

(1996) 09 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5997 and 8347 of 1996 and C.C. No. 373 of 1996

Thallapaka Ananthacharyulu and Others

APPELLANT

Vs

The Principal Subordinate Judge and Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 141

Constitution of India, 1950 — Article 226

Contempt of Courts Act, 1971 — Section 2

Citation : (1996) 4 ALT 15 : (1996) 2 APLJ 382 : (1996) 1 APLJ 382

Hon'ble Judges : S.R. Nayak, J; M.N. Rao, J

Bench : Division Bench

Advocate : K. Ashok Reddy, for the Appellant; T. Anantha Babu, for Adinarayana Raju, for the Respondent

Judgement

M.N. Rao. J.

1. This judgment will dispose of all the three matters - two writ petitions and one contempt case - since they are inter-connected.

2. A writ of Prohibition is sought in each of the two writ petitions: In W.P. No. 5997 of 1996, against the Court of the Principal Subordinate Judge, Tirupati in respect of O.S. No. 69 of 1995 and in W.P. No. 8347 of 1996 against the Revenue Court, Tirupati in respect of the appeal preferred by the Tirumala Tirupati Devasthanams (for short "the T.T.D") against the order of the Inam Deputy Tahsildar, Chittoor, in SR. No. 1/95 dated 9-8-1995. The contempt case - C.C. No. 373 of 1996 - was filed alleging that the judgment of the Division Bench of this Court, to which one of us (M.N. Rao, J.,) was a member, in W.A. Nos. 4 of 1993 and 1752 of 1987 rejecting the claim of the T.T.D. that the land in question was an inam granted in favour of the institution and upholding the plea of the inamdars (petitioners herein) that the grant was a personal one without any conditions in favour of their ancestor - Sri Tallapaka Annamacharya - was wilfully disobeyed by the respondent-T.T.D., by instituting O.S. No. 69 of 1995 on the file

of the Principal Subordinate Judge's Court, Tirupati for the same relief.

3. Before advertng to the facts and the contentions, it is necessary to refer to the background events leading to the filing of the present cases.

4. Sri Krishna Devaraya - one of the greatest Emperors who ruled southern India in the 15th century - granted an extent of Ac. 27-04 cents of land on Tirumala Hills (now covered by Survey Nos. 586 and 645) to Sri Tallapaka Annamacharya, the celebrated saint, composer and reformer, the progenitor of the petitioners herein (for short "the Tallapaka people"). Annamacharya was a great devotee of Lord Venkateswara, in whose praise he wrote and composed music for 32,000 devotional songs. He attained immortality as the greatest devotee of Lord Venkateswara and also the founder of the Bhakti cult, propagating the philosophy of Sri Ramanuja. Kings and emperors showered upon him honours and granted large number of inams in recognition of the spiritual service he rendered. He and his descendants, for over centuries, endowed vast properties for religious and charitable purposes. See: Inscriptions of Krishnaraya's Time Published by TTD, 1935, Vol.III. Tallapaka Venkata Seshacharyulu, the father of the petitioner in W.P. No. 8347 of 1996 and C.C. No. 373 of 1996 was the 12th descendant of Annamacharya.

5. The T.T.D., filed an application before the Revenue Divisional Officer, Chandragiri in 1962 under the Madras Hindu Religious and Charitable Endowments Act, 1951 against Tallapaka Venkata Seshacharyulu seeking resumption of the inam alleging that it was a grant in favour of the "Manager for the time being of Nandanavanam at Tirumala or Tirupati to be held for the support of Sri Venkateswara Swamy Pagoda at Tirumala and to be held so long as the conditions of the grant are duly fulfilled". The T.T.D. contended that the grant was for the maintenance of flower and Tulasi garden and fruit bearing trees for the daily worship of and offering to Lord Venkateswara but neither offerings were made nor plants and trees maintained much less flowers and Tulasi plants were supplied from the Nandanavanam to the deity by the inamdars. The T.T.D., therefore, prayed for: (i) resumption of the inam and determining it as a grant of both melwaram and kudiwaram (land revenue as well as proprietary right); and (ii) regranteeing the inam to the T.T.D., as an endowment. That application was disposed of by the Revenue Divisional Officer holding that the Inams Deputy Tahsildar, Chandragiri had already issued a ryotwari patta under the Inams Abolition Act in favour of the T.T.D., and, therefore, no further relief was called for. The inamdars carried the matter in revision to the Commissioner, Survey, Settlements and Land Records (for short "the Commissioner") u/s 14-A of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short "the Inams Abolition Act") and the Commissioner, while allowing the revision, remitted the matter to the Tahsildar for fresh enquiry on the ground that while granting patta in favour of the T.T.D., the Deputy Tahsildar had not issued notices to the parties.

