

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Writ Petition No.26445 OF 2016

ORDER:

The sole petitioner by name V.Ramachandra Reddy, who earlier worked as V.A.O., Alluru Village, Kothapatnam Mandal of Prakasam District, maintained the writ petition against the five respondents viz., (i) The State of Andhra Pradesh, represented by its Principal Secretary-Endowments (ii) The Commissioner of Endowments (iii) The Assistant Commissioner of Endowments, Prakasam District at Ongole (iv) Sri Kodanda Rama Swamy Vari Temple, Woollapalem Village, Singarayakonda Mandal, Prakasam District, represented by its Executive Officer and (v) The Sub-Registrar, Ongole, Prakasam District.

The prayer in the writ petition reads as follows:

“to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents 2 & 3 in including the property of the petitioner to the extent of Ac. 1.75 cents which forms a part of Ac. 17.15 cents in Survey No.152, Alluru Village, Kothapatnam Mandal, Prakasam District at Serial No.16 in the list of immovable properties prepared under Sec. 22(A)(1)(c) of the Registration Act, 1908 pertaining to Alluru Village, Kothapatnam Mandal, Prakasam District, on the ground that the same is the property of 4th respondent temple, as illegal, arbitrary and without jurisdiction and further direct the respondents to delete an extent of Ac. 1.75 cents belonging to the petitioner covered under Agreement of Sale cum GPA Doc. No.11434/2010, dated 21.07.2010, which forms a part of Ac. 17.15 cents in Sy.No.152, Alluru Village, Kothapatnam Mandal, Prakasam District, shown at Serial No.16 in the said list pertaining to Alluru Village, Kothapatnam Mandal, Prakasam District and pass....”

2. From the prayer, the sum and substance of the writ petition *lis* to decide is the sustainability of the inclusion by the Commissioner and the Assistant Commissioner of Endowments of the property total extent of Ac. 17.15 cents in Survey No.152 of Alluru Village at Serial No.16 in the list of immovable properties prepared under Section 22(A)(1)(c) of the Registration Act, 1908 of Alluru Village as the property of respondent No.4 wherein the writ petitioner claimed by Agreement of sale-cum-GPA bearing document No.11434/2010 dated 21.07.2010) which is an extent of Ac. 1.75 cents in seeking to delete the same there from and whether the writ petition is maintainable when same can be impugned before the A.P. endowments Tribunal under Section 87 of the Endowments Act in the fact finding Tribunal?

3. Heard both sides in answering the *lis* covered supra within its scope and perused the pleadings and documents placed reliance.

4. In deciding the above points for consideration referred supra, coming to the averments in the affidavit of the writ petitioner, who consciously did not mention as worked as V.A.O. of Alluru Village, but mentioned as retired employee are that originally the land of Ac. 17.15 cents supra was an inam land belonging to one Mulugu Veerasalingam, Mulugu Sangameshwara and others, which was a Bhatavarthi personal inam and not a service inam as per the inam record and after following the due procedure as per the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, a Ryotwari Patta in Form VIII was issued in the

name of A.Lalithamma. A.Venkata Subbaiah Naidu, a lessee of said land purchased the same in the year 1940 (no Sale Deed filed) and after his demise his wife A.Lalithamma applied for Ryotwari Patta which was granted after due enquiry by the then Special Deputy Tahsildar (Inams), Ongole vide proceedings in I.A.No.6107/59 dated 21.09.1981 [No such order in I.A.No.6107/59 filed much less any proceedings, but for a Xerox copy of Form VIII (Rule 7) as Ryotwari Patta referred as Ex.P3 by mentioning Survey No.152, Punja Ac. 17.15 cents, Achhakota Lalithamma, W/o. Venkata Subbaiah Naidu of Voollapalem Village, Kandukuru Taluka which was dated 21.09.1981 and there is no full signature of the so-called Special Deputy Tahsildar (Inams), Ongole] and her name is mutated in the revenue records. The so-called Pahani of Fasli 1424 not even issued by the M.R.O. Office with seal, but by the Village Revenue Officer, Alluru, dated 28.08.2015 mentions as one of the document filed at Page No.127 of the writ petition material for Survey No.152 total Ac. 17.15 cents as Patta with Khata number 3820 mentions the name of Khatadar as Achhakala Prameelamma, W/o. Koteswara Rao Naidu and the enjoyer as Achhakala Prameelamma and the extent as Ac. 3.15 cents as 'Anuvamsikam' and also as Khatadar for other respective extents of Ac.2.00 cents as Tumu Venkata Sai Varun Kumar, S/o. Venkat Rao, Veerepally Ramachandra Rao, S/o. Rami Reddy for Ac.1.75 cents, Vadapally Srinivas Rao, S/o. Venkateshwarlu for Ac.3.50 cents, Achhakala Venkatasubbaiah Naidu, S/o. Koteswar Rao for Ac.1.50 cents, Pothuri Tirumaleshwar Rao, S/o. Subba Rao for Ac.1.75 cents,

