
(2006) 12 AP CK 0089

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 160 of 1997

Tirumala Educational Trust

APPELLANT

Vs

Tirumala Tirupati Devasthanams

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 107, 109, 109(2), 70, 71
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 100, 101, 102, 103, 104
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties (Other than Agricultural Lands) Lease Rules, 1982 — Rule 4(1), 4(2)
Andhra Pradesh General Clauses Act, 1891 — Section 18, 8
Tirumala Tirupati Devasthanam Rules, 1979 — Rule 138, 139, 140, 141, 142
Tirumala Tirupati Devasthanams Act, 1979 — Section 2(27), 4, 4(1), 46(1), 47

Citation : (2007) 2 ALD 188

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : B.V. Subbaiah, for the Appellant; M. Adinarayana Raju, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—This appeal is directed against the judgment and decree dated 04.12.1996 passed in O.S. No. 15 of 1987 by the Principal Subordinate Judge, Tirupati.

2. The appellant is the plaintiff trust and the respondent is the defendant in the suit O.S. No. 15 of 1987 filed seeking declaration that the plaintiff trust is entitled at its option to get successive renewals of the lease in respect of the plaintiff schedule property successively for period of six years each from the defendant Devasthanam and for consequential permanent injunction. The said suit has been dismissed by judgment and decree dated 04.12.1996 and aggrieved by the same the plaintiff trust preferred this appeal.

PLEADINGS:

2. The plaint averments in brief are as follows:

(a) The plaintiff is an educational trust registered under the Societies Registration Act, 1860 to cater to the educational needs of the children of the permanent population of Tirumala Hills and the trust commenced kindergarten section of the school in the name of Sri Venkateswara B. Nagi Reddi English Medium School from 14.06.1971 in temporary building erected on the site in S. No. 642 surrounding the samadhi of Tarigonda Venkamamba, philanthropically donated by their heir G.V.L.N. Murthy, since deceased. The plaintiff trust also commenced a primary school with Telugu as medium of instruction in N.M. Shed No. 16 made available to the trust initially on nominal rent. The plaintiff trust commenced the said schools with the consent of the defendant Devasthanam and duly obtaining the necessary recognition etc. from the educational department. With a view to construct permanent buildings for the school the plaintiff trust applied to the defendant Devasthanam for grant of 99 years lease of its site in S. No. 642, West of the aforementioned site donated by G.V.L.N. Murthy. In view of the limitation imposed by the statute upon the power of the defendant Devasthanam in the matter of alienations by way of lease etc. the defendant Devasthanam instead offered to grant lease of the said site of 27 cents for 6 years, subject to option in favour of the plaintiff trust for further extension of lease for further periods of 6 years. The Board of Trustees of defendant Devasthanam passed a resolution to that effect on 20.07.1971. Accordingly, the defendant Devasthanam obtained necessary permission of the Endowment Commissioner and the parties" thereunto entered into a bilateral transaction of lease for the said 27 cents by the registered lease deed dated 01.08.1975, for 6 years, commencing on 20.07.1971 on an annual rent of Rs. 10/-. The plaintiff trust spent huge sums of money and converted the temporary buildings erected initially into pucca ones and also constructed several other pucca buildings for the school with the necessary class rooms etc. upon the said 27 cents demised as well as on the site donated by the said G.V.L.N. Murthy with the knowledge and consent of the defendant Devasthanam.

(b) Before the expiry of the period of 6 years demised under the said lease, the plaintiff Trust exercised the option vested in it for the renewal of the lease in respect of the said 27 cents and also requested the defendant Devasthanam to grant lease of another 57 cents in S. No. 592 situated to the East of the site donated by the said G.V.L.N. Murthy for the purpose of providing pucca buildings to meet the increased needs of the school. The defendant Devasthanam agreed to do so. Accordingly the parties entered into another bilateral lease transaction in respect of the said sites of 27 cents and 57 cents by a registered lease deed executed between 15.10.1979 and 18.10.1979 for a period of 6 years commencing from 20.10.1977 to 19.07.1983 on an annual rent of Rs. 35/-. The said lease deed also contained the clause of granting option to the plaintiff trust for renewals of the lease for further periods of 6 years each. The plaintiff trust

with the knowledge, consent and also permission of the defendant Devasthanam erected several other pucca superstructures on the sites demised at considerable expense. The defendant Devasthanam granted exemption to the plaintiff trust from payment of water and electricity charges payable in respect of the suit premises.