6. After the remand, the Deputy Tahsildar conducted an enquiry under Section 3

of the Inams Abolition Act after notices to both the Institution (T.T.D.,) and the inamdars and recorded a finding that the land in question is an inam land in Ryotwari village and that it was not held by an institution. On appeal, preferred by the T.T.D., the Revenue Divisional Officer affirmed the order of the Deputy Tahsildar. The T.T.D.; carried the matter in revision to the Commissioner who, while recording the concession made by the Counsel for the T.T.D., that the lands in question were in possession of the inamdars on the crucial dates (as envisaged by Section 4 of the Inams Abolition Act) and that the inamdars had been in possession of the lands since 7-6-1933, dismissed the revision petition observing incidentally that the title deed was issued:

"to the holder of an office burdened with service and it was not specifically issued to an institution. It cannot be deemed to be a grant to the institution since it will be meaningless for an institution to burden itself with service and hence the presumption is that the grant was not in favour of an institution and that to an office bearer and his successors who were burdened with service."

This observation was made despite the fact that it was nobody's case that the inam was in favour of an individual burdened with service. The case of the T.T.D., was that it was a grant in favour of the institution while the inamdars' plea was that it was a personal inam in favour of their ancestor - Tallapaka Annamacharya.

7. The T.T.D., filed W.P. No. 11895 of 1986 challenging the order of the Commissioner affirming the orders of the subordinate statutory tribunals and the inamdar filed W.P. No. 11437 of 1986 contending that an extent of Ac.3-05 cents of land in question was illegally occupied by the T.T.D., without paying compensation and, therefore, he was entitled to be compensated for the wrongful deprivation. A learned single Judge heard both the matters together and by a common judgment, allowed the writ petition filed by the T.T.D., holding that the grant in question was to the institution and that the possession of the land "on the relevant dates" by the inamdars was only on behalf of the institution but not in recognition of their rights as inamdars and that the view of the Commissioner that the inam was burdened with service was contrary to the recitals in the two title deeds. The learned Judge by his common judgment dated 17-4-1987 quashed the revisional order of the Commissioner and consequently dismissed W.P. No. 11437 of 1986 filed by the inamdar. Two writ appeals - W. A. Nos. 1752 of 1987 and 4 of 1993 - arising out of the above two writ petitions were allowed by a common judgment dated 23-12-1992 by a Division Bench of this Court, of which one of us (M.N. Rao, J.,) was a member, in T.V. Srinivasacharyulu v. T.T.D, 1993(1) ALT 298 (hereinafter referred to as "the first Tallapaka case"). The Division Bench, after an elaborate discussion on all the aspects - the concept of "inam", the entries in the title deeds and Inam Fair Register, the statutory position under the Inams Abolition Act, the other relevant evidence including the earlier litigation in which the T.T.D., had not claimed these lands as belonging to it and that for the first time in 1962 it came up with the story that the grant was in favour of the institution and after reviewing the

relevant case- law, - has recorded a categorical finding that the inam was a personal inam without any conditions granted in favour of Tallapaka Annamacharya and that the "admitted possession of the Tallapaka people on the crucial dates must be construed as possession as inamdars within the meaning of Section 4 of the Inams Abolition Act." Adverting to the observations of the Commissioner in the revisional order that the inam was burdened with service, the Division Bench held that the opinion of the Commissioner was a "gratis dictum" and so must be ignored. The reasoning for this as contained in paragraph 35 of the judgment is in the following terms:

"The observations of the Commissioner in the revisional order that it was an inam burdened with service is totally unwarranted. There was no plea raised in that regard before the Commissioner. The revisional jurisdiction of the Commissioner u/s 14-A of the Inams Abolition Act is confined only to examining the regularity, correctness, legality or propriety of the decision rendered by the appellate authority. The findings recorded by the appellate authority on questions of fact when not questioned do not fall within the ambit of revisional jurisdiction. That is the reason why, the Commissioner has upheld the conclusion of the appellate authority that the inam was not to the institution but a personal one. The revisional authority cannot go into a question which was not raised before it and when it was not the subject matter of adjudication by the appellate authority. The opinion expressed by the Commissioner that it was an inam burdened with service, is therefore, a gratis dictum and so must be ignored."

While coming to the conclusion that the inam was a personal grant in favour of Tallapaka Annamacharya, the Division Bench after discussing the entries in the two title deeds eschewed both of them from consideration doubting the very existence of one of the title deed s and that the copy of the other title deed placed before the Division Bench was different from the one considered by the appellate authority (Revenue Divisional Officer) under the Inams Abolition Act.

8. The judgment of the learned single Judge was rendered on 17-4-1987 and that was set aside by the Division Bench on 23-12-1992. During the pendency of the writ appeals, an order was passed by a Division Bench on 19-1-1988 granting status quo, freezing the situation as it obtained on that day. In spite of it, the T.T.D., basing on the judgment of the learned single Judge, by which the plea of the T.T.D., that the inam was in favour of the institution was upheld, obtained patta in respect of the land u/s 7 of the Inams Abolition Act from the Deputy Tahsildar on 10-3-1989 in breach of the order oistatus quo granted by the Division Bench. This fact was not brought to the notice of the Division Bench at the time of the hearing of the writ appeals. During the course of the hearing of the writ appeals, when an attempt was made incidentally to invite the attention of the Division Bench to the aspect that patta was already granted by the Revenue authorities without disclosing the fact concerning the order of status quo granted on 19-1-1988- evidently by mistake it was represented that patta was granted by the Revenue Divisional Officer instead of the Deputy Tahsildar -

the Division Bench, in passing, observed:

"As regards the finality of the patta issued by the Revenue Divisional Officer u/s 7 of the Inams Abolition Act in favour of the appellants, we are not inclined to express any views for the reason that in these two writ appeals, that issue does not arise. After the Revenue Divisional Officer upheld the order of the Inams Deputy Tahsildar, patta was issued in favour of the inamdars before the revisional order of the Commissioner was passed u/s 14-A of the Inams Abolition Act. As the nature of the land was decided u/s 3 of the Inams Abolition Act to the effect that the land does not belong to the institution, it is probable that the institution was not heard when the patta was granted. We, therefore, see no justification, whatever, to express any view on the finality of the patta granted by the Inams Deputy Tahsildar u/s 7 of the Inams Abolition Act in favour of the appellants."

The judgment of the Division Bench was carried in appeal to the Supreme Court in Civil Appeal Nos. 3468-69 of 1993. After stating that the question before the High Court was whether the inamdars or the institution was entitled to patta u/s 4(1) of the Inams Abolition Act and after adverting to the revisional order passed by the Commissioner, the decision of the learned single Judge and its reversal by the Division Bench, the Supreme Court dismissed both the appeals on 11-1-1995 observing:

"In view of the findings of fact reached by the authorities under the Act, it was not open to the learned single Judge of the High Court to have interfered with the same. In any case, the findings of the learned Single Judge having been set aside by the Division Bench of the High Court, we see no ground to interfere with the same. The appeals are dismissed. No costs."

Review Petition Nos. 683-684 of 1995 seeking review of the aforesaid order of the Supreme Court were also dismissed by the Supreme Court on 9th May, 1995.

9. After the dismissal of the review petitions by the Supreme Court, the Tallapaka People (inamdars) filed an application before the Inams Deputy Tahsildar for grant of patta u/s 7(1) of the Inams Abolition Act and the same was granted by the Deputy Tahsildar by an order dated 9-8-1995.

10. The T.T.D., filed a suit - O.S, No. 69 of 1995 - in the Court of the Principal Subordinate Judge, Tirupati seeking a declaration that it is the absolute owner of the Ac.25-08 cents of land covered by Survey Nos. 686 and 679/92 and for a consequential direction to the Tallapaka people to surrender possession of the same. The T.T.D also filed an appeal u/s 7 (2) of the Inams Abolition Act before the Revenue Divisional Officer challenging the grant of patta by the Deputy Tahsildar in favour of the Tallapaka people. In the plaint filed in O.S.No.69 of 1995, it was averred by the T.T.D. inter alia, that the entire property lying within the limits of Tirumala belongs to the deity - Lord Venkateswara. The question of title to the suit land was not the subject matter of the earlier litigation between the T.T.D. and the Tallapaka people and in spite of the failure of the T.T.D. in the revenue proceedings and the judgment in the writ appeals (the first Tallapaka

case), the question of title can still be agitated in a Civil Court. After advertng to certain G.Os., and the earlier proceedings before the revenue authorities, it was averred by the T.T.D., in the plaint that the inam was to the temple and not a personal grant to the Tallapaka people. As already stated at the very outset, the inamdars (the Tallapaka people) filed the present two writ petitions, each for a writ of Prohibition: one in regard to the suit and the other in regard to the appeal before the Revenue Divisional Officer, Tirupati restraining them from proceeding further in the matters. In the contempt case, it was alleged by the inamdars that the T.T.D., in deliberate disobedience of the judgment of this Court in the first Tallapaka case had instituted the suit and, therefore, it is liable to be punished for contempt.

11. The case of the petitioners- the Tallapaka people - is that after the judgment of this Court in the first Tallapaka case categorically holding that the inam was a personal inam in favour of Tallapaka Anna macharya and that it was not in favour of the institution - T.T.D., - and after the observations of the Commissioner to the effect that it was an inam burdened with service were set aside declaring them to be "gratis dictum", no suit is maintainable for declaration of title in respect of the very same property. The jurisdiction of the Civil Court, by virtue of the declaration granted by this Court in the first Tallapaka case, is totally ousted. After the judgment of the Division Bench in the First Tallapaka case, the earlier patta granted in favour of the T.T.D., by the Inams Deputy Tahsildar pursuant to the judgment of the learned single Judge declaring that the inam was in favour of the institution-T.T.D., ceased to have any legal validity as the Division Bench has reversed the learned single Judge's findings and, therefore, when the Tallapaka people approached the Inam Deputy Tahsildar for grant of patta u/s 7 (1) subsequent to the judgment of the Division Bench, there was no necessity for the Deputy Tahsildar to issue notice to the T.T.D., since the issuance of patta u/s 7 of the Inams Abolition Act is a formality. At any rate, the T.T.D., was not entitled to notice after the judgment of the Division Bench in the first Tallapaka case categorically declaring that the inam was not granted in favour of the T.T.D. The Revenue Divisional Officer, therefore, has no jurisdiction to entertain the appeal preferred by the T.T.D., against the order of the Deputy Tahsildar dated 9-8-1995 granting patta in favour of the Tallapaka people.