Baddeli Ramesh Reddy, S/o. Ramalinga Reddy for Ac.3.50 cents as purchasers. In fact, there is no Sale Deed even admittedly as per the writ petition averments in favour of the writ petitioner. For such there is Adangal entry in his favour. A Xerox certified copy issued under the Right to Information Act, 2005 dated 22.06.2016 of Adangal copy for Survey No.152 filed with writ petition at Page No.120 of the material papers speaks Khata Number differently as 843 and Pattedar Achikala Lalithamma and Patibandla Krishna Murthy and enjoyer as Achikala Lalithamma for the entire extent (of which year the Adangal relates not clear), another pahani without mentioning of the year obtained on 28.06.2016 with signature of the writ petitioner as V.A.O. filed where Survey No.152 Khata number 5431 struck off and 1888 added for the extent Ac.17.15 cents with Serial No.560, the name of Achikala Lalithamma as Pattedar and enjoyer struck off and Sri Kodanda Ramaswamy Vaari temple-respondent No.4 to the writ petition added. It is unknown how the petitioner being V.A.O. verified and signed in issuing the R.T.I. Act information of said Adangal by striking the name of Achikala Lalithamma and adding Sri Kodanda Rama Swamy Vaari temple if at all the G.P.A. of 2010 in his favour lying for any part of the land in mutation of the temple name. Another Adangal without fasli for Survey No.152 Ac.17.15 cents Khata number 1888 mentions the Pattedar and enjoyer for the entire land as Sri Kodanda Ramaswamy Vaari temple-respondent No.4 to the writ petition entered where the signature of petitioner as V.A.O. therein at Page No.112 of the material papers. Similar is the case for

another Adangal, year not there, obtained under the Right to Information Act (Page No.108 of the writ petition material papers referring Serial No.560, Khata No.1888, Survey No.152, extent of Ac.17.15 cents, Pattedar and enjoyer as Sri Kodanda Ramaswamy Vaaru. Another copy of Adangal at Page No.104 of the writ petition material papers without mention of which fasli obtained under the Right to Information Act with self-same particulars referred in the writ petition as Ex.P.10 mentioning the temple as Pattedar and owner for the entire land.

5. The further averments in the writ petition are that said A.Lalithamma had only one son by name Koteshwara Rao Naidu, who predeceased her leaving behind his wife Prameelamma and four sons. After the demise of Lalithamma, Prameelamma supra was mutated in the revenue records and she obtained Pattedar Pass Books. A Xerox copy filed of the Pass Book and title deed only two pages each as writ petition material papers 38 to 41. There are no signatures as to when issued. In Pass Book page No.2 mentioned the entire extent of Survey number as 'Anuvamsakam' and at Column No.11 there is a different writing subsequently with different language as can be seen from the Xerox even of Kothapatnam Tahsildar orders in Rc.No.211/07 dated 28.05.2007. That order is not before the Court for said Passbook and title deed to obtain, to say if at all those were obtained subsequent to that if not recently. Further in Pass book mentioned Patta No.3820 whereas in the title deed mentioned Patta

No.1888 with unexplained variation and the writ petitioner is signatory as V.A.O. in both.

6. The further averments in the writ petition are that the property was partitioned among Prameelamma and her four sons by a registered Partition Deed bearing document No.2711/2010 dated 04.03.2010 [Xerox copy filed in pages 23 to 37 of the writ petition material papers. It is referred as if the source of title the ancestors of Achhakala Koteswara Rao Naidu acquired the property and succeeded by them as the joint family property, but for Survey No.152 of Ac.17.15 cents there is no other property included in the partition, it refers about Passbook Patta No.3820.] The writ petitioner thereby claimed purchased the property of Ac.1.75 cents from one A.Prasad Rao, S/o. Prameelamma, and got his share in the said Partition under the Sale Agreement-cum-GPA dated 21.07.2010 supra. A copy of the G.P.A. is filed at Page No.53 of the material papers of the writ petition. It shows for Rs.7.00 lakhs non-possessory Sale Agreement-cum-GPA in favour of the writ petitioner and another Potturi Tirumaleswara Rao, S/o. Potturi Subba Rao jointly executed by Achhakala Prasad Rao, S/o. late A.Koteswara Rao Naidu of Kukatpally, Hyderabad, and his minor daughters Lakshmi Bhargavi and Hasini, and page No.2 refers the partition dated 04.03.2010 register No.2711 of 2010 between the first executant and his brothers and mother Prameelamma and it falls to him and it is for Ac.3.50 cents middle.