The Executive Officer of the defendant Devasthanam, who is the Ex-Officio, the executive authority for the Tirumala Hills area for the purpose of the A.P. Grama Panchayat Act exempted the buildings upon the plaint schedule site from assessment to property tax as per Government policy.

(c) The plaintiff trust opened new classes up to High School, imparting instruction in English Medium to the level of class X and also in Telugu Medium up to class V. Five batches of students of the school took the S.S.C examination in the school premises recognizes as a centre for holding public examinations and secured a very high percentage of passes therein. The school has a N.C.C. wing for both boys and girls. The total strength of the English Medium School consisting of lower kindergarten to X class is 806 and the strength of Telugu Medium primary school run by the plaintiff trust in the N.M. Shed No. 16 is 144. The plaintiff trust employed 25 teaching and 20 non- teaching permanent staff besides temporary employees ranging from 10 to 15 on nominal muster basis.

(d) In or about 1982 the then Executive Officer of the defendant Devasthanam desired to take over the management of the school and initiated correspondence by calling for particulars in that regard. Though earlier in 1975 the defendant Devasthanam had expressed its inability to take over management of the schools run by the plaintiff trust, the plaintiff trust by letter dated 17.02.1982 agreed to take over the management of the schools by the defendant Devasthanam conditionally. The conditions imposed by the plaintiff trust for taking over the management of the schools were not accepted by the defendant Devasthanam and ultimately the plaintiff trust by letter dated 09.05.1982 informed the defendant Devasthanam that it would not be willing to hand over the institution maintained by it. Therefore, the defendant Devasthanam and its officers are displeased with the said attitude of the plaintiff trust. On account of the said displeasure and by reason of political differences between the Executive Committee of the plaintiff trust and the newly elected Government of January 1983 the defendant Devasthanam did not extend the lease in respect of the demised sites though intimation exercising option was sent sufficiently before 19.07.1983. Instead by proceedings dated 01.12.1983 the defendant Devasthanam sought to extend the lease by 3 years from 20.07.1983 to 19.07.1986 with the usual 10% increase in the annual rent at Rs. 38.50 paise. The defendant Devasthanam has no manner of right to refuse to accept the option for renewal duly exercised by the plaintiff trust. Hence, the plaintiff trust called upon the defendant Devasthanam to renew the lease for 6 years as agreed, instead of doing so the defendant Devasthanam once again resolved to take over the management of the schools maintained by the plaintiff trust and by

letter dated 01.09.1986 appointed a committee consisting of Joint Executive Officer, Tirumala; Financial Adviser and Chief Accounts Officer; Devasthanam Law Officer and the Devasthanam Educational Officer and advised the plaintiff trust to negotiate with the said committee. Pending such take over the defendant Devasthanam sought to extend the period of lease by one more year subject, however, to the condition that two of its Board members and two of its Officers should be members of the school committee. The defendant Devasthanam had no right to do so and the negotiating committee never met with the plaintiff trust nor did the defendant Devasthanam nominate the names of two Board members to be included in the school committee. Upon receiving the reminders in that regard, the plaintiff trust signified its willingness by letter dated 25.11.1996 to negotiate in the best interest of the institution and the school going children.

