

(2001) 01 AP CK 0051
In the Andhra Pradesh High Court
Case No : CC No. 1026 of 2000

K. Harinatha Reddy and others	Vs	APPELLANT
B. Rama Rao and others		RESPONDENT

Date of Decision : 20-01-2001

Acts Referred:

Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 — Section 11, 2(A), 3, 4, 5(2)
Civil Procedure Code, 1908 (CPC) — Order 16 Rule 11, Order 47 Rule 1
Constitution of India, 1950 — Article 136, 226

Citation : (2001) 2 ALD 116 : (2001) 2 ALT 237

Hon'ble Judges : R. Ramanujam, J; N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. G. Veera Reddy, for the Appellant; Advocate-General, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—Since the recall petition and the review petition relate to the same subject matter viz., to recall and review the judgment passed by this Court in Writ Petition No.21859 of 1996, dated 1-3-2000, they are clubbed together and disposed of along with the above contempt case by this common order.

2. For purpose of convenience the parties are referred to as arrayed in the writ petition.

3. The petitioners have filed the above writ petition seeking a writ of mandamus directing the respondents to grant ryotwari patta u/s 7 of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (hereinafter referred to as "the Act") in respect of the land in S.No.246 of Vallerigunta patteda in Tiruchanur village, Tirupati Rural Mandal.

4. The whole dispute revolves around S.No.246 of Vallerigunta Patteda in Tiruchanur village. According to the writ petitioners, the lands in S.No.246 are inam lands and their late father K.R. Krishna Reddy purchased the said lands

from the inamdars, viz., M. Singarachari etc., under a registered sale deed dated 2-2-1970 and they being the legal heirs of late K.R. Krishna Reddy are entitled for ryotwari patta. According to the official respondents, the said S.No.246 is a tank poramboke and thus it is vested with the Government. After hearing the arguments advanced on both sides, this Court allowed the writ petition. Aggrieved by this, the Government preferred SLP before the Supreme Court which was dismissed. Subsequently, the writ petitioners filed the contempt case alleging that the respondents flouted the order passed by this Court in the writ petition. The respondents also filed review and recall petitions.

5. Before dealing with the contempt, review and recall petitions, it is necessary to narrate a few facts as averred in the affidavit filed in support of the Writ Petition No.21859 of 1996 as follows:

The petitioners are the legal heirs of one K.R. Krishna Reddy. Originally, the land in S.Nos.243 to 260 of Vallerigunta patteda in Tiruchanur village were inam lands and M. Singarachari and others were the Inamdars. Under a registered sale deed, dated 2-2-1970, K.R. Krishna Reddy purchased the lands in the said survey numbers from M. Singarachari and other Inamdars. During the year 1979, the said lands were partitioned by a decree of the civil Court between K.R. Krishna Reddy and others. In the said partition, the land admeasuring Ac.41-61 cents in S.No.246 of Vallerigunta patteda in Tiruchanur village fell to the share of K.R. Krishna Reddy. The said K.R. Krishna Reddy died in the year 1984 leaving behind the petitioners who are his legal heirs.

6. Vide notifications, dated 3-9-1984, 9-8-1985, 27-12-1985, 4-4-1986 and 19-7-1995 the Deputy Tahsildar in exercise of powers under sub-section (3) of Section 3 of the Act passed an order notifying the land in an extent of Ac.33.00 in S.No.246 and also other lands as inam lands. Before publication of notifications, various persons obtained ryotwari pattas, but the said pattas were set aside by the Revenue Divisional Officer, Tirupati, and a de novo enquiry was ordered. Challenging the same, Writ Petition Nos.10021 of 1990 and 15961 of 1990 were filed, which were dismissed by the learned single Judge holding that the order passed by the Revenue Divisional Officer is correct. The order of learned single Judge was confirmed by the Division Bench of this Court in Writ Appeal Nos.1220 of 1993 and 1221 of 1993 by judgment, dated 29-1-1994.

7. Pursuant to the order of the Revenue Divisional Officer, the Deputy Tahsildar, Inams, first respondent, proceeded with the enquiry and granted ryotwari pattas to various persons including K.R. Krishna Reddy. The first respondent vide proceedings S.R, No.39/96 and S.R. No.40/96, dated 30-1-1996, held that late K.R. Krishna Reddy was in lawful possession and enjoyment of the land as on 7-1-1948 in respect of land in S.No.246. It was also held that the Inamdars were in exclusive possession and subsequently K.R Krishna Reddy came into possession of the said land and also observed that as on the date of vesting, the land in S.No.246 of Vallerigunta patteda in Tiruchanur village was not in possession of the tenants. Except the legal representatives of K.R. Krishna

Reddy, no one claimed ryotwari patta in respect of land in S.No.246 and as on the date of coming into the force of the Act the Inamdar was in possession of land in S.No.246. According to sub-section 2 (B) of Section 4 of the Act, any tenant who is in possession of the land on 7-1-1948 shall file an application before the Revenue Divisional Officer (Revenue Court) for a declaration that he is or was a tenant on 7-1-1948 and has to obtain a declaration to that effect. If no application is filed u/s 5(2) of the Act, the Inamdar will be entitled to ryotwari patta in respect of that land.

8. As mentioned above, no tenant had filed an application claiming that he is entitled to 2/3rd of the land. The enquiry u/s 7 of the Act is controlled by Section 4, which means that the tenant seeking ryotwari patta u/s 7 must obtain a declaration u/s 5 of the Act and then only Section 4 will come into operation. In the absence of declaration u/s 5 of the Act, Section 4 cannot be made applicable with regard to entitlement of ryotwari patta.

9. As the first respondent in his proceedings S.R. No.39/96 and S.R. No.40/96, dated 30-1-1996, held that Inamdars were in possession of the land as on 7-1-1948, the petitioners being legal heirs of the purchaser viz., late K.R. Krishna Reddy, who purchased land from Inamdars, are entitled to ryotwari patta.

10. Grant of ryotwari patta u/s 7 of the Act shall be preceded by entitlement and declaration and in their absence, the Inamdars are entitled for ryotwari patta as contemplated under subsections 2(B) and (C) read with Section 4 of the Act. Even if no patta is granted u/s 7, still they are entitled to ryotwari patta. As the petitioners are in continuous enjoyment and possession of the land, non-grant of ryotwari patta will not disentitle or disable them to seek such a relief. Further, the provisions of the Act coming into force does not defeat the claim in respect of the Inamdars as the Act contemplates not only abolition but also conversion of land into ryotwari. Sections 5, 7, 8 and II of the Act clearly indicate that the Inam tenure continues till the grant of pattas.

11. As late K.R. Krishna Reddy was in possession and enjoyment of the land, even before the Act coming into force on 7-1-1948, he was entitled to ryotwari patta.

12. Ignoring the petitioners' entitlement respondents have taken steps to deny their rights and have even taken steps to dispose of the land in S.No.246 for the purpose of construction of houses for the employees of the Revenue Department of Chittoor District. Thus averring, the petitioners sought that ryotwari patta u/s 7 of the Act be granted in respect of land in S.No.246 of Vallerigunta patteda in Tiruchanur village, Tirupati Rural Mandal.