7. The further averments in the writ petition are that One Kunapareddy Surya Prakash Rao filed W.P.No.62 of 2012 (Ex.P5) alleging the property of an extent of Ac.17.15 cents in Survey No.152 supra of Alluru village belongs to respondent No.4 temple wherein the present writ petitioner V.Ramachandra Reddy was arrayed as respondent No.8, the Assistant Commissioner of Endowments, Ongole (respondent No.3 herein) was arrayed as respondent No.2. Respondent No.2 therein filed a detailed counter therein (Ex.P6) with reference to the record stating the said land of Ac.17.15 cents does not belong to the temple. The notifications that were issued earlier under the Inams Abolition Act vide Gazette notification No.12 dated 03.12.1979, Notification No.8 dated 17.08.1981, Notification No.10 dated 24.08.1981 clearly show Survey No.152 consisting of Ac.17.15 cents supra is not held by an institution and said Notification No.10 dated 24.08.1981, the latest of the above under Section 3(3) of the A.P. Inams Abolition Act, 1956 supra became final and unchallenged by anybody including respondent No.4 temple. The Assistant Commissioner thereby in the earlier W.P.No.62 of 2012 supra filed counter saying the land does not belong to the temple. The High Court dismissed the writ petition in W.P.No.62 of 2012 (Ex.P7 order) holding said land does not belong to the temple and it became final with no appeal against it.

8. The further averments in the writ petition are that basing on the representation made by the persons, who are not connected with said

land, and obviously instigated by the petitioner in W.P.No.62 of 2012 supra, once again a complaint made to the District Collector, from which the Tahsildar submitted a report dated 10.02.2016 (Ex.P.9) and in that report the present impugned proceedings issued by including Survey No.152 of an extent of Ac.17.15 cents situated at Alluru Village at Serial No.16 in the list prepared under Section 22(A)(1)(c) of the Registration Act pertaining to Alluru Village by the Assistant Commissioner-respondent No.3. Respondent No.3 herein filed counter affidavit in W.P.No.62 of 2012 supra ought to have not included the subject property in the impugned list also for the reason that Gazette notification No.10 dated 24.08.1981 became final. Respondent No.4 temple is Section 6(c) classified temple under the provisions of the A.P. Endowments Act. Section 43 of the A.P. Endowments Act contemplates persons-in-charge of the temple shall file an application before the Assistant Commissioner for its registration containing all the particulars of movable and immovable properties of it. It is learnt that the subject property was never treated as temple property in the temple records. Merely because some wrong entries are made in three adangals (revenue records) the same cannot form a basis to contend that the property belongs to the temple. Admittedly the property is an inam property. A competent authority under the provisions of the Inams Abolition Act has conducted a due enquiry and issued Ryotwari Patta in favour of the petitioner's vendor (Lalithamma supra) and later issued Pattedar Passbook to her legal representatives and earlier notification No.10 dated 24.08.1981 not

included the land held by institution. However, the subsequent inclusion under the impugned list under challenge is thereby illegal.

9. It is further averred that the writ petitioner came to know of the Assistant Commissioner included the property of petitioner in the list prepared under Section 22(A)(1)(c) of the Registration Act and communicated to the Sub-Registrar, Ongole (respondent No.5). The writ petitioner filed a representation dated 21.04.2016 (Ex.P11) to the Commissioner of Endowments with these facts. However, the Commissioner of Endowments without considering the objections forwarded said list to the Commissioner & Inspector General (Stamps & Registration) Dept. vide proceedings letter in Rc.No.M2/9576/2016 dated 04.06.2016 (Ex.P1). The Assistant Commissioner (respondent No.3) communicated said list to the Commissioner (respondent No.2). Even before said list was communicated to the Commissioner (respondent No.2) the writ petitioner filed his objection petition on 21.04.2016. Respondent No.2 still failed to consider the objections in inclusion of the property of Ac.1.75 cents of the petitioner, which is part of Ac.17.15 cents of entire Survey No.152 of Alluru Village in the list by treated the property as that of respondent No.4 temple rather cannot treat so and having no other effective alternative remedy constrained to file the writ petition in seeking the prayer supra.

