



IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

**HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE D.V.S.S. SOMAYAJULU**

WRIT APPEAL No.34 of 2022
(Proceedings through Physical Mode)

The Commissioner, Endowments Department,
A.P., Gollapudi, Vijayawada, Krishna District ... Appellant

Versus

Kandimalla Sairam, S/o. Venkaiah,
Age: 38 years, Occ: Agriculture,
R/o. Vatticherukuru (V&M), Guntur
District and others ... Respondents

Counsel for the appellant : G.P. for Endowments
Counsel for respondent No.1 : Mr. D.V. Sasidhar
Counsel for respondent No.4 : G.P. for Registration & Stamps

ORAL JUDGMENT

Dt: 20.06.2022

(Prashant Kumar Mishra, CJ)

This intra-court appeal has been preferred against the order dated 25.08.2021 passed by the learned single Judge allowing W.P.No.6370 of 2021, declaring Memo No.M2/19021(35)/30/2019 dated 25.02.2021 as illegal and violative of Articles 14, 21 and 300-A of the Constitution of India, consequently setting aside the same and directing the 2nd respondent therein (appellant) to delete the properties of the writ petitioner (respondent No.1) from the prohibitory property list under Section (A)(1)(c) of the Registration Act, 1908 (for short, "the Registration Act").

2. A private choultry, viz. *Pulladigunta Satram*, Pulladigunta Village, Vatticherukuru Mandal, Guntur District, was constructed in the year 1820 by one

Sri Katrapati Seshachalam, ancestor of Katrapati Anasuyamma, Katrapati Rama Rao and Katrapati Balakrishnamohan in Sy.No.445 of Pulladigunta Village and own property in Sy.No.14 and other survey numbers of Vatticherukuru Village and Mandal, Guntur District. In the year 1840, Sri Raja Jaganna Manikya Rao, the Zamindar of Raichur made a rent-free personal grant of about Ac.40.00 cents of dry land as reward to Sri Katrapati Seshachalam, the founder of the choultry to service and run the choultry from his personal funds. Since the time of grant, he was in possession and enjoyment of the same during his lifetime and the same was personal *inam*, which is not charitable and alienable. During his lifetime, Katrapati Vasudeva Parabrahmam maintained the choultry, thereafter Katrapati Sesha Chalapathi Rao maintained it and subsequently, legal heirs are maintaining the same.

3. When the Endowments Department proposed to interfere with the possession of the land of the choultry of the Katrapati family, the legal heirs of the founder Sri Katrapati Seshachalam preferred O.A.No.56 of 1977 under Section 77 (present Section 87 as per the Endowments Act, 1987) of the Endowments Act, 1966 (for short, 'the 1966 Act') before the Deputy Commissioner, Endowments Department, for declaration that the choultry is a private choultry and the land admeasuring Ac.14.14 cents in Sy.No.14 and 445 of Pulladigunta Village, Vatticherukuru Mandal, Guntur District, is not a charitable endowment. The O.A. was dismissed on 20.08.1979. However, the legal heirs of the founder preferred O.S.No.60 of 1979 before the District Judge, Guntur, which was dismissed on 19.08.1983 against which they preferred A.S.No.1718 of 1989 in the High Court of Judicature, Andhra Pradesh at Hyderabad. The said appeal was allowed on 17.11.1995 by setting aside the judgment dated 19.08.1983 of the District Judge, Guntur in O.S.No.60 of 1979.

The said judgment has attained finality as no S.L.P. was preferred by the defendants, including the Deputy Commissioner of Endowments, Guntur. The writ petitioner purchased an extent of Ac.3.00 cents out of the subject property involved in A.S.No.1718 of 1989 in Sy.No.14 of Vatticherukuru Village and Mandal, Guntur District from Katrapati Lakshmi Narasimha Rao, legal heir of the founder Sri Katrapati Seshachalam, through registered sale deed No.2981 of 2015 dated 17.08.2015. When the writ petitioner wanted to alienate the property, it was informed that the property is kept under prohibitory list under Section 22-A(1)(c) of the Registration Act.