(e) The plaintiff trust also made certain allegations that one B. Ramachandra Raju was then newly appointed as member of the managing committee and between him and the President of the plaintiff there was enmity, due to which the defendant Devasthanam has taken the decision of dispossessing the plaintiff trust from the said demised sites though the defendant Devasthanam is bound to grant successive renewals for a period of 6 years each. The lease by its very nature and even otherwise is permanent one. The renewals at the plaintiff trust option in the face of legal disability of the defendant Devasthanam to alienate for more than 6 years does not detract from the merit of permanency. The defendant Devasthanam having actively induced the plaintiff trust to spend huge sums of money for construction of pucca buildings for the benefit of large number of students is estopped by conduct from seeking to make the lease a determinable one at its whims and fancies. If the lease was not renewable at the option of the plaintiff trust for successive 6 years the plaintiff trust would not have ventured into construction of huge buildings, purchase of equipment for laboratory, library, furniture etc. If the defendant Devasthanam forcibly dispossessed the plaintiff trust the plaintiff trust as well as the students of the school under its management and the employees thereof will be put to irreparable loss and damage. Therefore, the plaintiff trust is obliged to file the suit for declaration of its entitlement at its option to successive renewals of the lease in respect of the 27 cents and 57 cents successively for periods of 6 years each and for permanent injunction restraining the defendant Devasthanam its agents, servants, subordinates and officers from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties and the amenities of water and electricity supply.

3. The brief averments of the written statement filed by the defendant Devasthanam are as follows:

(a) The defendant Devasthanam is running an elementary school at Tirumala with strength of 2000 and a High School with strength of 1000. The contention that the site on which the plaintiff trust erected temporary buildings and started kindergarten section in 1971 was donated by the heir G.V.L.N. Murthy are

incorrect and the entire land which is in S. No. 10 1/3 square miles in and around Sri Vari Temple in Tirumala belongs to Tirumala Tirupati Devasthanams (TTD) and the TTD is absolute owner of the entire site and nobody else has got any right, title or interest in it. N.M. Shed No. 16 premises belong to TTD and the said shed was never made available to the plaintiff trust by the defendant Devasthanam and the said premises was encroached by the plaintiff trust.

(b) The defendant Devasthanam allotted a vacant site of an extent of 0.27 cents out of Ac.0.59 cents in S. No. 642 for the purpose of locating S.V. Kindergarten school thereon for a period of 6 years from 20.07.1971 to 19.07.1977 on a nominal rent of Rs. 10/- per annum and the said lease was confirmed by the Commissioner, Endowments Department, Hyderabad in his proceedings dated 15.07.1972 and a lease deed for the said term was executed and the same was also registered. So the contention of the plaintiff trust that the plaintiff trust sought lease for 99 years is not correct and true. G.V.L.N. Murthy has no right to donate any site and there is no option of renewal of lease as can be seen from the lease deed and there is no such resolution dated 20.07.1971 of the Board of Trustees of TTD giving option of renewal of lease and no approval for constructions of the buildings was give by TTD. G.V.L.N. Murthy did not own any site and so the question of donation does not arise and all the constructions were made in TTD site only. The plaintiff trust encroached an extent of Ac.0-32 cents in S. No. 642.

(c) As per the request of the plaintiff trust to lease another extent of 57 cents of land in S. No. 592 part contiguous to the aforesaid site the Board of Trustees of TTD in their resolution dated 05.10.1978 accepted the request and have granted lease of the said land of 57 cents on a nominal rent of Rs. 25/- per annum for the period up to 19.07.1983 and a lease deed dated 18.10.1979 was got executed and registered. Thus, the total extent of the land, which was leased out, is 83 cents and the plaintiff trust encroached an extent of 32 cents. Thus, the total extent of land in possession of the plaintiff trust is Ac.1-16 cents.

(d) The lease of 27 cents of land expired on 19.07.1977 was extended on the same terms for a further period of 6 years from 20.07.1977 to 19.07.1983 vide resolution dated 30.06.1977, which was also approved by the Commissioner, Endowments Department, Hyderabad in his proceedings dated 27.07.1977. The lease deed 2/1984 was executed for the second term but it was not registered. The managing committee of TTD in its resolution dated 04.09.1983 extended the lease for a further period subject to an increase in rent at 10% and in another resolution dated 31.10.1983 the managing committee extended the lease only for three years from 20.07.1983 to 19.07.1986 subject to increase in rent at 10%. The entire land on which the school is being run belongs to TTD and the plaintiff trust obtained it on lease from time to time. As the term of lese was over in respect of both the pieces of land the defendant Devasthanam sent a notice dated 22.07.1986, which was acknowledged by the plaintiff trust on 26.07.1986, demanding the plaintiff trust to vacate and surrender vacant possession of the

entire land after removing the superstructures. The plaintiff trust instead of complying with the demands approached the Court and obtained ex parte interim injunction.