10. On 22.02.2017, the then Assistant Commissioner of Endowments V.Srinivas Reddy filed his counter affidavit stating the subject land as per Section 6(C) of the Endowments Act notified and

mentioned as “Held by the institution” and published in the District Gazette as per Form II of Section 3(3) of the A.P. Inams Abolition Act, 1956 in the Prakasam District Gazette No.12 dated 03.12.1979 where it is wrongly notified of District-Visakhapatnam, Taluk-Bhumunipatnam, Village-Krishnapuram and thereby an Errata notification was issued on 07.04.1980 correcting the same as Prakasam District, Ongole Taluk, Alluru Village. It was published in the Gazette No.10 dated 24.08.1981 wrongly as “is not held by institution” and an Errata was issued from the Tahsildar report dated 10.02.2016 of only change of village, taluk and district and no change of nature of land as is not held since “Held by the institution”. It is contended that the writ petition itself is not maintainable for effective alternative remedy otherwise to approach the Endowments Tribunal if at all to impugn the land does not belong to the temple and in wrongly recording as held by the temple or prohibited from registration. It is also stated in view of the Endowments Tribunal is there to approach, the writ petition is a bar as held by the Division Bench of this Court in W.A.No.500 of 2012 dated 09.10.2012.

11. It is also averred that because of the alternative remedy available under the Endowments Act the writ petition wont lie from the settled expressions given by the Apex Court in this regard including from (2003) 11 SCC 680, (2014) 1 SCC 603 and (2015) 4 SCC 204. It was also observed in **Guntur City House Construction Cooperative Society Limited v. The Tahsildar, Guntur Mandal** in

W.P.No.26566 of 2011 dated 18.01.2012 referring to Section 22(A)(1)(c) of the Registration Act, the writ petition was disposed of by left open to the writ petitioner to assail the correctness of legality of the proceedings of the Endowments Department of such inclusion in the prohibited list, to impugn under Section 87 of the Endowments Act before the Endowments Tribunal by referring to the expressions including of the Apex Court by dismissal of the writ petition as not maintainable. It is also averred that the petitioner is put to strict proof of the inam land was granted to the so-called vendors of the writ petitioner as personal inam or Bhatavarthi personal inam for entire land of Ac.17.15 cents in Survey No.152 of Alluru village since it is the land of the temple and recorded as such in the very gazette notification of Prakasam District dated 03.12.1979 as referred supra. Once such is the case, grant of any Ryotwari Patta to the so-called vendor of the writ petitioner if at all in the year 1981 as claimed does not arise, that too without even issuing any notice to the temple and the Department and any such Ryotwari Patta allegedly granted without notice is contrary to law under the Inams Abolition Act. Even the so-called Ryotwari Patta issued in the name of Atchakala Lalithamma instead in favour of the temple that too by ignoring the Gazette notification dated 03.12.1979 of the land held by institution. Once such is the case, the so-called counter affidavit filed in the earlier writ petition i.e., W.P.No.62 of 2012 by the then Assistant Commissioner is factually incorrect as if not held by the institution and no credence can be given to place reliance on it.

12. It is further averred that the Tahsildar, Kothapatnam Mandal in Rc.No.B/413/2015 from the enquiry and report dated 10.02.2016 clearly mentioned the property in Survey No.152 admeasuring Ac.17.15 cents belongs to Sri Kodanda Rama Swamy Vari Temple by also referring to the Gazette notification dated 03.12.1979 as held by the institution and by referring to the Errata Gazette No.10 dated 24.08.1981. It is thereafter the land mentioned as belongs to Achakala Lalithamma in procuring Form-VIII and patta number was even missing. The Adangals of Alluru village speaks the land belongs to Sri Kodanda Rama Swamy Temple. The writ petitioner V.Ramachandra Reddy himself during his period as Village Administrative Officer of Alluru Village entered the land as belongs to the temple. One Jetti Jalamma and Patibandla Krishna Murthy were cultivating the land and paying rents to the trust board of the temple and the trust board spending the amounts for performance of Utsavams in the temple. Achakala Lalithamma's husband Venkata Subbaiah Naidu and their family members were earlier acting as trustees of the temple as per the report of the Tahsildar supra dated 10.02.2016, same cannot be taken advantage to set up any claim against the temple much less to convert the land of the temple as if private land of the trustees and the same is liable to be set aside as held by this Court in Gurukul Trust's case in **Ayyappa Society v. Commissioner of Endowments**. The Endowments Department was not a party to W.P.No.42644 of 2015 and denies various adverse

