, as this Court cannot exercise jurisdiction or discretion under Article 226 of the Constitution of India.
- 2) The possession of 3rd parties or petitioners is admitted by all. The District Collector has undertaken vide counter affidavit dated 20.04.2011 to provide house-sites to eligible persons who are in possession of Trust property. It is matter of common knowledge that the State Government is implementing several welfare schemes under which houses and house sites are provided to weak, needy and eligible applicants. Therefore, the persons who are in possession or desirous of taking allotment from Government and vacate from Trust property, are allowed to represent to Assistant Commissioner, Endowments, the District Collector and the Revenue Divisional Officer, Tirupati, by enclosing a copy of this order. Such petitioner(s)/applicant(s) furnish all the details that are required for consideration of their applications for house-site allotment by District Collector.

On receipt of applications from petitioners, the issue of consideration for allotment of house sites is taken up by the Assistant Commissioner, Endowments with the Revenue Divisional Officer and the Tahsildar. As stated in the counter affidavit, house-sites are allotted to eligible applicants. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. For a period of four months, all the parties are directed to maintain *status quo* as on today. The petitioners who are ineligible or not interested in representing to authorities, it is made clear the respondents can implement the orders passed under Act 30 of 1987 for eviction of encroachers.

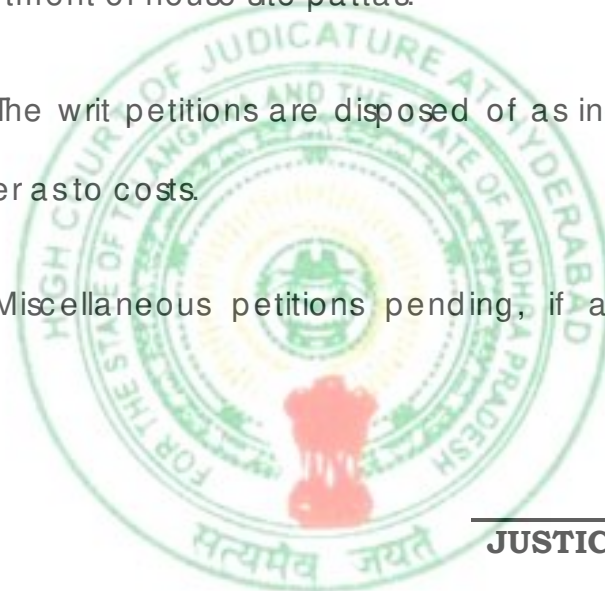
- 3) The District Collector constitutes a committee consisting of Deputy Commissioner/Assistant Commissioner, Endowments, Revenue Divisional Officer/Tahsildar and Deputy Superintendent of Police/SHO for expeditious consideration and implementation of the directions issued by this Court in the present writ petitions. The Committee examines the request of each eligible person(s) and passes orders as are fit and provides house or house-sites to eligible applicants in the schemes implemented by Government of Andhra Pradesh. In the alternative, if request for assignment is refused, the decision is intimated to applicant(s) and the Assistant Commissioner is entitled to evict such person(s).

- 4) This Court, as already held, is not expressing a view on the effect or nature of possession claimed by the petitioners. With a view to restricting the order only for the petitioners/ eligible persons, this Court directs the Assistant Commissioner of Endowments to forthwith inspect Survey Nos.296 and 302, take down details of occupants of subject matter of writ petitions and prepare a list of all the encroachers as on the date of inspection, which can be relied on while examining the applications given for allotment of house site pattas.

The writ petitions are disposed of as indicated above.

No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.



JUSTICE S.V. BHATT

Date: 20th October, 2017

Note:

C.C. in one week.

B/o.

Prv/ Sp