(e) The option to renew the lease vests with the defendant Devasthanam and the last renewal was made in the year 1983 for a period of three years, which expired on 19.07.1986 and the defendant Devasthanam thought it fit not to extend the lease any further in view of the complaints received by it about the plaintiff trust and whatever may be the terms of prior lease deeds, the latest lease document of February 1984 clearly stipulates that TTD has the power to reduce or even terminate the lease at any time. No permission as such was granted to the plaintiff trust to make the pucca constructions and the allegation that water and electricity charges were not collected from the plaintiff trust is not correct. As the entire property belongs to the defendant Devasthanam the property tax is not being collected.

There were complaints against the management of the school run by the plaintiff trust and in fact, the teachers working in the school have lodged a complaint on 10.09.1981 and 30.01.1982 and there is dissatisfaction among the staff of the school, the parents of the children of the school and the general public about the functioning of the school and numerous complaints have been received by the defendant Devasthanam about the management of the school and therefore, the Board of Trustees of TTD vide resolution dated 18.12.1974 resolved to take over the management of the school provided that the staff is found suitable. The plaintiff trust did not accept the conditions imposed by the defendant Devasthanam but on the other hand the plaintiff trust stipulated numerous conditions for handing over the management. Therefore, the matter was placed before the Board in 1974 and the Board resolved not to take over the management of the plaintiff trust in 1974 but in 1982 the plaintiff trust itself offered to hand over the school on certain terms and conditions which were discussed by the Management Committee of TTD vide its resolution dated 23.04.1982 to the effect that it disagreed with the terms and conditions. Ultimately, the managing committee in its resolution No. 334 dated 20.08.1986 resolved that the management of the school can be taken over by TTD provided two of its officers or Board Members are in the management board of the plaintiff trust. For this condition also, the plaintiff trust did not agree, as such the taking over of the management by the defendant Devasthanam did not take place.

(f) The allegations made against B. Ramachandra Raju and the alleged enmity between him and the self-styled President of the plaintiff trust were all denied. The plaintiff trust is well aware of the short period of lease and its inability to vacate and remove the superstructures after expiry of lease and yet it embarked upon some considerable amount on the structures, measuring that it is interested in its own way of earning money on the school. The lease is determinable at the end of the period and so the question of estoppel does not arise. The reason for spending amount on the school is at the risk of the plaintiff

trust and the defendant Devasthanam cannot be blamed for it. The defendant Devasthanam is not interested in taking forcible possession but treating the plaintiff trust as an encroacher of the land and the defendant Devasthanam is at liberty to remove the structures and to take the vacant possession of land.

As the plaintiff trust is in the position of wrong doer the question of its suffering any loss or damage does not arise. The suit is not for specific performance of any term of lease and the plaintiff trust cannot therefore seek a declaration and no permanent injunction can be granted.

ISSUES:

4. On the said pleading the following issues were framed:

1. Is the defendant liable to renew the leases in respect of 27 cents in S. No. 642 and 57 cents in S. No. 592 at the option of the plaintiff successively each time for 6 years?

2. Is plaintiff not liable for eviction from plaint schedule demised property?

3. Is plaintiff entitled for permanent injunction prayed for?

5. Thus, it is the case of the plaintiff trust that it is entitled at its option to get successive renewals of lease each time for a period of 6 years for a total period of 99 years, whereas it is the case of the defendant Devasthanam that it never agreed to lease out the said premises permanently for a total period of 99 years renewable in between 6 years each time as contended by the plaintiff trust.

It is further the case of the defendant Devasthanam that in view of the execution of subsequent lease deeds the plaintiff trust waived the right of renewal. It is stated that there was no right of renewal and even if there is any right the plaintiff trust waived its renewal clause by executing last lease agreement and therefore there is no promissory estoppel.