13. On the other hand, the stand taken by the official respondents was that late K.R. Krishna Reddy never purchased land; that the Inamdars were never in possession of land in S.No.246 and that subsequently K.R. Krishna Reddy did not continue to be in possession as on the date of vesting. According to the respondents, nobody was in possession of the land in S.No.246 and it was tank

poramboke. Hence no one was entitled to patta. According to the respondents, publication u/s 3(3) of the Act was made in respect of S.Nos.243 to 260 during the year 1984. In respect of land in S.No.246, no notification u/s 2(A) of the Act was made on 13-9-1984 declaring that the said land is a tank poramboke, which has become final, and hence, the question of considering petitioners claim does not arise. With regard to the allegation that in respect of other survey numbers, pattas were granted but not in respect of S.No.246, it was stated that the grant of pattas in respect of other survey numbers have been challenged before the Revenue Divisional Officer, who is the appellate authority under the Act and who in turn remanded the matter to the first respondent for further enquiry. Aggrieved by the order of the Revenue Divisional Officer, Tirupati, Writ Petition Nos. 10021 of 1990 and 15961 of 1990 and 7048 of 1991 were filed before this Court. The said writ petitions were dismissed by the learned single Judge on 30-7-1993 against which Writ Appeal Nos. 1220 of 1993 and 1221 of 1993 were preferred. The Division Bench by its judgment, dated 29-1-1994, disposed of the appeals directing de novo enquiry. Thereafter, the first respondent had conducted enquiry and passed orders on 12-3-1999 confirming that the land in S.No.246 is a tank poramboke and as such vested in the Government. The said proceedings of the first respondent are not challenged by the petitioners but other persons have filed appeal against the same before the Revenue Divisional Officer. In para 5 of the counter-affidavit the first respondent admitted that he had granted ryotwari pattas by an order, dated 10-1-1996, in S.R. No.39/96 and S.R. No.40/96 in respect of the land in S.No.243 and other survey numbers and not in respect of S.No.246. The said order was challenged and the appeals are pending before the appellate authority. Some applications seeking pattas in respect the above survey numbers are also pending before the first respondent. It was admitted by the respondents that earlier notification was issued u/s 3(3) of the Act stating that lands in Vallerigunta patteda are inam lands and that out of an extent of Ac.41-61 cents in S.No.246, Ac. 18-00 cents was notified on 3-9-1984 and Ac.15-00 cents was notified on 27-12-1985. The first respondent on noticing the mistake issued errata in respect of S.No.246 vide notification, dated 3-2-1986 showing that S.No.246 in an extent of Ac.41-61 cents is a tank poramboke and in respect of notification, dated 3-9-1984, in an extent of Ac.18-00 cents, the Mandal Revenue Officer had filed an appeal before the Assistant Collector, Tirupati, who is the appellate authority. The appellate authority set aside the decision of the first respondent, the Inams Deputy Tahsildar, by an order, dated 9-6-1987. Challenging the same, Writ Petition Nos.2661 of 1987 and 7667 of 1987 were filed which were allowed by this Court by an order, dated 22-12-1987, against which Writ Appeal Nos.941 of 1988 and 1070 of 1988 were preferred. The said writ appeals were disposed of on 13-4-1992 with a direction to the Inams Deputy Tahsildar that before passing orders u/s 5(3) of the Act, he has to issue notices to the parties. Pursuant, to the same, the first respondent conducted an enquiry and declared the entire extent of Ac.113/67 1/2 cents as communal poramboke called "Peddacheruvu" falling u/s 2 (A) of the Act by an order, dated 11-5-1993. However, the enquiry in respect

of S.No.246 could not be conducted as several writ petitions and writ appeals were pending before this Court. In respect of notification, dated 27-12-1985, concerning Ac.15-00 in S.No.246, it is stated that the first respondent issued errata in the Gazette, dated 3-2-1986, as the said S.No.246 is tank poramboke and as it was inadvertently published as "inam dry". Further, the land in S.Nos.243 to 260, totalling Ac. 143-72 cents, is in Vallerigunta patteda, which is part of Tiruchanur village and K.R. Krishna Reddy claimed the entire extent of land on the ground that he purchased the same through sale deed, dated 2-2-1970 from the original Inamdars. The said claim of late K.R. Krishna Reddy was rejected by the Inams Deputy Tahsildar by an order, dated 15-7-1983, in IDT No.1/83, holding that he was already granted ryotwari patta for 1/3rd share. Aggrieved by the same, K.R. Krishna Reddy, filed appeal before the Revenue Divisional Officer, Tirupati, and also filed Writ Petition No.8580 of 1993, which was disposed of by this Court on 25-8-1986 with a direction to the Revenue Divisional Officer to dispose of the appeal u/s 7(2) of the Act. The appellate authority passed an order, dated 30-6-1990, allowing the appeal and remanded the matter to the first respondent for dc novo enquiry. While remanding, the Revenue Divisional Officer observed that ryotwari patta issued for an extent of Ac.70-88 cents is invalid. When things stood thus, T. Rajaram and five others aggrieved by the order of the Revenue Divisional Officer, dated 30-6-1990, filed Writ Petition No.10021 of 1990. Likewise, P. Subbaraya Pillai and seven others also filed Writ Petition No.15961 of 1990. M/s. Estage Hotels, Madras, also filed Writ Petition No.7048 of 1991 on the ground that they purchased a portion of the land from K.R. Krishna Reddy, who died when Writ Petition No.8580 of 1993 was pending before this Court. The legal heirs of KR. Krishna Reddy gave General Power of Attorney to T.C. Munaswamy Naidu, who sold some lands to M/s. Estage Hotels, Madras. One Smt. Hema Varadarajan was impleaded in Writ Petition No.10021 of 1990 claiming "Vallerigunta patteda" in an extent of 5/8th share on the ground that she is the heir of one Vangipyratn Srinivasa Dikshithulu of Tiruchanur. This Court by its order, dated 30-7-1993, dismissed Writ Petition Nos.10021 of 1990, 15961 of 1990 and 7048 of 1991 with an observation that the first respondent shall dispose of the remanded case within six months. Accordingly, on 22-10-1993 paper publication was effected in the daily news paper "Andhra Jyothi" calling for objections. T. Rajaram and five others filed Writ Appeals 1220 of 1993 and 1221 of 1993 against the order in Writ Petition No.10021 of 1990 and the same were dismissed by a judgment, dated 29-1-1994, with a direction to the first respondent to dispose of the remanded case by giving wide publicity. Following the same, paper publication was caused on 13-4-1995 and 10-6-1995 calling for objections in respect of lands in Vallerigunta Patteda. The first respondent passed orders on 12-3-1999 holding that the land in S.No.246 of Tiruchanur village is not inam land but it is a communal land classified as tank poramboke. The earlier proposal for conversion of the said land into house-sites were subsequently dropped. In view of Sections 2(A) and 7(A) of the Act, ryotwari patta in respect of the land vested in the State cannot be granted. Thus averring, the respondents sought that the petition be

dismissed.