12. In opposition to this, Sri Anantha Babu, learned Senior counsel for the T.T.D. has urged that from a reading of the order of the Supreme Court in Civil Appeal Nos. 3468-69 of 1993, what emerges is that the finding of the Commissioner that the inam was burdened with service was affirmed and, therefore, the T.T.D., was not disabled from asserting its title to the suit property. What the T.T.D., has done was nothing but asserting its right to resort to legal remedies and this lawful pursuit cannot be prevented by a writ of Prohibition. The Civil Court itself can decide the question whether or not it has jurisdiction but even before the trial has commenced, the Civil Court cannot be stopped from proceeding further by issue of a writ of prohibition. Questions of title in respect of inam lands are outside the purview of the revenue authorities and, therefore, civil suit is the

only proper remedy. No disobedience in respect of the judgment rendered by the Division Bench in the first Tallapaka case was in any way involved and, therefore, the contempt case was wholly misconceived.

13. Before considering the rival contentions, we think it apt to refer briefly to the statutory provisions concerning the Inams Abolition Act. The Inams Abolition Act was enacted for the purpose of conversion of inam lands other than estates into ryotwari tenure. An "inam" is a beneficial grant made by the State in favour of individuals or religious or charitable institutions. Depending upon the nature of the grant, the entitlement of the grantee varies - whether it is confined to land revenue or also comprehends proprietary right (melwaram and kudiwaram respectively). Sometimes, inams are burdened with conditions and some grants are personal without any conditions. In the first Tallapaka case, the history of the inams, their nature and the developments leading to the passing of Estates Abolition and Conversion into Ryotwari Act and the Inams Abolition Act, 1956 were synoptically dealt with. Major inams are covered by the Madras Estates Land Act, 1908 and all such estates were abolished by the Estates Abolition and Conversion into Ryotwari Act, 1948.

14. In respect of minor inams, the 1956 Act - the Inams Abolition Act- was brought in on the statute book. Section 3 of the Inams Abolition Act, 1956 confers power on the Tahsildar, which expression includes Deputy Tahsildar also, to enquire and determine inam lands, and this power is exercised either suo motu or on application. He has to decide: (i) whether a particular land in his jurisdiction is an inam land; (ii) whether such inam land is in ryotwari, zamindari or inam village; and (iii) whether such inam land is held by any institution. Before holding the enquiry, the Tahsildar is obliged to issue a notice in the prescribed manner in the village or town where the lands are situate requiring every person or institution claiming interest in any inam land to file a statement of particulars concerning the land. He is required to comply with the principles of natural justice by affording reasonable opportunity to persons or institutions to adduce evidence in support of their case, examine relevant documents in possession of the Government for giving a decision and communicate the same to the persons or institutions concerned. An appeal is provided by sub-section (4) to me Revenue Divisional Officer against an order passed by the Tahsildar. If no appeal is preferred, the order of the Tahsildar is final and if an appeal was preferred, the appellate authority's order attains finality by virtue of sub-section (5). Sub-section (7) lays down that such a decision binds all persons and institutions claiming interest in any such inam land even though they have not filed any applications or statements or adduced any evidence or participated in the proceedings before the Tahsildar or the Revenue Court as the case may be. Section 4 deals with conversion of inam lands into ryotwari lands. As per sub-section (1), in the case of an inam land in a ryotwari or zamindari village, the person or institution holding such land as inamdar on the date of the commencement of the Act shall be entitled to a ryotwari patta. Sub-section (2) deals with inam lands in an inam village and the grant of ryotwari patta for such

lands and the entitlement of a tenant for a ryotwari patta to the extent of 2/3rds share of the land and that of the inamdar's entitlement for the balance 1/3rd share. After the determination as to who is entitled for ryotwari patta u/s 4, the grant of patta is done u/s 7. The Tahsildar, by sub-section (1), has to determine the persons or institutions entitled to ryotwari pattas in accordance with the provisions of Section 4 and this enquiry has to be done after complying with the principles of natural justice. By sub-section (2), appeal is provided to the Revenue Court against the grant of ryotwari patta by the Tahsildar. The appellate order is made final by sub-section (3). We are not concerned with the other provisions except Sections 14,14-A and 15. Section 14 bars the right of suit in respect of the orders passed by the authorities under the Act except in cases where any decision of the authorities was obtained by mis-representation, fraud or collusion. Section 14-A confers revisional jurisdiction on the Board of Revenue to call for and examine the records relating to any proceedings taken under the Act for the purpose of satisfying itself as to the correctness, regularity, legality or propriety of any such orders. Section 15 says that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

15. In the light of the facts stated supra and the relevant statutory provisions, we have to consider the question whether the Civil Court and the Revenue Court have no jurisdiction to entertain the suit and the appeal?