6. Sr. K.M. Krishnaiah, the President of the plaintiff trust was examined as P.W.1 and marked Exs.A1 to A55 and one P. Sudarsana Rao, Senior Assistant of the defendant Devasthanam was examined as D.W.1 and marked Exs.B1 to B5. The trial Court based on the oral and documentary evidence held all the aforesaid issues against the plaintiff trust and dismissed the suit.

POINTS FOR CONSIDERATION:

7. It is just and necessary to have a glance at the oral and documentary evidence to decide the points that arise for consideration as to whether the defendant Devasthanam granted long lease of the said two sites agreeing for successive renewals each time for 6 years as contended by the plaintiff trust; whether there was any promise made by the defendant Devasthanam agreeing to grant long lease for successive periods of 6 years for a total period of 99 years and whether there was any prohibition in law for the grant of long lease of 99 years by granting lease intermittently for successive periods each time for 6

years.

EVIDENCE:

8. P.W.1, stated that the defendant Devasthanam granted lease in 1971 and in the year 1982, thereafter pursuant to the application filed by the plaintiff trust to grant lease for the purpose of erecting buildings and running the school, the defendant Devasthanam asked the plaintiff trust to specify the period of lease, for which the plaintiff trust replied that it wanted lease for 99 years. On 18.07.1971 the plaintiff trust applied for grant of lease of site for construction of school building and the defendant Devasthanam vide its resolution dated 20.07.1971 granted lease of the portion of the site to enable the plaintiff trust to construct the building for the school. Subsequently the defendant Devasthanam by Ex.A2 letter dated 19.09.1971 asked the details earlier called for regarding the term of the lease applied for. In reply the plaintiff trust requested to grant lease for a period of 99 years under Ex.A3. On 22.11.971 the Board of Trustees of the defendant Devasthanam passed a resolution recommending to the Government for grant of lease of 99 years and the conditions of lease were also contained in the said resolution. Ex.B1 is the copy of the resolution No. 619 dated 20.07.1971; Ex.B2 is the copy of the resolution No. 999 dated 22.11.1971 and Ex.A5 is the no objection letter dated 05.08.1972 given by the Executive Officer of TTD for starting the school by the plaintiff trust. Thereupon Ex.A6 lease deed dated 01.08.1975 was registered by executing bilateral deed by both parties but the period of lease was from 20.07.1971 to 19.07.1977. The Executive Officer of the defendant Devasthanam represented that he has no power to grant lease for more than 6 years though the Board recommended lease for 99 years and hence there is an option clause in Ex.A6 giving the plaintiff trust to get renewal for a further period of six years and the option is contained in Clause 3(iv) of Ex.A6.

The plaintiff trust by Ex.A7 letter dated 27.05.1977 exercised the option and asked the defendant Devasthanam to renew the lease for further period of 6 years. The extent of land covered in Ex.A6 is 27 cents. As the site was not sufficient the plaintiff trust applied for additional area of 57 cents and the Board of Trustees of defendant Devasthanam vide resolution dated 05.10.1978 approved the lease of additional 57 cents and accordingly communicated Ex.A8 letter.

The Joint Executive Officer of the defendant Devasthanam issued Ex.A12 proceedings dated 01.12.1983 pursuant to the resolution of the Board for renewing the lease for 3 years from 20.07.1983 to 19.07.1986 and the rent was increased 10%. As the period was reduced to 3 years because defendant Devasthanam wanted to take over the management of the school and the plaintiff trust refused to do so as the defendant Devasthanam did not agree for the conditions stipulated by it.

It is stated that as he was the Town Congress President of Tirumala and all the

members of the plaintiff trust were congress supporters and as at that time Telugu Desam Government was in office, the defendant Devasthanam did not renew the lease for 6 years. Then the defendant Devasthanam wrote a letter pursuant to the Board resolution dated 23.04.1982 for taking over the school run by the plaintiff trust but the defendant Devasthanam did not agree for the conditions imposed by the plaintiff trust and ultimately the plaintiff trust refused to hand over the management of the school to the defendant Devasthanam if conditions 2 to 6 in Ex.A13 were not fulfilled by the defendant.