14. In the reply-affidavit filed by the writ petitioners it was contended that the claim of the petitioners in an extent of Ac. 18-00 cents cannot be rejected as against the order passed by the first respondent u/s 3(3) of the Act, that the appeal filed before the appellate authority was also rejected and this Court set aside the order of the appellate authority, dated 9-6-1987, and directed the respondents to initiate action u/s 7 of the Act for grant of ryotwari patta to an extent of Ac. 18-00 cents in S.No.246. In Writ Appeal Nos.941 of 1988 and 1070 of 1988, this Court held that the view taken by the first and second respondents in respect of land in an extent of Ac. 18-00 cents in S.No.246 is covered by Section 2(A) of the Act has no merit. As far as the extent of Ac.15-00 cents in the same S.No.246 is concerned, the same was notified as inam land by the first respondent by passing an order u/s 3 (3) of the Act in the Gazette on 27-12-1985. The same was not challenged before any appellate authority. The said Ac.15-00 cents became inam land for which the petitioners are entitled for ryotwari patta. The order passed by the first respondent on 12-3-1999 holding that the land in S.No.246 is a tank poramboke is contrary to the earlier decisions of this Court in Writ Petition No.2661 of 1987 and 7667 of 1987 and Writ Appeal Nos.1070 of 1988 and 941 of 1988 wherein this Court directed the first respondent to pass reasoned order u/s 3 (3) of the Act. It is further averred that the order of the first respondent, dated 12-3-1999, is contrary to the direction given by the Division Bench of this Court in Writ Appeal Nos.1220 of 1993 and 1221 of 1993, dated 29-1-1994. The first respondent passed orders on 30-1-1996 pursuant to the directions in Writ Appeal Nos.1220 of 1993 and 1221 of 1993 granting ryotwari patta to various survey numbers, but consideration of granting ryotwari patta in respect of S.No.246 could not be taken up as there were interim directions granted by this Court on 10-11-1995 in WPMP No.31256 of 1995 in Writ Petition No.253 73 of 1996 wherein Narasimha Sastry claims that he has got ryotwari patta in respect of S.No.246 and this Court ordered the first respondent not to hold enquiry in respect of S.No.246 till the disposal of the writ petition. The said writ petition was disposed of on 10-6-1996. It is further averred that the land in S.No.246 was divided -into four parts out of which Ac.32-26 cents of land was claimed by the employees working in the Revenue Department of Chittoor District and that in the counter-affidavit, filed by the Mandal Revenue Officer, the remaining area in the same survey number is available for house sites. Further, from the counter-affidavit filed by the Mandal Revenue Officer in Writ Petition No.3032 of 1996, it is clear that there is no tank in S.No.246. One more circumstance, according to the petitioners, is that a number of applications were dismissed except the application of the petitioners for ryotwari patta and the said application is still pending and thus they are entitled to ryotwari patta u/s 7 of the Act.

15. After hearing the arguments advanced on both sides and referring to some of the relevant provisions of Sections 2(A), 3, 4, 5 and 7 of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, this

Court allowed the Writ Petition No.21859 of 1996 on 1-3-2000 directing the respondents to issue ryotwari patta u/s 7 of the Act in respect of the land claimed by them in S.No.246 of Vallerigunta Patteda in Tiruchanur village, Tirupati Rural Mandal, forthwith.

16. Challenging the said order, the official respondents filed SLP before the Supreme Court with the following questions of law:

(1) Whether the ryotwari patta granted by the High Court in writ petition to the respondents u/s 7 of the A.P. Inams Abolition Act, 1956, is a valid one under the law?

(2) Whether the ryotwari patta granted by the High Court in writ petition to the respondents is opposed to the material on record and is, therefore, unsustainable?

(3) Whether the ryotwari patta granted by the High Court in writ petition to the respondents for Government lake and communal land is justified and sustainable under the law?

(4) Whether the nature and character of the land in question is conclusively and finally determined already by the Inams Deputy Tahsildar in a decision, dated 16-11-1983, declaring the Vallerigunta tank in S.No.246 as communal poramboke falling u/s 2(A) of the A.P. Inams Abolition Act, 1956, against which decision (published in the District Gazette, dated 3-9-1984, at page No.20) no appeal was preferred by anyone and, there, it became final, and thus the present order of the High Court granting a ryotwari patta is unsustainable in law?

(5) Whether the impugned order of the Division Bench of the High Court is opposed to other earlier Division Bench orders of the High Court and, therefore, unsustainable?

17. In the special leave petition, filed by the respondents in the writ petition, the Supreme Court delivered the following order:

"The SLP is dismissed".

18. Subsequently the writ petitioners have filed this Contempt Case No.1026 of 2000 against the respondents for not issuing ryotwari patta in favour of them u/s 7 of the Act in respect of the lands claimed by the writ petitioners in S.No.246 of Vallerigunta Patteda in Timchanur village, Timpati Rural Mandal, forthwith in spite of the direction given by this Court in the writ petition.

19. In the affidavit filed in support of the contempt case the writ petitioners reiterated the averments made in the writ petition. It is further stated that the RDO passed an order on 10-7-2000 in ROG/1348/ 96 ordering de novo enquiry in respect of S.No.246 on the ground that the staff of the Revenue Department were deprived of house-sites. According to them this is clear violation of the orders of this Court dated 1-3-2000 passed in the writ petition. In the appeal in SR. No.23/96 filed by the Police Co-operative House Building Society, the 1st

respondent held that the purchase made by the said society is not valid. The society never disputed the title of the Inamdars or that of late K.R. Krishna Reddy before any authority. It is further submitted that the RDO could have summoned the file in SR No.45/52 before passing the order from the office of 3rd respondent wherein the names of Inamdars were found. They lastly submitted that passing of the orders dated 10-7-2000 by 2nd respondent-RDO instead of complying with the directions given by this Court in WP No.21859 of 1996 dated 1-3-2000 which was confirmed by the Supreme Court in SLP No.9719 of 2000 on 14-7-2000 is in gross violation and it is an act of wilful disobedience of the orders of this Court. Hence they are liable to be punished.

20. The Revenue Divisional Officer, Tirupati, the first respondent herein, filed counter-affidavit contending inter alia that the order dated 10-7-2000 passed by him is only in respect of S.No.253 and other survey numbers of Timchanur village but not in respect of S.No.246 Vallerigunta Patteda which is the subject-matter of the present writ petition. He further submitted that the dismissal of SLP filed by the department was communicated to office of the District Collector on 31-7-2000. From 14-7-2000 to 13-8-2000 he was deputed to computer training. After receipt of notice in the contempt case he appeared before this Court and this Court was pleased to grant time till 30-8-2000 to implement its order. Accordingly on 28-8-2000, the 1st respondent-Talisildar in proceedings No.21859/96 passed an order granting ryotwari pattas to the petitioners as directed by this Court. The 2nd respondent-RDO lastly submitted that he has great respect to the Court and delay in complying with this Court order is not wilful but under the circumstances stated above.