allegations made therein and putting strict proof of the writ petitioner in this regard. Coming to Writ petition No.62 of 2012 filed by Kunapareddi Surya Prakash Rao against the present writ petitioner and the temple etc, the writ petition was disposed of in the absence of counsel for the writ petitioner. Any entering of name of the petitioner and his so-called vendors in the revenue record behind back of the Endowments Department and contrary to the District Gazette No.12 dated 03.12.1979 is unsustainable so also without referring to it the so-called counter affidavit of the then Assistant Commissioner as if not that of the temple without referring to it. It is since endowments land of the temple comes within prohibited lands from private alienation as per Section 22(A)(1)(c) of the Registration Act and thereby also from the report of the Tahsildar supra and from the Assistant Commissioner recommendation, the Commissioner rightly forwarded to the Commissioner & Inspector General, Stamps & Registration Department, in entering the list of prohibited lands from alienation having followed the procedure and in view of the above what are the objections filed not tenable in Commissioner forwarding to the Stamps & Registration Department. The Government followed the procedure before implementation of the amended Act 19 of 2007 and also the judgment of this High Court in W.A.No.232 of 2012, W.A.No.352 of 2013 and W.A.No.343 of 2015 & batch. It is also contended that even as per the amended Section 4 of the Act 16 of 2013 to the Endowments Act, no person shall be entitled to Ryotwari Patta in respect of any inam land given to a service holder or other

employee of an institution or endowment or a tenant having given permanent occupancy rights or any alienee or other person in any capacity. It is contended that when a question arises as to any property is an endowment property or private property, same has to be resolved under Section 87 of the Endowments Act earlier by the Deputy Commissioner and now by the Endowments Tribunal from the amended Act 2007 and the present dispute squarely covers under Section 87 of the Act and remedy of the petitioner is to approach the Tribunal. Further, there is a presumption under Sections 43 & 45 and 87(4) of the Endowments Act of the property is the endowment property for the person who claims as private property shall establish in discharge of the burden against the presumption. In view of the disputed facts to be resolved, the writ is not the remedy, but for to approach the Tribunal under Section 87 of the Act as also held in 1997 (1) ALD 171 (DB) by the Division Bench of this Court and as also held in 2012 (2) ALT 647 to approach the Endowments Tribunal. It is further averred that after the repeal of the A.P. Endowments Act 17/66 and from coming into force of the Endowments Act 30/87, till 1999 respondent No.4 temple used to be under the private committees administration as trustees under the Trust Board constituted by the Commissioner was on 06.04.1999 with the persons by name M.Subbamma, Achakala Venkata Subbaiah Naidu, P.Ramulu, Ramalingam Musalaiah and U.Venkata Ramanaiah, of whom Achakala Venkata Subbaiah Naidu was the elected Chairman of the temple. The report of Tahsildar dated 10.02.2016 addressed to the

District Collector also reveals that Inam 10(1) Register of Alluru Village for 1391 Fasli, as per I.A.No.6107/59 dated 21.09.1981 was altered from Inam to Seri and included into TD No.957 and Patta No.5431 in the name of Acchakolu Lalithamma, W/o. Venkata Subbaiah Naidu as if Pattedar and the Tahsildar clearly reported in his report dated 10.02.2016 of the entries made relating to Patta Nos.5430 & 5432 are in one ink whereas the entries relating to Page No.5431, TD No.957 is made with another ink. The petitioner and his vendors are chosen to create litigation to knock the temple land. The Full Bench of the High Court in W.A.No.343 of 2015 & batch referred supra by orders dated 23.12.2013 directed all authorities mentioned in the guidelines issued by the Stamps & Registration Department through Circular Memo No.G1/19131/2005 dated 14.09.2007 mentioned the procedure that shall be followed in respect of the lands held by the Government organisations. As per the said judgment, the Commissioner of Endowments is the authority to communicate the list of the properties of the religious and charitable institutions under Section 22(A)(1)(c) of the Registration Act and the judgment further speaks that it is open to the parties to a document if at all relevant property place in the list covered by clauses (a) to (d) of Section 22(A)(1) of the Registration Act, to apply for its deletion, to the concerned authorities as provided for in the guidelines and the burden lies on the person who claiming the properties as not that of the institution or endowment, but private. Even from that the Commissioner recommended the list in saying as the endowments

property the petitioner should have been filed the application before the Endowments Tribunal which is a proper remedy and hence, to dismiss the writ petition.