It is stated that on 13.06.1986 the plaintiff trust requested the defendant Devasthanam for extension of the lease for 6 years from 20.07.1986 but the Managing Committee of the defendant Devasthanam vide its resolution dated 20.08.1986 resolved to take over the management of the school and appointed a committee for negotiations with the management of the plaintiff trust and in the mean time the defendant Devasthanam decided to extend the lease for a period of one year. But the committee appointed under Ex.A17 did not hold any negotiations with the plaintiff trust for taking over the management of the school in spite of the willingness expressed by the plaintiff trust to negotiate with the committee. He further stated that the defendant Devasthanam did not object the buildings material transported from Tirupati to Tirumala for the purpose of construction of buildings. It is further stated that the school is being run with good reputation and appreciation from one and all and there are no complaints about the administration of the school from the public and there is a need for imparting education at Tirumala in addition to the schools run at Tirumala and instead of extending the successive lease at the option of the plaintiff trust as per the clause of the lease deeds the defendant Devasthanam initiated action to dispossess the plaintiff trust and filed a case in O.A. No. 1 of 1988 under Sub-section 2 of Section 83 read with Sections 95 and 180 of the Endowment Act 30 of 1987 before the Commissioner of Endowments, Hyderabad.

The plaintiff trust received a notice on 11.04.1988 that the hearing of the case was scheduled on 23.04.1988. Aggrieved by the said letter the plaintiff trust filed W.P. No. 9356 of 1988 and obtained stay in W.P.M.P. No. 11706 of 1988 by order dated 23.06.1988. It is further stated that the plaintiff trust provided temporary accommodation as and when required by the authorities at Tirumala. The said W.P. No. 9356 of 1988 was dismissed by this Court on 10.06.1999 on the ground that it was only a show cause notice in the case O.A. No. 1 of 1988.

(a) In the cross-examination it is stated by P.W.1 that the plaintiff trust has been collecting tuition fee from all the students but it is also imparting free education for the students in Telugu Medium.

It is stated that there was no necessity for the plaintiff trust to take permission of the defendant Devasthanam for starting Junior College and the plaintiff trust did not ask any permission for it. There is no lease deed between the plaintiff trust and the legal representative of Tharikonda Venkamamba samadhi and there is no record to show the title of samadhi in respect of 57 cents of land or in

favour of G.V.L.N. Murthy. He did not know whether the Government gave approval for the recommendation of the Board of Trustees for grant of lease of 99 years and the plaintiff trust has not filed any writ for a direction to the Government to approve the proposal of the Board. The Executive Officer of the defendant told the plaintiff trust that he has no power to grant lease for more than 6 years and therefore, the plaintiff trust went on taking leases every six years. He did not know whether the Executive Officer of the defendant Devasthanam has power under the Rules framed under the Endowment Act to grant leases for more than 1 year. The lease granted in favour of the plaintiff trust was by private negotiations. He did not know whether the Executive Officer had power to renew the lease year by year for two more years subject to maximum of three years. He did not know as to how Tharigonda Venkamamba Samadhi people got ownership and title for the extent of 57 cents out of the suit land. The suggestion that he plaintiff trust is an encroacher of 32 cents of land within the compound wall was denied. The plaintiff admitted that he took lease of 84 cents of land from TTD under two leases i.e. 27 cents + 57 cents. The distance between the temple and the school is about a furlong. N.M. Shed 16 was given free of rent by TTD but there was no lease period.

The suggestion that there were complaints by the teachers and others against the management of the school was denied.