21. Subsequently, the official respondents choose to file Review Petition in WPMP (SR) No.84832 of 2000, seeking review of the order in Writ Petition No.21859 of 1996, dated 1-3-2000, passed by this Court, along with a petition, i.e., WPMP No.20534 of 2000 to condone the delay of 127 days in filing the review petition. The respondents also filed a petition, namely WPMP No.21748 of 2000 seeking permission to raise additional grounds in the review petition. They also filed a petition, i.e., WPMP No.20723 of 2000 to recall the order passed in the said writ petition.

22. The grounds urged in the review petition are that the statutory notification dated 3-2-1986 notifying the entire extent of land in S.No.246 as a tank poramboke and the errata to notification cannot be challenged by the writ petitioners after expiry of 14 years. In any case, absence of notice can be waived and this can be inferred from the long delay in challenging the notification. The writ petitioners are also not parties-in-interest to the notice. In such circumstances, this Court was not justified in declaring the said notification as unlawful. In the sale deed dated 2-2-1970 on which the writ petitioners based their title, one of the boundaries is mentioned to be the Vallerigunta tank. This is a clear indication that the Vallerigunta tank area was not a part of the property purchased by the ancestor of the writ petitioners. The petitioners did not place

before this Court the sale deed. In view of this fact, the review petition deserves to be allowed. This Court failed to see that the revenue records show that S.No.246 is tank poramboke. Survey of Tiruchanur village was conducted during 1967 and a Village Map No. 11 of Tirucahnur, prepared and published in Part-II of A.P. Gazette, dated 8-6-1967. The said map, correlation statement and the adangal of F.1351 that an extent of Ac.41.61 cents in S.No.264 is a tank poramboke which is known as "Vallerigunta Tank". This Court erred in referring in para-5 to the proposal for grant of house sites from these lands to Government employees ignoring the fact that this proposal was dropped by the Collector as this was tank bed poramboke. Its observation that prior to 1975 the land in S.No.246 was not shown as tank poramboke is an error apparent on the face of the order. This Court should have taken into consideration the fact that the enquiry before the Commissioner of Survey, Settlement and Land Records in regard to the nature of S.No.246 is still pending. Thus it should have awaited till its adjudication. This Court should have also taken note of the fact that the issue relating to the identification of inam lands pertaining to Vallerigunta patteda was decided by the Inams Deputy Tahsildar and the aggrieved parties filed WP No.13416 of 2000 and the same is pending. This Court erred in ignoring the fact that other parties have preferred some appeals for patta for the very lands and neither the writ petitioners nor their ancestors or any other person were in possession of the lands in question. This Court cannot decide the disputed questions sitting under Article 226 of the Constitution. This Court failed to see that in Writ Petition No.35618 of 1997 this Court had dealt with the claim of Sarrepalli Ramulu who sought patta for an extent of Ac.9-00 in S.No.246.

23. K. Venkatanatha Reddy, the fifth writ petitioner, filed counter-affidavit on his behalf and on behalf of other petitioners contending that the review and recall petitions are not maintainable under law because they have not committed any misrepresentation or fraud. The 2nd respondent-RDO did not make out a case so as to review or recall the order of this Court, dated 1-3-2000.

24. It is stated that the department filed SLP before the Supreme Court on 30-5-2000; that the cause was listed on 14-7-2000; that the RDO issued proceedings on 10-7-2000 setting aside the orders of the Inams Deputy Tahsildar, in all appeals which were not heard and without notice; that already in pursuance of the order passed in Writ Petition No.8580 of 1983, dated 25-8-1986, de novo enquiry was ordered; by the proceedings, dated 10-7-2000, i.e., after 14 years, again a de novo enquiry was ordered to identify the inamdars; that the said order was passed only to defeat the orders of this Court, dated 1-3-2000; that after dismissal of the SLP No.9719 of 2000, the RDO did not take any action to implement the order of this Court; that the Contempt Case No. 1026 of 2000 has come up for admission on 21-7-2000 and at the request of the 2nd respondent-RDO, the contempt case was adjourned to 30-8-2000 for compliance; that on 29-8-2000 he filed a petition for review; that on 30-8-2000 he submitted a copy of the proceedings of compliance wherein a ryotwari patta was granted only to an extent of Ac.24-00 cents showing the land as "tank

poramboke"; incorporating a clause that the said grant is subject to review petition and further litigation; that on 31-8-2000 the matter was adjourned to 6-9-2000; that on 4-9-2000 the RDO filed a petition to recall the order of this Court, dated 1-3-2000, passed in Writ Petition No.21859 of 1996 on the grounds of misrepresentation and fraud. All the above events show that the 1st respondent-RDO indulged in the abuse of process of the Court with scant regard to the Court.

25. It is further stated by the petitioners that at the time of enquiry conducted by the RDO in pursuance of the order of this Court in Writ Petition No.8580 of 1983, dated 25-8-1986, the sale deed, dated 2-2-1970, was produced and the then RDO issued proceedings in Roc.G/8006/86, dated 30-6-1990 ordering de novo enquiry by the 1st respondent. In the said proceedings it is shown the extent of the inam lands known as Vallerigunta patteda as Ac.143-00 cents. Against the said order, Writ Petition No. 10021 of 1990 and batch were filed wherein the then RDO filed a counter-affidavit stating that Sri K.R. Krishna Reddy has right and title over the said extent of Ac. 143.00 cents and he derived his title from the Inamdars, namely, Sri M. Singarachari, Smt. M.S. Pattammal, Sri C.S. Gandhi, Sri T.K. Rangaswamy and Sri T.K. Seshadri. The said Writ Petition No.10021 of 1990 and batch filed were dismissed on 30-7-1993. In Writ Appeal Nos.1220 of 1993 and 1221 of 1993, which were filed against the order in the above writ petitions this Court while agreeing with the view taken by the learned single Judge directed the 1st respondent, the Deputy Tahsildar, to dispose of all the applications pending before him relating to the grant of ryotwari pattas in respect of land situated in Vallerigunta patteda on merits in accordance with law. Therefore the writ petitioners have neither misrepresented nor made any fraud in obtaining the above order. According to the writ petitioners their sale deed became a part of record in the enquiry conducted by the Revenue Divisional Officer. The inam comprised of dry and wet lands, fruit bearing trees, field channels and two tanks as per the schedule of the said document. Tanks are part of inam and it has no independent existence. This fact is evident from the sale deeds, dated 2-4-1866, 31-1-1868, 26-11-1902, 23-1-1903, 17-2-1904, 11-11-1912 and 4-12-1959 which has also been extracted in the petitioners' sale deed, dated 2-2-1970. In the sale deed, dated 2-2-1970, the extent was stated as Ac.101-00 (as dry and wet). It is also stated that two tanks have been sold to the writ petitioners. The said lands were not surveyed at the time of sale deed, dated 2-2-1970, and therefore survey numbers were not given. The defunct unused tank falls in S.No.246. The same land as found in the sale deed, dated 2-4-1866, is shown in the present sale deed. Actually there were no tanks on the ground even on the date of the sale and it was confirmed during the survey operations. The counter-affidavit filed by the 1st respondent in Writ Petition No.3032 of 1996 clearly shows that S.No.246 has been surveyed and sub-divided under the provisions of the Madras Survey and Boundaries Act, 1923. After sub-division, the land has been assigned to the Tirupati Revenue and Survey Employees Cooperative House Building Society. If S.No.246 is a tank,