16. There is no controversy that the suit land and the land which was the subject matter in the first Tallapaka case decided by the Division Bench are one and the same. In the first Tallapaka case, elaborate arguments were advanced based upon the entries in the title deeds, inam fair register, the earlier inscriptions concerning the inam land and also how it was treated in the earlier civil litigation by both sides - the T.T.D. contending that the grant was in favour of the institution and the inamdars asserting that it was a personal inam in favour of their ancestor, Tallapaka Annamacharya. After exhaustively considering the entire evidence and the contentions, the Division Bench recorded a categorical finding that the grant was a personal inam in favour of Tallapaka Annamacharya, that he was not a servant of Lord Venkateswara Swamy temple and that the inam was not granted in favour of the institution T.T.D. The Division Bench set aside the observations of the Commissioner in the revisional order that the inam was burdened with service on the ground that the same were gratis dictum, since it was nobody's case and that the revisional jurisdiction did not empower the Commissioner to go into that question. The Division Bench also held that there was no relationship of master and servant between Tallapaka Annamacharya and the diety Lord Venkateswara and after stating so, it held:

"What is legally sustainable in the order of the Commissioner is his finding that the appellate order of the Revenue Divisional Officer does not suffer from any legal infirmity warranting interference in exercise of revisional jurisdiction u/s 14-A of the Inams Abolition Act."

The Division Bench also noted the fact that before the Commissioner, the T.T.D., admitted the fact that the Tallapaka people were in possession of the lands since 7-6-1933 and this was highlighted by the Division Bench for the purpose of the claim of the Tallapaka people for grant of ryotwari patta u/s 4, since in the enquiry u/s 3, it was held that the land was an inam land in a ryotwari village and not held by an institution.

17. The judgment of the Division Bench in the first Tallapaka case was affirmed by the Supreme Court in Civil Appeal Nos. 3468-69 of 1993 dated 11-1-1995. After extracting the revisional order of the Commissioner, the Supreme Court observed:

"In view of the findings of fact recorded by the authorities under the Act, it was not open to the learned single Judge to have interfered with the same. In any case, the findings of the learned single Judge having been set aside by the Division Bench of the High Court, we see no ground to interfere with the same. The appeals are dismissed. No costs."

From the words "we see no ground to interfere with the same", an argument was sought to be built up by Sri Anantha Babu, learned senior counsel for the T.T.D., that the Supreme Court only affirmed the revisional order of the Commissioner which includes an observation that the inam was burdened with service and, therefore, the judgment of the Division Bench must be understood subject to the aforesaid exception. We entirely disagree with this contention. When the Supreme Court said, after referring to the Division Bench judgment, "we see no ground to interfere with the same", it clearly and unambiguously means that the judgment of the Division Bench was affirmed by the Supreme Court in its entirety. If any doubt is there, the same is dispelled by the succeeding sentence: "The appeals are dismissed." Acceptance of Shri Ananta Babu's argument must logically result in our holding that the Supreme Court allowed the appeals of the T.T.D., in part setting aside the judgment of the Division Bench to the extent it held that the observation of the Commissioner that the inam was burdened with service was a *gratis dictum*. We cannot do it: it would amount to altering the judgment of the summit Court. The High Court, in the guise of interpretation of a judgment of the Supreme Court cannot modify the judgment of the Supreme Court much less can it attribute words not found in the judgment. The duty of the High Court is to take the words in the judgment "in the sense in which they were used" and ought to apply them "to the facts before it instead of trying to put words in the mouth of the Supreme Court.", See: *G.K. Dudani and Others Vs. S.D. Sharma and Others*, With no hesitation, we reject the contention of Sri Anantha Babu since it is grounded on a patently factual inaccuracy.

18. Having regard to the conclusion reached by us, we find little merit in the argument of Sri Anantha Babu that as the order of the Division Bench was merged with that of the Supreme Court, which has upheld the revisional order of the Commissioner, it is the latter order alone in force but not the judgment of the

Division Bench. The decisions cited by Sri Anantha Babu pertained to cases where composite orders were carried in appeal and doubts had arisen as to which part of the composite order was affirmed and which part was set aside. Keeping such situations in view, the Supreme Court held in *State of Madras Vs. Madurai Mills Co., Ltd.*, :

".... the application of the doctrine (merger) depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction."

We, therefore, think it unnecessary to refer to the other precedents cited by the learned counsel on the aspect of application of the doctrine of merger.

19. What is the effect of the affirmation of the Division Bench judgment by the Supreme Court? The views expressed and the findings recorded by the Division Bench attained finality. No Court or authority - either directly or indirectly - has power to enquire into any of the aspects covered by the Division Bench judgment, for the purpose of arriving at a conclusion divergent from or at variance with what has been held by the Division Bench. The attempt of the T.T.D., in filing the suit is nothing but an indirect device to reopen the question as to the entitlement of the T.T.D., to the land in question. The plea of the T.T.D., that it is only resorting to the available legal remedies is but a clever subterfuge to reopen the questions.

20. When the Division Bench held that the Tallapaka people are the inamdars, the original grant was a personal one with no conditions in favour of Tallapaka Annamacharya and that it comprised both Melwaram and Kudiwaram rights - land revenue as well as proprietary rights, - the grant of patta is only a mere formality u/s 7 of the Inams Abolition Act.

21. The decision of the Tahsildar u/s 3 of the Inams Abolition Act as to the nature of the land cannot be reopened u/s 7 of the Act while granting a ryotwari patta. This question was settled by a decision of this Court in *Nagabhushanam v. R.D. Officer* 1963(2) An.W.R. 201 wherein it was held.