4. The writ petitioner preferred the writ petition challenging the inclusion of the property in the list of prohibited properties, *inter alia*, contending that the 2nd respondent issued Memo No.M2/19021(35)/30/2019 dated 25.02.2021, rejecting his application seeking deletion of the property from the list of prohibited properties, on the ground that the choultry was published under Section 6(c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'Act 30 of 1987'), as such, the choultry is a public choultry along with its properties and the publication dated 12.11.1987 under Act 30 of 1987 was done in accordance with law, which can be challenged only before the Endowments Tribunal. According to the writ petitioner, when once proceedings attained finality in A.S.No.1718 of 1989, there is no question of again invoking Section 6(a) of Act 30 of 1987, in view of Section 160 of Act 30 of 1987.

5. On the other hand, it is the stand of the State authorities that once the property is notified under Section 6(a) of Act 30 of 1987, the writ petitioner has

to challenge the same before the jurisdictional Tribunal under Section 87 of Act 30 of 1987.

6. The learned single Judge has allowed the writ petition on the ground that re-registration of the choultry under Section 6(c) of Act 30 of 1987 subsequent to passing of Act 30 of 1987, takes away the writ petitioner's right over the property; therefore, the action is arbitrary and illegal. The learned single Judge took note of the contention of the learned Government Pleader for Endowments on the basis of 2(3) of Act 30 of 1987 that even the grant in favour of Katrapati Seshachalam being the founder of the choultry, is deemed to be a grant in favour of the institutions though regarded as personal grant in the name of an individual and held that though such interpretation is permissible, however, in view of the judgment of this Court in A.S.No.1718 of 1989, the said contention of the learned Government Pleader is unsustainable.

7. Having heard learned counsel for the parties at length, we are in agreement with the findings recorded and observations made by the learned single Judge for the simple reason that, once right, title and interest of the parties in the suit property has been decided by the High Court in A.S.No.1718 of 1989, the same would bind the parties and it cannot be reopened in a separate proceedings by taking recourse to the provision contained in Section 6(1) of Act 30 of 1987. It is also to be kept in mind that Section 77 of the Endowments Act, 1966 is in *pari materia* with the present Section 87 of Act 30 of 1987. The earlier suit was preferred by the legal heirs of the founder Sri Katrapati Seshachalam when the Endowments Tribunal dismissed the claim over the property in exercise of powers under Section 77. Now, the learned Government Pleader for Endowments wants the writ petitioner to be relegated

to the same position by taking recourse to Section 87 of Act 30 of 1987. Once *pari materia* provisions of the old Act have been invoked and the litigation has eventually been decided in favour of the legal heirs of the founder, it is wholly improper and unfair to direct the writ petitioner again to take recourse to the same exercise.

8. Learned Government Pleader for Endowments has referred to Section 160 of Act 30 of 1987 to argue that preparation and publication of list of charitable and religious institutions and endowments under Section 6 of Act 30 of 1987 is not open to challenge in writ proceedings, because provisions of Act 30 of 1987 have overriding effect notwithstanding any compromise, agreement, scheme, judgment, decree or order of a Court, Tribunal or other authority. This overriding clause contained in Section 160 of Act 30 of 1987 would come to the rescue of the Endowment authorities when the list is prepared for the first time, but the present is a case where same list was challenged by the legal heirs of the founder, invoking Section 77 of the Endowments Act, 1966. Therefore, even for the purposes of Section 160 read with Section 6 of Act 30 of 1987, the previous judgment of the Court in A.S.No.1718 of 1989, which emanated from exercise of power under Section 77 of the Endowments Act, 1966, would estop the authorities in challenging the same in independent proceedings.

9. Judging the matter from another angle, even if the writ petitioner is relegated to invoke Section 87 of Act 30 of 1987, the judgment in A.S.No.1718 of 1989 would bind the Endowments Tribunal and the end result would be the same. When once the Civil Court having declared that the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act 1966, are not applicable to the subject property and the proceedings initiated by the Deputy



Commissioner, Endowments, Guntur are without jurisdiction, it will be an exercise in futility to reopen the matter.

9. In view of the above discussion, we find no substance in the appeal preferred by the State. Consequently, the intra-court appeal deserves to be, and is hereby, dismissed, confirming the order passed by the learned single Judge. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ
MRR

D.V.S.S. SOMAYAJULU, J