there cannot be any sub-divisions of the land as is rightly held by the Division Bench of this Court in Writ Petition No.21859 of 1996. The learned single Judge of this Court in Writ Petition No.3032 of 1996 held that there is no tank in S.No.246. It is clear that S.No.246 is inam land known as Vallerigunta patteda and therefore the notification u/s 3(3) of the Act and the subsequent notification u/s 2(A) of the Act were issued. The claims of Vangeepuram Hemavaradarajan as Inamdar was rejected by the 1st respondent and as per the counter of 2nd respondent-RDO C.S. Dorai is not an Inamdar of Vallerigunta patteda. Hence there is no dispute with regard to the inamdars of Vallerigunta patteda. The writ petitioners lastly submitted that they have not committed any misrepresentation or fraud. On the other hand, it is the Revenue Divisional Officer who is indulging in abuse of the process of this Court. Thus contending, the writ petitioners pray to dismiss the review as well as recall petitions.

26. The present RDO filed reply affidavit denying all the allegations made against the officials. According to him, there were as many as 20 claimants claiming different extents of land in S.No.246. Number of documents were ultimately found to be fabricated. The writ petitioners have committed misrepresentation and fraud in obtaining the order in the writ petition. They have suppressed the sale deed on which they based their title and have not brought to the notice of this Court the schedule describing the properties in the said sale deed, which destroys their case. The RDO never indulged in abuse of process of law as alleged. While complying with the directions of this Court, the following documents i.e., (1) Sale deed, dated 2-2-1970, (2) Copy of the decree passed in Partition Suit, (3) Copy of Village Map prepared under the Town Survey and Boundaries Act, (4) Order passed earlier awarding patta for only 1/3rd of the land as Inamdar's share were carefully scrutinised. According to the said documents the property sold under the sale deed, dated 2-2-1970, is an extent of Ac.101-33 cents though the total extent of lands in S.Nos.243 to 260 including S.No.246 would be about Ac.145-00 cents. The lands purchased were stated to be in S.No.243 to 260. There was no specific mention of S.No.246. The sale deed did not specify the extent of any survey number. The extent mentioned in the sale deed would be explicable only on the footing that the document did not cover the extent of Ac.41-61 cents in S.No.246 which was a regular tank at that time and not alienable. The schedules in the sale deed as also the Court decree showed the boundaries and the eastern boundary was stated to be Vallerigunta tank. This recital clearly indicates that Vallerigunta tank was not part of the property sold or partitioned. The averment that the order, dated 30-6-1990, passed in pursuance of the enquiry conducted by the then Revenue Divisional Officer showing the inam lands as "Vallerigunta patteda" as Ac.143-00 cents is misconceived. As a matter of fact the said proceedings have been set aside in Writ Appeal Nos.1220 of 1993 and 1221 of 1993 by ordering fresh enquiry. The land includes the extent of Inam Poramboke (tank) of Ac.41-00 cents. The Joint Collector, Chittoor, in his counter-affidavit, filed in Writ Petition No.8580 of 1983, clearly mentioned that the writ petitioners have purchased Ac.101-33 cents only

in Vallerigunta patteda. The father of the writ petitioners in his declaration made before the Land Reforms Tribunal, Chartdragiri, claimed only to an extent of Ac.101-33 cents in Vallerigunta patteda on the strength of registered sale deed 2-2-1970. He also admitted in the said proceedings that he is not in possession of any extent of land in Tiruchanur village. As per the judgment of the land Reforms Tribunal, the writ petitioners are entitled to have 1/3rd of the extent, which works out to Ac.33-78 cents out of the extent of Ac.101-33. The total extent in S.Nos.243 to 260 including Vallerigunta tank and other Government lands is Ac. 143.72 cents. It is not correct to say that there is no dispute with regard to the Inamdars. According to the fnam "B" Register prepared in the year 1938 (maintained by the Inams Deputy Tahsildar, Chittoor) Bikshatulu Srinivasulu Acharyulu is also one of the Inamdars whose names does not find place in the list of Inamdars. The 1st respondent overlooked this fact and passed order granting pattas. Against the order of the 1st respondents 20 appeals were filed. According to him, S.No.246 with an extent of Ac.41-61 cents was brought u/s 2(A) of the Inams Abolition Act, 1956, and the same was published in the District Gazette on 3-9-1984 and, therefore, the contention of the writ petitioners that it is not a tank is not correct. The petitioners' sale deed, dated 2-2-1970, excludes the land in S.No.246 in an extent of Ac.41-61 cents and, therefore, the question of consideration of ryotwari patta for the communal land which vests with the Government u/s 2(A) of the Inams Abolition Act, 1956, does not arise.

27. The RDO further stated that on 12-10-1998 the writ petitioners filed an affidavit into Court with false allegations, in respect of the lands in S.Nos.243 to 260, in Criminal Miscellaneous Petition no.3680 of 1998 in Criminal Petition No.3336 of 1998 and obtained an interim order. The order impugned in the said cases was challenged in another writ petition, which was dismissed. The deponent of the said affidavit, the fifth writ petitioner herein, tendered his unconditional apology in those proceedings. Taking a lenient view of the matter, the Court dropped further action by imposing costs of Rs.1,000/-. Tin's shows that the writ petitioners are habituated in coming to the Court with false allegations. It is also significant that no evidence was placed before this Court regarding possession of the writ petitioners and unless this fact is conclusively established by cogent evidence no patta can be granted. There are clear errors of fact and law in the order of this Court in Writ Petition No.21859 of 1996, dated 1-3-2000 and, hence, this is liable to be reviewed in the interests of justice. As huge extent of valuable Government property is involved in the matter, all these facts are being brought to the notice of this Court in the interests of justice. The order of this Court was complied with by granting patta. The review petition is filed in the public interest but not for any other reason as alleged by the writ petitioners. Thus contending, the respondents, in the writ petition, pray to review the order passed by this Court in Writ Petition No.21859 of 1996, dated 1-3-2000.

28. The Revenue Divisional Officer, Tirupati, Chittoor District, also WPMP No.21748 of 2000 to permit them to raise additional grounds in review petition

stating that the review petition was prepared in a hurried manner by their Counsel and during the process many important grounds have been over looked and thus could not be mentioned in the memorandum of review petition. Therefore they are advised to raise the same.

29. Though the petitioners opposed to raise additional grounds, but to avoid multiplicity of the proceedings, the same are urged. So also additional grounds urged by the petitioners.