".....the earlier decision u/s 3 would govern the rights of the individual vis-a-vis the institution and if it has been held thereunder that a particular inam land in a ryotwari village is held by an institution, that institution would be entitled to a ryotwari patta u/s 7 (1) and the individual goes out of the picture, the enquiry u/s 7(1) read with Rule 6 (2) being confined to the formal question whether the same Institution was holding the land on the date of commencement of the Act."

In that case (4 supra), the archakas who were claiming that the lands were personal inams before the Deputy Tahsildar in the enquiry u/s 3, filed written representations and when that authority had called for certain particulars of the lands involved, the same were not furnished and so the enquiry was proceeded with and a decision rendered under sub-section (3) of Section 3 holding that the lands were inam lands in a ryotwari village held by the institution - Sri Chenna

Malleswaraswami temple. The appeal preferred by the archakas was rejected by the Revenue Divisional Officer. Thereafter, when patta was granted u/s 7 (1) to the temple, an appeal was preferred against that to the Revenue Divisional Officer which was dismissed on the ground that the same was not maintainable since the archakas were not the aggrieved persons. Adverting to this aspect, it was held;

"Notices were not given to the petitioners apparently for the reason that they could not be regarded as persons "interested in the grant of ryotwari pattas in respect of the inam lands concerned" because by virtue of the decision u/s 3 which had become final and binding, their interest, if any, was extinguished and they had no longer any subsisting interest. If they were not persons "interested" and entitled to notice and hearing under sub-section (1) of Section 7, it would follow as a necessary corollary that they were not persons aggrieved within the meaning of that expression in sub-section (2) of Section 7, so as to entitle them to prefer appeals under that sub-section against the grant of ryotwari pattas to the institutions."

22. The Division Bench in the first Tallapaka case went into the question as to the possession of the Tallapaka people on the crucial dates and after noticing the concession made by the T.T.D. before the revenue authorities that since 1933, the Tallapaka people have been in continuous possession, held that by virtue of Section 4 (1) of the Inams Abolition Act, the Tallapaka people are entitled for ryotwari patta as they were in possession of the land long before the Act came into force. Thereafter, the issue of a patta u/s 7 (1) is only a formality. Section 7(1): As soon as may be after the commencement of this Act and subject to the provisions of Sub-section (4), the Tahsil dar may suo motu and shall on application by a person or an institution, after serving a notice in the prescribed manner on all the persons or institutions interested in the grant of ryotwari pattas in respect of the inam lands concerned and after giving them a reasonable opportunity of being heard and examining all the relevant records, determine the persons or institutions entitled to ryotwari pattas in accordance with the provisions of Section 4 and grant them ryotwari patta in the prescribed form,. At any rate, the T.T.D. having lost in the enquiry u/s 3 concerning the nature of the land and in whose favour the inam was granted and in the light of the finding of the Division Bench that u/s 4 (1) of the Inams Abolition Act, the Tallapaka people are entitled for patta, cannot challenge, by filing an appeal, the order of the Deputy Tahsildar u/s 7 (1) formally granting patta in favour of the Tallapaka people in compliance of the directions of the Division Bench in the First Tallapaka case. That earlier the T.T.D., was able to get patta on 10-3-1989 from the Deputy Tahsildar was of no consequence at all for the obvious reason that the patta granted on 10-3-1989 by the Deputy Tahsildar was pursuant to the judgment of the learned single Judge and when that judgment was set aside by the Division Bench, the patta automatically became ineffective. What must be noticed in this regard is that there was already an order passed by the Division Bench of this Court on 19-1-1988 directing maintenance of status quo and so the granting of

patta by the Deputy Tahsildar on 10-3-1989 was plainly in violation of that status quo order.

23. We do not want to go into the question whether it was done deliberately or unintentionally. Even taking that it was done in ignorance of the order of the Division Bench concerning the direction of status quo, after the final judgment of the Division Bench in the first Tallapaka case, the patta granted pursuant to the judgment of the learned single Judge automatically stood cancelled. In this fact situation we think it was not open to the appellate authority to entertain the appeal u/s 7 of the Inams Abolition Act. What purpose would be served by entertaining the appeal? The Revenue Divisional Officer has no power to record a finding that the T.T.D. is entitled to patta in view of the judgment of the Division Bench in the first Tallapaka case. The T.T.D., was not a person "aggrieved" as u/s 3 (3), concerning the nature of the land, it was held to be in favour of an individual but not the T.T.D., and the same became final. In an enquiry u/s 7, the T.T.D., has no place. If any one had any right to make a grievance, it could only be one of the inamdars complaining that inter-se the inamdars, the shares were not properly fixed in the grant of ryotwari patta. But that was not the case and no inamdar has complained that in the grant of patta u/s 7(1) his share was affected.