9. D.W.1, examined on behalf of the defendant Devasthanam, stated that the lease for an extent of 27 cents out of 59 cents in S. No. 642 was granted for a period of six years from 20.07.1971 to 19.07.1977 under Ex.A6 and the said lease was renewed for a further period of six years from 20.07.1977 to 19.07.1983 and the balance extent of 32 cents was encroached by the plaintiff trust. Again an extent of 57 cents in S. No. 592 was given on lease for a period of 6 years up to 19.07.1983 under Ex.B3 lease deed dated 18.10.1979. Again the lease period for both the bits were extended by three years from 20.07.1983 to 19.07.1986 under Ex.A12 proceedings and thereafter there was no extension of lease. Accordingly, the defendant Devasthanam issued a notice to the plaintiff school to vacate and deliver the vacant possession of the land and as the plaintiff trust failed to vacate and deliver the possession, the defendant Devasthanam filed O.A. No. 1 of 1988 before the Commissioner of Endowments, Hyderabad for eviction treating the plaintiff trust as encroacher. The renewal clauses in Exs.A6 and A.7 are void and not binding on the defendant Devasthanam in view of the Endowments Act and Rules. The contention of the plaintiff trust that it is entitled for renewal of lease for every six years is not correct and the plaintiff trust is not entitled to any relief. The plaintiff schedule property is surrounded by a compound wall of height about 5" to 8" and the total extent available in the said compound wall is Ac.1-16 cents, comprised in two survey numbers bearing 642 and 592. It is stated that he also visited the school premises for the first time in 1984 to admit his daughter and also attending regularly thereafter and his son is still continuing his studies in the said school. In Ex.A3 there is a recital with regard to 99 years lease.

The suggestion that the gram panchayat of Tirumala gave permission to the plaintiff trust for construction of the buildings in the suit schedule site and that the plaintiff spent 10 lakhs for construction of buildings was denied. The suggestion that the defendant Devasthanam permitted the plaintiff trust to transport building material from Tirupati to Tirumala through ghat road was denied.

It is stated that on the date of execution of lease deeds Exs.B1, A6, A3 and B5 he was not present.

10. The letter dated 19.09.1971, Ex.A2, addressed by the Executive Officer of TTD to the plaintiff trust, goes to show the plaintiff was requested to send the details called for in the earlier letter of TTD as regards further action and for want of information, as the approval of the Commissioner, Endowments could not be obtained even though the TTD Board's resolution has been passed as early as on 20.07.1971. The perusal of note Ex.B1 resolution of the TTD Board goes to show that the President of Sri Venkateswara Kindergarten School, addressed a letter dated 18.07.1971 requesting to spare a portion of TTD's site for construction of Kindergarten school proposing to run English Medium School for the benefit of the children of the local people residing at Tirumala as there was no school at Tirumala at that time and the funds for the construction of the building and establishment would be borne by the local people themselves and by that time 200 boys were studying in the school and most of the children belong to TTD employees. The request of the President, Sri K.V. Munirathnam, to provide a site on a nominal rent of Rs. 10/- per annum in Tharigonda Venkamamba Garden to enable them to construct a school building for the benefit of the school going children without any rights for the site subject to executing an agreement duly was accepted by TTD Board. As no period was stipulated in the said Ex.B1 resolution, the President of the plaintiff trust addressed Ex.A3 letter to the Executive Officer, TTD stating that the site may be given to Kinder Garden school, Tirumala under lease for 99 years as per the Board's resolution dated 20.07.1971. It is also pertinent to note that the agenda was put up before the Board of Trustee of the defendant Devasthanam with regard to special note agenda 999 to fix the period of lease and conditions of lease pursuant to the earlier Board's resolution dated 20.07.1971 and the said note goes to show that the Board of Trustees vide its resolution dated 20.07.1971 approved sanction of the site on a long lease in favour of the President, Sri Venkateswara Kinder Garden School, to open an English Medium School on a monthly rent of Rs. 10/- per annum, but the extent of the period and the conditions of lease have not been prescribed and as per the report of the Surveyor, it was found that the plaintiff trust was in occupation of 27 cents in S. No. 642, so the extent may be ordered to be taken as 27 cents and that the President was asked to specify the period of lease and he requested for lease of 99 years and the said request may be considered subject to conditions mentioned in the said note from 1 to 5. On the said note the Board passed a resolution No. 999 dated 22.11.1971 recommending the period of lease to be fixed for the decision of the

Government. Thus, Ex.B2 resolution goes to show that the Board recommended all the conditions of the lease but as regards to the period, it recommended for the decision of the Government and the Board has not fixed any period of lease. Thereafter, the Executive Officer, TTD vide Ex.A4 letter dated 05.08.1972 stated that TTD has no objection to start a fresh Telugu Medium School at Tirumala by the plaintiff trust.