13. The reply affidavit, to said counter of respondent No.3, filed by the writ petitioner on 27.02.2017 speaks the self-same writ petition of the writ petitioner as if the land does not belong to the temple and should not have been included as the temple land of respondent No.4 for respondent No.4 cannot claim the said land as temple land even by relying upon the Gazette notification No.12 dated 03.12.1979 where the land in Survey Nos.152 and 521 of Alluru Village wrongly included and later by Gazette notification No.10 dated 24.08.1981 mentioned as “not held by the institution” and as such for Gazette notification No.12 dated 03.12.1979 no relevance. The lands are Bhatavarthi inam lands. As per the judgment of the Supreme Court in **Poliseti Pullamma v. Kalluri Rameswaramma** [AIR 1991 SC 604] nine kinds of inams were referred, of which Bhatavarthi inam granted to Brahmins and other religious persons for their personal maintenance. There is a distinction between inam granted to institution, services connected therewith and inam granted to Brahmins and other religious persons for their personal maintenance. Bhatavarthi inam is a personal inam. The writ petitioner denied about he prepared the entries in the four adangals showing the land as temple land. As per the judgment of the Supreme Court in **2014 (6) ALD 28 (SC)** in C.A.No.8605/2013 dated 02.07.2014 the adangal

entries do not convey title to the property, but for to collect land revenue. Atchakala Lalithamma or Prameelamma, said Pattedars filed revenue patta Fasli 1407 (year 1998) fixing later land revenue was abolished by the Government of A.P. in G.O.Ms.No.559, Rev. Department dated 31.07.1998. It was denied of Jetti Jamma as tenant paying rents on the land to the trust board members. The legal heir of Jetti Jamma by name Nallapureddy Anil Kumar Reddy filed third party affidavit denying of paid any amount to the trust board members by himself or his ancestors. The other allegations are denied by reiterating the original writ petition averments and also stated no other alternative remedy, but for the present writ as the claim is private land. Some more documents obtained under the Right to Information Act are otherwise all Xerox copies are with the so-called translations filed with the reply affidavit and even any of those not reflecting faslies, but for with different writings at page 216 as Fasli 1417 as if Achakala Lalithamma is personally cultivating the entire land which is even contrary to the earlier Adangal referred supra, enclosure with the original writ petition. Even any few tax receipts filed with this reply affidavit in the name of Atchakala Prameelamma or Lalithamma, those were subsequent to 1988-89. So far as the payment of cists is concerned, the mere payment of taxes is from mere entry in the Adangal. After that the writ petitioner filed two applications in I.A.No.1 of 2018 and I.A.No.2 of 2018 respectively of 19.02.2018 and 30.07.2018 in the writ petition to receive additional material which speaks the very Alluru Village for Survey No.152

inam patta No.957 Ac.17.15 cents from Page No.3 of the Register referred as part of Bhatavarthi inams in the names of Ganjam Venkata Ranga, Ganjam Rukminamma, Mulugu Veeresalingam, Mulugu Sangameswaraiah, Mulugu Kamakshaiah. The Re-survey & Settlement Register of Alluru Village Survey No.152 of Ongole Taluk at page Nos.272 & 273 a Xerox copy to the true extract for Survey No.152 of Ac.17.15 cents shown in the name of Mulugu Veeresalingam, Sangameswaraiah and another. The Joint Sub-Registrar, Ongole also shown issued at request of the petitioner under the Right to Information Act in December, 2017 in relation to Survey No.152 of Ac.17.15 cents particulars that mentions Patta No.957 Survey No.152 an extent of Ac.17.15 cents as Bhatavarthi stands in the names of Mulugu Veersalingam, Sangameswaraiah and Kamakshaiah for the Fasli 1373. The Tahsildar, Kothapatnam under the R.T.I. Act issued endorsement on 07.05.2015 of Alluru-Kottapatnam Inam statement not available in their office. As to service inams and endowment inams when applied under the R.T.I. Act on 18.04.2016 to the A.P. State Archives & Research Institute, Tarnaka stated having searched the Inam Fair Register and Inam B Register of Alluru Village not found, obtained from the Assistant Commissioner, Ongole, a copy of Section 25 Endowments Register of the temple of the year 1958 which refers the temple installed by one Kochuru Venkaiah Naidu and till 1958 January under his control and management and there were trustees by name Thota Bhujanga Rao besides Kochuru Venkata Krishna Rao Naidu, Koonapa Reddy Peda