30. The additional grounds urged by the respondents are that this Court erred in not considering the scope of Section 2(A) of the A.P. (Andhra Area) Inams Abolition and Conversion Act, which was introduced by amending Act 20 of 1975 and its applicability to the case on hand. Even if the petitioners had acquired title to S.No.246, by operation of Section 2(A), they would be divested of their title. This Court sitting under Article 226 cannot grant pattas u/s 7 of the Inams Abolition Act as an original authority as granting of pattas involves proper investigation contemplated under the provisions of the Act, examination of claims of the claimants with regard to their title and possession on the basis of evidence adduced before the authority concerned after giving public notice to all interested parties etc. In the instant case, no notice to the interested parties was issued although there were many claimants seeking patta for different extents of land falling within S.No.246. There was no enquiry into the respective titles of the claimants. Even in regard to the title of the petitioners, it was taken for granted without even verification of the truth or their averments that their ancestor had purchased the lands. There was no discussion at all about the possession of the petitioners, muchless, any examination as whether they have cultivated the lands in S.No.246 at any time. Thus, the procedure followed by this Court contravened all the requirements of Section 7. The Court could at best correct any illegal order passed by the concerned statutory authorities. The High Court in other proceedings directed the authorities to consider the claims for patta of the petitioners and others and the claim of the petitioners was rejected by an order passed in 1999 and the claims in respect of other persons are pending. The petitioners never assailed the rejection order. The writ petitioners ought to have challenged the notification.

31. The respondents submit that if the above additional grounds are not permitted to be raised, the review petitioners will suffer serious prejudice and irreparable loss. The omission to raise the above grounds is not deliberate.

32. The writ petitioners filed counter-affidavit contending inter alia that this Court dealt with Section 2(A) of the A.P. (Andhra Area) Inams Abolition and Conversion into Ryotwari Act, 1956 and held that the notifications u/s 2(A) is not only discriminatory but also abuse of the power by the authorities. It is not in dispute that S.No.246 is an inam land in an inam village. For the apportionment of the land u/s 4 of the Act, between the tenant and the Inamdar, the tenant has to prove his possession on the crucial dates as per the Act, i.e., 7-1-1948 or 27-12-1956, to get his 2/3rd share of the land. The Inamdar need not show his

possession of the land and even if he is not in possession, this Court held in various judgments that "holding" of the inam amounts to constructive possession. The Inams Deputy Tahsildar clearly stated that all the applications pending before him for grant of ryotwari patta in S.No.246 were rejected on the ground that they all produced bogus and fabricated documents. The writ petition was filed in the year 1996 and the writ petitioners obtained a direction that they should not be dispossessed by the respondents in the writ petition. The entries in the adangals will arise only after the grant of ryotwari patta and Inam tenure will continue till the grant of ryotwari patta as held by the Full Bench of this Court in 1980 (1) ALT 131. Thus contending, they sought the dismissal of the above petition.

33. The 2nd respondent-RDO, also WPMP No.20723 of 2000 to recall the order passed by this Court in Writ Petition No.21859 of 2000, dated 1-3-2000, with the same averments as in the affidavit filed in review petition. Therefore, there is no necessity to reiterate the same averments once again and only the averments which are not stated in the said affidavit tiled in review petition are stated hereunder:

34. Various claims put forward by the parties were being adjudicated from time to time. In all the Estates and Inams, the lands on which tanks were situated and communal poramboke were vested in the State on abolition. However, as there was no specific provision detailing the types of lands, which would vest in the State, the Inams Abolition and Conversion Act was amended by Act 20 of 1975 and Section 2(A) was introduced. The above section specifically declared that the tanks and tank beds stood transferred to the Government and vested in free from all encumbrances. The constitutional validity of Section 2(A) was upheld by this Court in a case reported in 1982 (1) APLJ 421. A Division Bench of this Court also ruled that as this provision was introduced in the year 1975 and disputes might arise with regard to the nature of the lands, such disputes could be determined even after introduction of this provision in enquiries u/s 7. On 22-9-1983 a decision was recorded u/s 3 sub-section (3) that the lands in an extent of Ac.41-61 cents in S.No.246 was tank poramboke. Two months earlier, for reasons, which are not clear, an extent of Ac. 18-00 cents in S.No.246 had been recorded as dry land. These two decisions were published in the Gazette, dated 3-9-1984. Once again on 15-7-1984, Ac.15-00 cents of land in S.No.246 was shown as dry land and that decision was gazetted on 27-12-1985. Later on discovering this mistake, an errata was issued deleting this entry of Ac.15-00 cents of land from S.No.246. In regard to the decision about Ac. 18-00 cents of land in S.No.246 being recorded as dry land, at the instance of the Mandal Revenue Officer, the appellate authority (Assistant Collector, Tirupati) set aside those proceedings. Meanwhile some bogus pattas purporting to be issued by the Inams Deputy Tahsildar came into existence. Considerable litigation ensued with claims and counter claims. One of those claims was that of the father of the writ petitioners. Various other writ petitions were filed challenging different adjudications, out of which some were allowed and some were dismissed. The

claim of the father of the writ petitioners in respect of Vallerigunta patteda on the basis of sale deed, dated 2-2-1970, was rejected by the Inams Deputy Tahsildar, Chittoor, on 15-7-1983 against which an appeal has been preferred. He also filed Writ Petition No.8580 of 1983, which was disposed of with a mere direction to the Revenue Divisional Officer, Tirupati, to dispose of the appeal u/s 7(2) of the Act, who allowed the appeal and remanded the matter to the Inams Deputy Tahsildar for de nova enquiry and disposal. Meanwhile one of the former Inams Deputy Tahsildar had granted pattas for an extent of Ac.70-88 cents to various persons. Further litigation ensued T. Rajaram and 5 others, aggrieved by the order, dated 30-6-1990, of the Revenue Divisional Officer, Tirupati and filed Writ Petition No.10021 of 1990 before this Court. One P. Subbaraya Pillai and 7 others have also filed Writ Petition No.15961 of 1990 against the same orders of the Revenue Divisional Officer. M/s. Estage Hotels, Madras, represented by the Managing Director Sri M. Sathyancnyana Setty and General Power of Attorney Sri T. Ganapati Mudaliar and 4 others have also filed Writ Petition No.7048 of 1991 contending that after the legal heirs of K.R. Krishna Reddy gave General Power of Attorney in favour of one T.C. Mnnaswamy Naidu who sold the lands to M/S. Estage Hotels, Madras. Sri Vangipuram Srinivas Diksliihuhi was the original inamdar of Timchanur village possessing 5/8th share in the entire village and hence, Smt. Hema Varadarajan was impleaded as a party in Writ Petition No.10021 of 1990 claiming "Vallerigunta patteda" area as part of 5/8th share of the lands of Tirchanur village. This Court dismissed said writ petition on 30-7-1993 with a direction to the Inams Deputy Tahsildar to dispose of the remanded case within six months. Against the said judgment of this Court, Writ Appeal Nos.1220 of 1993 and 1221 of 1993 were preferred, which were dismissed with a direction to the 1st respondent to dispose of all the pending claims after wide publicity. Accordingly, a press notification was issued on 13-4-1994 in the daily news paper "Andhra Jyolhi" calling for claims and objections in respect of the lands in "Vallerigunta patiteda". After due consideration of the matters, the Inams Deputy Tahsildar passed orders on 12-3-1999. As the SLP was dismissed by a non-speaking order, the respondents in the writ petition were advised to move this Court to review its order. They were further advised that apart from review petition they could also move this Court to recall the order as the writ petitioners were guilty of fraudulent conduct in suppressing the fact that they were entitled under the sale deed only for 101-33 cents and also the fact that the land purchased excluded the tank. They also suppressed the fact that the Court decree relates only to this extent and those parts of these extents were already sold by their father. Unfortunately, due to the fact that there was no proper brief by the concerned officials to the Government Pleader about these matters, some of which came to light subsequent to the disposal of SLP before the Supreme Court. Since the writ petitioners obtained the orders of this Court for issuance of ryotwari patta by misrepresenting the real facts and by playing fraud, the order dated 1-3-2000 in the writ petition be recalled as this Court has inherent powers to recall under such circumstances as held by the Supreme Court in catena of decisions.