24. The observations in the first Tallapaka case in paragraph 21, extracted supra, that the Division Bench was not inclined to express any views as regards the finality of the patta issued in favour of the inamdars do not in any manner lend support to the case of the T.T.D. The observations refer to the situation obtaining after the Revenue Divisional Officer dismissed the appeal of the T.T.D., u/s 3 (4) affirming the view of the Deputy Tahsildar (Inams) concerning the nature of the land and its grant in favour of Tallapaka Annamacharya and rejecting the T.T.D.'s plea that the inam was to the institution and before the revisional order was passed by the Commissioner, during the interregnum, the Tallapaka people obtained patta u/s 7. When arguments were sought to be advanced as to the finality of that patta, the Division Bench rightly observed that it was not inclined to express any views as to the finality of such an order. After the judgment of the Division Bench attained finality with the dismissal of the appeals and the review petitions by the Supreme Court, the Tallapaka people obtained patta u/s 7(1) from the Deputy Tahsildar, which is nothing but an act of formality since the Deputy Tahsildar had no discretion except to act in compliance of the findings recorded by the Division Bench. In view of the interpretation placed by us on the extent and ambit of the power of the revenue authorities u/s 7, we see no substance in the plea raised before us by the T.T.D., as to the true effect of the observations in paragraph 21 of the judgment.

25. By virtue of the judgment of the Division Bench in the first Tallapaka case, the T.T.D., was estopped from claiming any rights in respect of the land in question. The failure of the T.T.D., to establish its claim that the grant of inam was in its favour before the Division Bench, the findings of which attained finality,

estops it from contending that the Tallapaka people have no right for grant of ryotwari patta in their favour. The earlier judgment of the Division Bench being declaratory of the rights of the inamdars vis-a-vis the T.T.D., it is settled principle of law that judgments in personam operate as estoppel as between the parties. Ahmed Ali Khan v. Veeraya -1958 ALT 938

26. Jurisdiction implies power to decide. From the Civil Court as well as the Revenue Divisional Officer, the appellate authority u/s 7 (2) of the Inams Abolition Act, the relief the T.T.D., is seeking is diametrically contrary to the findings recorded by the Division Bench in the first Tallapaka case. It is plainly an act of abuse of jurisdiction. If the Civil Court and the Court of the Revenue Divisional Officer were permitted to proceed with the trial and the appeal, they would be acting outside their powers. A writ of Prohibition can be issued to prevent a person from acting or continuing to act in such a way as to abuse jurisdiction of a judicial or quasi-judicial body. See. Richard Cordon Q.C. - Judicial Review: Law & Procedure 2nd Edition P.60. It is not necessary for the petitioners to wait until the decisions are rendered by the Civil Court and the Revenue Divisional Officer and then move this Court for a writ of certiorari. The distinction between a writ of prohibition and a writ of certiorari was explained by the Supreme Court after noticing the English precedents:

"They are issued at different stages of the proceedings. When an inferior Court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior Court for a writ of prohibition, and on that, an order will issue forbidding the inferior Court from continuing the proceedings. On the other hand, if the Court hears that cause or matter and gives a decision, the party aggrieved would have to move the superior Court for a writ of "certiorari", and on that, an order will be made quashing the decision on the ground of want of jurisdiction.

It might happen that in a proceeding before the inferior Court a decision might have been passed, which does not completely dispose of the matter, in which case it might be necessary to apply both for "certiorari" and "prohibition"-certiorari for quashing what had been decided, and prohibition for arresting the further continuance of the proceeding. See: Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, "

27. The principle that a decision rendered in an earlier writ petition on merits bars a subsequent suit involving the same questions and for the same reliefs upon general principles of res judicata was well settled by the majority judgment of the Supreme Court in Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), . In that case, a person who failed in a writ petition on the question that he was discharged as surety was held to be barred from raising the same question in a subsequent suit. The majority judgment has discussed the question comprehensively and after noticing that "the jurisdiction of the Civil Court and the High Court or the Supreme Court cannot be said to be co-extensive but it is plain that the Civil Court, in the exercise of its jurisdiction, is subject to the

appellate or revisional jurisdiction of the High Court and the Supreme Court" declared that:

"on the general principles of res judicata, the decision of the High Court on a writ petition under Article 226 on the merits on a matter after contest will operate as res judicata in a subsequent regular suit between the same parties with respect to the same subject matter."

28. Although, after the 1976 Amendment Act, Section 141 of the CPC was amended by inserting an Explanation to the effect that proceedings under Article 226 do not fall within the ambit of "proceedings in any Court of civil jurisdiction". In G.K. Dudani (Supra), the Supreme Court explicitly ruled that "the principle of res judicata does apply to all writ petitions under Article 226" of the Constitution of India. The well settled principle that a question concluded by the judgment of the High Court in a writ petition cannot figure for adjudication in a subsequent suit was reiterated by the Supreme Court in Govt. of Andhra Pradesh Vs. M. Narasimha Murthy, .

29. Sri Anantha Babu's contention is that no writ of prohibition shall issue to a Civil Court prohibiting it from proceeding with the suit and the only remedy even in respect of matters of jurisdiction an aggrieved person has is only by preferring an appeal. We think the statement of law is not absolute and unqualified. Where facts clearly establish that the Court lacks total jurisdiction or where a party is seeking to abuse the jurisdiction of the Court or where matters were settled by pronouncements of higher Courts and on pleadings or in respect of the prayer sought, there is little ambiguity or dispute, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, which is founded on equitable considerations, would not hesitate to issue a writ of prohibition.