Venkaiah, Koonapa Reddy Raghavulu and Achyakala Koteswara Rao Naidu during 1950 to 1958 and from 24.06.1958 Achyakala Koteswara Rao Naidu was the Chairman and it was by then under Nellore District of Kandaluru Taluk as Part of Oollapalem Village refers temple lands in Survey Nos.53, 564/1, 565/1, 465C of Villages Baginapalle, Pakala with Archaka and Survey No.607/1 & 607/2 of Pakala village with Bhajantrilu and Survey No.543 of Pakala village with dhobi. It also refers to the Patta/Inam statement of Patta Nos.656, 106, 277, 111, 293, 143, 108, 379 & 519 and the lands are in the possession of trustees. Section 43 Register of the temple opened on 26.08.2017 with single trustee mentions about the property at Binginapalli Survey No.53 of an extent of Ac.3.36 cents. After the death of earlier Archaka it is with present Archaka service in Survey No.465/C of an extent of Ac.0.72 cents also and various lands mentioned which include the present land of Alluru Village Survey No.152 of an extent of Ac.17.15 cents besides lands at Binginapalli, Pakala, Pelluru. It also mentioned entered in Section 43 Register the land in question concerned pursuant to the Tahsildar report dated 10.02.2016 referred above.

14. Respondent No.3 filed additional material which is Section 25 of Endowments Act, 1951 Property Register, copy that is already filed as additional material by the writ petitioner discussed supra besides copies of the some of the documents among exhibits P1 to P10 filed with the writ petition discussed supra.

15. The writ petitioner also with W.P.M.P.No.38157 of 2016 dated 12.09.2016 filed another set of additional material which are also only the Xerox copies which shows as per Section 3(2)(a) of The Andhra Inams (Assessment) Act 1955 for the land assessment in Form I draft notification from the Collector/Revenue Divisional Officer where copies under the R.T.I. Act obtained in 2016 on 28.07.2016. However, there are over writings including the words Bhatavarthi inam at the top of page 1 in between column 3 to 6 at the top. No doubt, at page 2 the Patta No.957 Survey No.152 an extent of Ac.17.15 cents mentioned. At page 3 there is also over writing of service inam. At last page 6 there is mention with over writing as to Chakali inams encroached or unlawfully alienated. So far as some copies of Adangals filed for Survey No.152 are concerned, on the patta number there are over writings and striking off and again insertion of 5431 and struck off and rewriting there were originally the name of Achchakala Lalithamma, w/o. Venkata Subbaiah Naidu as pattedar and owner for Ac.17.15 cents that was rounded off and other persons names included, it appears in 2014 by referring to document No.7332/2013 for Ac.1.75 cents as Gonugunta Srinivasulu and there is also further over writing of as per Kothapatnam Tahsildar proceedings in Rc.No.211/B/07 with incomplete particulars further without referring as to what extent. Another Xerox copy filed with over writings as if the certified copy of Tahsildar, Kothapatnam dated 25.06.... (year not clear) and it refers to I.A.No.6107/59 dated

21.09.1981 order. The claim thereby of the writ petitioner is it is the Bhatavarthi personal inam of the vendor's vendor. There is no document filed as to the original persons who were given Bhatavarthi inam even taken as personal inam executed any document in favour of Achikala Lalithamma or her husband and any others. It is not even shown out of three or four persons recorded as persons of Bhatavarthi inam as to who sold, when and by what document.

16. The Inam Register refers the land noted in the name of three persons as Bhatavarthi. There could be any possibility of those persons agreeing endowment by dedication for which intention and giving orally even enough with no document necessary, leave apart they were servicedars if any or not to decide. As held by the three Judge Bench of the Apex Court in **Pushpagiri Math v. Kopparaju Veerabhadra Rao** [1996 (5) JT 590=5] Scale Page 8 giving of property belongs to an institution viz., Pushpagiri Math as Bhatavarthi inam to Sankaracharya who was serving as Peetadipathi of the Math to render service in the Math; once the service is to the institution/Math, the question of granting decree for declaration of title and injunction in favour of the Bhatavarthidhar supra and against the real owner Math, does not arise was when held by the First Appellate Court, the reversal judgment of the High Court was found fault by the Apex Court. No doubt, it referred earlier two Judge Bench expression in **Peddinti Venkata Murail Ranganath Desika Iyengar v. Government of A.P.** [JT 1996 (1) SC 234]. However, the