35. Dismissal of the SLP filed against the order dated 1-3-2000 of this Court in limini by the Supreme Court does not preclude entertainment by this Court of the present recall petition. As the order in the SLP is not a speaking order, it leaves the High Courts judgment intact. Dismissal by a non-speaking order without anything more only means that the Supreme Court has decided that it is not a fit case where special leave should be present and it does not imply approval of the conclusions of the High Court. This position has been cleared by Supreme Court in the decision rendered in *Indian Oil Corporation Ltd. Vs. State of Bihar and others*, . The dismissal of a SLP is not equivalent to the dismissal of an appeal as pointed out by the Supreme Court in *V.M. Salgaocar and Bros. Pvt. Ltd. Vs. Commissioner of Income Tax*, . It is to be noted that only after leave is granted under the procedural rules of the Supreme Court, an appeal has to be separately filed. The doctrine of merger applies only when an appeal is dismissed and not when a SLP is dismissed. Order 47(1) (a) speaks of non-preferment of an appeal. The filing of a petition for leave to appeal is not preferment of an appeal and it is only after leave is granted that situation would arise if at all. Order XVI, Rule 11 of the Supreme Court Rules reads as follows:

"On the grant of special leave, the petition for special leave shall, subject to the payment of additional Court fee, if any, be treated as the petition of appeal and it shall be registered and numbered as such. The provisions contained in Order XV shall, with necessary modifications and adaptations, be applicable to appeals by special leave and further steps in the appeal shall be taken in accordance with the provisions therefore".

36. The above rule clearly shows that it is only on the grant of special leave that the petition for special leave is to be treated as an appeal. When the leave is refused, it amounts to an order by the Supreme Court that the petitioner is not entitled to prefer an appeal. It is to be noted that Article 136 of the Constitution is an unique provision conferring vast discretionary power on the Supreme Court and it is not equivalent to a provision conferring a right of appeal, as has been repeatedly stated by the Supreme Court. When Article 136 of the Constitution does not confer a right of appeal, it is illogical to state that the petition filed under Article 136 of the Constitution would amount to preferment of an appeal visualised by Order 47 of the Code of Civil Procedure. In 1977 (3) SCC, the Supreme Court ruled that neither an application for special leave nor an appeal by special leave fall within the scope of the word "appeal". On this reasoning the word appeal under Order 47 of the CPC takes in only an appeal under ordinary law. In *Chaitanya Kalbagh and Others Vs. State of U.P. and Others*, applications under Article 136 of the Constitution have been described as a "class apart". In 1994 (1) Suppl. SCC 103 at 108, the Supreme Court observed that "the jurisdiction vested in this Court under Article 136 is not to be confused with an ordinary statutory Appellate jurisdiction". An ordinary appeal provides for a re-hearing on facts and law while the jurisdiction of Article 136 of the Constitution is wholly discretionary. The appeal referred to in Order 47(1) of the CPC is an ordinary appeal, which does not take in an appeal by special leave under Article

136 of the Constitution. It is pertinent to mention that against the orders of Inams Deputy Tahsildar, Chittoor, 20 appeals have been preferred claiming different extents of land in S.No.246 and are now pending disposal. Thus contending the respondents in the writ petitioners pray to recall the order passed by this Court in Writ Petition No.21859 of 1996, dated 1-3-2000.

37. The writ petitioners filed counter-affidavit in review petition stating that the same be treated as counter-affidavit in this recall petition also. Therefore, the averments in the said affidavit are taken in this petition also and there is no need to reiterate the name averments once again.

38. Heard the learned Advocate-General, appearing on behalf of the State, and Mr. G. Veera Reddy, the learned Counsel appearing on behalf of the writ petitioners.

39. Firstly, we will deal with the scope of Article 136 of the Constitution of India which reads as follows :

"(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any Court or Tribunal constituted by or under any law relating to the Armed Forces.

40. In the light of the scope of Article 136 of the Constitution, now we have to answer the rival contentions on the following points :

(1) Whether the order of the Supreme Court in SLP amounts to merger?

(2) Whether such an order of the Supreme Court prohibits the High Court to exercise its powers under Article 226 of the Constitution.

(3) Whether after the dismissal of special leave petition, a review lies on the same grounds which were urged in the special leave petition?

41. Both parties placed reliance on some of the authorities in this behalf which are dealt with hereunder:

42. In *Bengal Chemical and Pharmaceutical Works Ltd., Calcutta Vs. Their Workmen*, , the Supreme Court held that Article 136 of the Constitution does not confer a right of appeal to any party from the decision of any Tribunal but it confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any Tribunal in the territory of India and that it is implicit in the discretionary reserve power that it cannot be exhaustively defined and also it cannot obviously be so construed as to confer a right to a party where he has none under the law.

43. In *The State of Bombay Vs. Rusa Mistry and Another*, , the Supreme Court

held that Article 136 does not confer right of appeal on party and the Supreme Court will not interfere on questions of fact except in exceptional cases.

44. Similar is the view taken by the Supreme Court in *Union of India and Others Vs. N.S. Sekhawat and Others*, and *State of Karnataka Vs. Bheemappa and Others*, .

45. Thus an order in the SLP shall not be mistaken as an order passed in an appeal.

46. When an order passed in the SLP is not an order on appeal, the same cannot be said as amounting to merger as held by the Supreme Court in *Laxman Marotrao Navakhare Vs. Keshavrao Eknathsa Tapar*, .

47. Dismissal of the SLP does not attract the principle of merger as dismissal of SLP is one thing and dismissal of appeal on merit is altogether different as held by the Supreme Court in *V.M. Salgaocar and Bros. Pvt. Ltd. Vs. Commissioner of Income Tax*, .

48. Similarly in *Gopabandhu Biswal Vs. Krishna Chandra Mohanty and Others*, , the Supreme Court held that dismissal of SLP without giving any reasons is neither *res judicata* nor the doctrine of merger applies.

49. Dismissal of SLP shall not be construed that it approves the order of the High Court as held by the Supreme Court in *Indian Oil Corporation Ltd. Vs. State of Bihar and others*, .

50. Thus merger arises only when an appeal is dismissed on merit and not dismissal of special leave petition.

51. Dismissal of SLP or its withdrawal is not a bar for the High Court to exercise its power under Article 226 of the Constitution of India on the ground of *res judicata* as held by the Supreme Court in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, .