30. Precedents are not lacking in this regard. A Division Bench of this Court in D. Sambamurthy v. Collector, E.G. 1979 (2) APLJ 93 had an occasion to consider the question in the context of the Andhra Pradesh Administrative Tribunal Order, 1975, by which the Civil Courts were divested of their jurisdiction concerning Government employees in respect of their conditions of service. A Government employee filed a suit for alteration of his date of birth in the service register and obtained an interim injunction restraining the Government from retiring him from service on the basis of the entry concerning the date of birth in the service register. The Division Bench speaking through Kuppuswamy, J., (as he then was) considered the relative position in India and the United Kingdom and expressed the opinion:

"Whatever may be the position in England, there cannot be any doubt that having regard to the wide use of the expression "authority" in Art .226 of the Constitution, the High Courts in India have powers to issue writs in respect of proceedings in subordinate Courts."

The learned Judge approvingly referred to the view expressed earlier by Gopal Rao Ekbote, J., (as he then was) in P. Venkata Somaraju and Others Vs. Principal

Munsif-Magistrate, Bhimavaram, West Godavari Dist. and Others, :

"....It is difficult to hold that subordinate Civil Courts are not inferior Courts for the purpose of Article 226. A Court is an inferior Court for the purpose of a writ of certiorari or prohibition whenever its jurisdiction is limited. The words of Article 226 are wide enough to include the subordinate Civil Courts. In principle, there is no difference between a subordinate Civil Court or a criminal Court. In both these cases, in appropriate cases, writs mentioned in Article 226 can issue."

The Division Bench while expressing the view that a suit filed by a Government employee for declaration of age will not enure to his benefit as a condition of service but in other aspects, such a suit is maintainable and to that extent, issued a writ of prohibition. In passing, we may state that in England, the position is well settled that the High Court in exercise of its supervisory jurisdiction can issue a writ of certiorari to a Subordinate Court to correct an error of law on the face of the record. Lord Widgery, C.J. in *R. v. Crown Court, Exeter* 1974(1) All.E.R.1183 said:

"The High Court's power to make an order of certiorari.... in relation to the jurisdiction of the Crown Court was not strictly limited to matters of jurisdiction but extended to other situations in which an order of certiorari was commonly used."

31. Where the judgment of a Civil Court is clearly illegal and in violation of law, a writ of certiorari can be issued was the rule laid down by the Supreme Court in *State of M.P. v. Babu Lal* AIR 1977 SC 1718. A decree granted by the Civil Court was found to be in violation of the MP. Land Revenue Code. The High Court dismissed the application filed by the State Government for a writ of certiorari to call up the record and quash the decree. On appeal, while quashing the decree, the Supreme Court stated the rule thus:

"One of the principles on which certiorari is issued is where the Court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari."

32. The rulings cited by the learned counsel for both sides in regard to the proposition concerning the jurisdiction of the Civil Court relating to questions of title, we think, are not relevant in view of the decision of the Division Bench in the first Tallapaka case. In none of the cases, was the fact situation analogous to the present one warranting issuance of a writ of prohibition on the ground of want of jurisdiction in consequence of an earlier declaration made by the High Court, which was affirmed by the Supreme Court. Although, in the written arguments filed on behalf of the T.T.D., a number of rulings have been mentioned, our attention has not been invited to any passage indicating a position not warranting issuance of a writ of prohibition in a fact situation similar to the present one.

33. Coming to the contempt case, in which it is alleged that by instituting the suit -O.S.No.69 of 1995 -the T.T.D., had committed an act of civil contempt 45 within the meaning of Section 2 (b) of the Contempt of Courts Act, 1971, we find no merit in it. When the question whether a writ of prohibition would lie needed elaborate consideration, it could not be said that the filing of the suit would amount to an act of contempt. As the requisite mental element is absent, we cannot hold that the T.T.D., had wilfully and deliberately disobeyed the judgment in the first Tallapaka case by instituting O.S.No.69 of 1995.

34. In the result, both the W. Ps., are allowed. A writ of prohibition will issue in W.P. No. 5997 of 1996 prohibiting the Principal Subordinate Judge, Tirupati from proceeding with the suit - O.S.No.69 of 1995. Likewise, a writ of prohibition will issue in W.P.No.8347 of 1996 prohibiting the Revenue Divisional Officer, Tirupati, from proceeding with the appeal preferred by the T.T.D., against the order of the Inams Deputy Tahsildar, Chittoor in S.R. No.I / 95 dated 9-8-1995. The Contempt Case-C.C.No.373 of 1996 - is dismissed. No costs.

35. After the judgment is pronounced, the learned counsel for the Tirumala Tirupati Devasthanams has made an oral application for leave to appeal to the Supreme Court. We have followed the binding precedents in these cases and, therefore, we do not think that any substantial questions of law of general importance or substantial questions of law as to the interpretation of the Constitution arise in these cases for determination by the Supreme Court. Leave is, therefore, rejected.