Inams Abolition Act amendment brought into force as referred supra which says no patta can be granted for any land of the institution other than to it even it was in the possession of servicedar tenant encroacher or other person. Once such is the case, there is no any source of title for said Achikala Lalithamma or her husband or any of the ancestors of them. As per the documents relied by the writ petitioner in I.A.Nos.1 & 2 of 2018 referred supra, Achikala Lalithamma's husband was one of the trustees even from 1957-58 twice and it also shows from Section 25 Register of the Endowments Act, 1951 of since prior they were the trustees. While managing the property of the temple, even they were in possession and even their names entered for the purpose of management of the lands, from the death of the husband of said Lalithamma who was the trustee the entering of name of Lalithamma cannot confer on her any right over the property. Even taken for arguments sake that too when Achikala Lalithamma and her husband not claiming as legal representatives of the original Bhatavarthidars, but for if at all to claim as alienees for any third-party alienation of any property over Rs.100/- must be by registered document and in the absence of showing any right and title including with no document to say purchase in 1940, that too when Lalithamma's husband and family members were acting as trustees of the temple and they have no title over the property, any obtaining of Ryotwari Patta for the first time under the Act 37 of 1956 only in the year 1981, that too when the property shown by Gazette notification dated 03.12.1979 under the Endowments Act as the temple property

without even notice to the temple and without enquiry, the question of giving any Ryotwari Patta under Section 7 of the Inams Abolition Act, 1956 by the Inam Tahsildar does not arise. Any entry as if a Form VIII is a Ryotwari Patta no way suffice in the absence of record showing any *suo moto* proceedings initiated by the Inam Tahsildar on any complaint/application for enquiry to issue Ryotwari Patta made, from which after notices to the persons interested and being effected and field inspection and enquiry as per the procedure established by Section 7 of the Act and the rules made thereunder, an order has to be passed and Form VIII to be issued only pursuant to the order, only after publication of notice in a prescribed format with reasons and after conducting of enquiry from hearing of persons/institutions interested/effectuated as per Sections 3, 4, 7 and 14 of the Act. The Apex Court's expression in **Poliseti Pullamma v. Kalluri Rameswaramma** [AIR 1991 SC 604] only relates to the Estates Abolition Act and not the Inams Abolition Act and the provisions and the procedure are undisputedly entirely different under both the Acts including as to the entitlements and nature of lands. Thus mere showing a format in Form VIII with any name will not be suffice in the absence of any said enquiry proceedings to claim any Form VIII of 1981 for the first time from the Xerox copy filed as if inam land converted into Ryotwari Patta in 1981.

17. Having regard to the above and that too when the record clearly shows the petitioner as V.R.O. made entries of the land belongs to the

temple originally as referred and discussed supra, it is not a case as if there is no cloud to the title of the so-called vendors of the petitioner. Once there is a cloud and once the property was originally inam land and nothing to show any private inam land succeeded by the so-called vendors of the petitioner much less purchased from the Bhatavarthi inamdars, they cannot claim much less by the petitioner under the guise of so-called Achikala Lalithamma, W/o. Venkata Subbaiah Naidu for the first time in 1981 allegedly obtained any Ryotwari Patta which is not supported by any material as to what is the order for such a grant of patta and after notice as to whom the parties interested and with what reasons to give any sanctity to it with conclusiveness relying upon the expression of the Apex Court in **Vatticherukuru Village v. Nori Vekatrama Deekshithulu** [1991 SCC Supl. (2) 228], for his claim thereupon and to say there from in 2010 he obtained any non-possessionary Sale Agreement-cum-GPA. A non-possessionary sale agreement will not give right of possession and a GPA will not give independent right even. It clearly shows the petitioner never in possession of the property and the record shows the temple is in possession of the property from the Adangals also and the Achikala Lalithamma or the legal representatives of Lalithamma from whom for Ac.3.50 cents non-possessionary Sale Agreement-cum-GPA allegedly obtained by the petitioner with others for the first time in 2010 even to prove it, did not choose to come nor implead in the writ petition much less with any claim to support the case of petitioner even the necessary parties if at all to adjudicate the *lis* covered by the writ,

leave about there is factual dispute which requires much oral evidence and involve several complicated questions of fact and from the alternative efficacious remedy available to adjudicate for fact finding by the Courts and Tribunals that too when there is a provision under Section 87 of the Endowments Act to approach the Endowments Tribunal where the Tribunal constituted and functioning from Section 162 of the Amended Act 2007-08 with the rules made thereunder entitled to adjudicate any question, matter or other dispute and this question or matter or dispute squarely falls within the exclusive jurisdiction of it. The remedy of the petitioner is thus to approach the Endowments Tribunal and not by writ petition.

18. Having regard to the above and with the above facts and from the legal position and without expressing any opinion on merits, this Writ Petition is disposed of rather than dismissal by left open to the writ petitioner to invoke the available efficacious alternative remedy to determine in resolving the complicated and disputed questions of fact involved and discussed in detail supra uninfluenced by this order. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

28.09.2018
MVA