52. In *Ahmedabad Mfg. and Calico Printing Co., Ltd. v. Workmen* (198!) 2 SCC 683, the Supreme Court held that the permission accorded to unconditionally withdraw a SLP under Article 136 does no amount to its dismissal and hence the High Court is not justified in dismissing the writ petition under Article 226 in limini on the sole ground that the SLP covering the same facts had been withdrawn.

53. The learned Advocate-General, submitted that the writ petitioners obtained the order in WP No.21859 of 1996 dated 1-3-2000 passed in the writ petition by misrepresenting the facts, suppressing the relevant documents and by playing fraud. According to him the writ petitioners suppressed the fact that they were entitled under the sale deed only for Ac. 101-33 guntas and also the fact that the land purchased excluded the tank. They also suppressed the previous proceedings. Thus urging he sought the order dated 1-3-2000 be reviewed and recalled. The petitioner denied the said allegations. According to the Advocate-

General, the Court has got inherent powers that whenever it comes to its notice a mistake crept in its order either due to fraud or mistake practised by the other side, the same can be corrected by way review and recall. To support his contention the Advocate-General placed reliance on the following decisions, viz., (i) S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, ; (ii) Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., ; (iii) United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, .

54. In S.P. Chengalvaraya Naidu v. Jagannath, wherein it was held thus:

"The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. A person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/ decree - by the first Court or by the highest Court - has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."

In this case, the respondent, on his own volition, executed the registered release deed in favour of C. He knew that the appellants had paid the total decretal amount to his master C. Without disclosing all these facts, he filed the suit for partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of C. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the Court. Therefore, the judgment of the High Court is set aside and that of the trial Court is restored. The appellants shall be entitled to costs quantified at Rs. 11,000/-"

55. In Indian Bank v. Satyam Fibres (India) Pvt., Ltd, the Supreme Court held as follows :

"Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order".

56. The Supreme Court further held that the fraud committed before the Court amounts to abuse of process of Court and under the inherent powers, the Court will be obliged to decide the question regarding the fraud by recording evidence and in appropriate cases it can recall its decree/order.

57. In *United India Insurance Co. Ltd. v. Rajendra Singh*, the Supreme Court held that the power to correct an error caused by fraud is available.

58. Order 47, Rule 1 of the CPC deals with the scope of review which reads as follows :

"Application for review of judgment :-

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of small causes,

and who, from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order".

59. Thus review lies when there is an error apparent on the face of the record. Further, the scope to review its order by the High Court, after the dismissal of the special leave petition, has been well explained by the Supreme Court in the following decisions, viz., (i) *Abbai Maligai Partnership Firm and Another Vs. K. Santhakumaran and Others*, ; (ii) *Commissioner of Police, A.P. Hyd. Vs. Sadrudin H. Javeri and Others*, and (iii) *P. Neelakanteswaramma and Others Vs. Uppari Muthamma and Others*, .

60. In *Abbai Maligai Partnership Firm v. K. Santhakumaran*, the Supreme Court held that the High Court has no power to review self same order which is subject-matter of challenge in special leave petitions and that entertainment of review petition by High Court against self same orders after dismissal of special leave petitions is subversive of judicial discipline. It was further held that:

"the manner in which the, learned single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the self-same order had been dismissed by this Court after hearing learned Counsel for the parties, to say the least, was not proper. Interference by the learned single Judge at that stage is subversive of judicial discipline. The High Court was aware that special leave petitions against the orders dated 7-1-1987 had already been dismissed by

this Court, the High Court, therefore, had no power or jurisdiction to review the self same order, which was the subject matter of challenge in the special leave petitions in this Court after the challenge had failed. By passing the impugned order on 7-4-1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this Court, on contest, no review petitions could be entertained by the High Court against the same order. The very entertainment of the review petitions, in the facts and circumstances of the case was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by the High Court, under the circumstances, was palpably erroneous. The respondents who approached the High Court after the dismissal of their special leave petitions by this Court, abused the process of the Court and indulged in vexatious litigation. We strongly deprecate the manner in which the review petitions were filed and heard in the High Court after the dismissal of the special leave petitions by this Court. The appeals deserve to succeed on that short ground. The appeals are, consequently, allowed and the impugned order, dated 7-4-1994, passed in the review petitions is hereby set aside. The respondents shall pay Rs.10,000/- as costs".

61. Even in *Commissioner of Police v. Sadruddin H. Javari*, a Division Bench of this Court, wherein one of us is a member to the said Division Bench, held that the High Court has power of review of its own order caused under Article 226 to correct all errors grave, palpable and apparent on the face of the record to prevent miscarriage of justice. Further, at para No. 15, it was held as follows:

"It is now necessary to consider the scope of this Court's power under Article 226 of the Constitution of India, in reviewing its own orders. In *Shivdev Singh v. State of Punjab*, AIR 1963 SC 1909, in a review petition filed under Order 47, Rule 1 CPC., the Supreme Court held that the power of review of its own order by the High Court inheres in every Court of plenary jurisdiction, to prevent miscarriage of justice or to correct grave and palpable errors committed by it. In doing so, the Court was only upholding the principles of natural justice. This decision indicates that the Court's power of review while exercising jurisdiction under Article 226 of the Constitution extends to correct all errors to prevent miscarriage of justice. In *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, , the distinction between an erroneous decision and a decision which can be characterized as vitiated by errors apparent, is brought out - "where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out".

62. A Division of this Court, in which one of us (Sri N.Y. Hanumanihappa, J.) is a party, in *P. Neelakanteswaramma and Others Vs. Uppari Muthamma and Others*, , while considering the scope of review of this Court in exercise of jurisdiction under Article 226 of the Constitution, discussed the law laid down in

various decisions of the Supreme Court and observed that:

"Review can be allowed only on (1) discovery" of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court".

It was further held, in the above judgment, that:

"Review proceedings cannot be equated with the original hearing of the case and the finality of the judgment rendered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in the order by judicial fallibility. When on appreciation the Court took a view, which was the only possible view warranted in view of the circumstances explained it cannot be said that there is an error on the face of the record. A ground not urged when the matter was heard and not objected to, new ground is not permissible to be urged for purpose of review",..... No review unless it is satisfied that there exists material error manifest on the face of the earlier order resulting in miscarriage of justice".

63. In the facts and circumstances of the case and in the light of the principles laid down by the Apex Court and also this Court, in our considered view, with due respect to the principles laid down by the Apex Court, in the instant case since there is no suppression of documents or material evidence by the writ petitioners pleading fraud requesting to recall the order, passed by this Court earlier does not arise at all and, there is also no error or mistake apparent on the face of the record to review the order and as such, the petitions to recall and review the order passed by this Court in Writ Petition No.21859 of 1996, dated 1-3-2000, do not survive. Therefore, the recall petition and the review petition are liable to be dismissed. Accordingly, they are dismissed.

64. In view of the subsequent developments during the pendency of the proceedings and granting of patta to the petitioners, no purpose will be served to continue the contempt proceedings. Accordingly, the same are dropped.

65. There shall be no order as to costs.