11. Ex.A6 registered lease deed dated 01.08.1975 in respect of 27 cents in S. No. 642 of Tirumala Hills, goes to show that TTD Board vide its resolutions dated 20.07.1971 and 22.11.1971 resolved to lease out the properties for a period of six years only from 20.07.1971.

The Commissioner, Endowment by letter dated 15.05.1972 accorded permission for grant of aforesaid lease for six years in exercise of his powers vested under Rule 9 of the Rules framed u/s 100(2)(m) of the H.R. & C.E. Act XIX of 1951. The conditions of the said lease deed go to show that plaintiff trust shall pay all rates, taxes and charges inclusive of water and electric charges payable in respect of the buildings erected by the plaintiff trust subject to the covenant regarding renewal of the lease that the lessee shall on the expiry of the term hereby reserved peacefully surrender possession of the demised premises, with all building etc. The plaintiff trust shall be at liberty with the consent of the defendant Devasthanam to construct buildings or make improvement. The covenant 3(iv) goes to show that the defendant Devasthanam will at request and cost of the plaintiff trust at the end of the term of the years thereby granted and so on from time to time thereafter at the end of such successive further terms of years, as shall be granted, execute to the lessee a new term and on such covenants and provisions as the defendant Devasthanam may then resolve. As per Clause 5 it was agreed that any dispute or difference arising between the parties thereto either in the matter of the interpretation of the several clauses, terms or stipulations or in the matter of giving effect to any or all of them during or at the expiry of the lease period, shall be referred to the arbitration of the Commissioner, Endowments.

12. The plaintiff trust addressed Ex.A7 letter dated 27.05.1977 to the defendant Devasthanam for further extension of lease for a period of 6 years commencing from 20.07.1977 on the usual terms and conditions and rent which was already agreed upon in the lease deed dated 01.08.1975. It is not in dispute that the Executive Officer, Tirumala Hills Area, vide Ex.A23 dated 09.09.1977 permitted the plaintiff trust to construct buildings subject to certain conditions. Thereafter the defendant Devasthanam vide Ex.A8 proceedings dated 15.11.1978 stated that the Board of Trustees agreed for the grant of lease in respect of adjacent extent of 57 cents in favour of the plaintiff trust on the nominal rent of Rs. 25/- per annum for a period of 6 years and also accorded permission to construct a compound wall to the said site which will be useful to the school. The defendant Devasthanam vide Exs.A9 and A10 letters dated 06.10.1979 and 15.10.1979 informed the plaintiff trust stating that the lease deed has been executed for the

period from 20.07.1977 to 19.07.1983 and it has to be registered in the Sub-Registrar of Assurances, Tirupati and requested the plaintiff trust to fix up a convenient date to get the lease deed registered and bear the costs. Accordingly, Ex.B3 lease deed dated 18.10.1979 was executed stating that the Board of Trustees of TTD approved for grant of lease of 57 cents also abutting to 27 cents for a period of six years up to 19.07.1983 in which a clause similar to Clause 3(iv) of Ex.A6 with regard to renewal and arbitration Clause 5 were incorporated. Thereafter, the defendant Devasthanam vide its proceedings dated 01.12.1983 agreed to extend the lease for a period of three years alone from 20.07.1983 to 19.07.1986 subject to increase of rent by 10% and subject to the conditions that the lessee shall execute a lease deed and get it registered at his cost; that it is open to the defendant Devasthanam to reduce the term of lease or terminate the lease at any time and the lessee shall deliver vacant possession of the site. After completion of the lease period the lessee shall deliver vacant possession of the site to the defendant Devasthanam etc. As the lease for the aforesaid two sites was going to be expired on 19.07.1986 the plaintiff addressed a letter Ex.B4 dated 13.06.1986 requesting to allow further extension for a period of 6 years commencing from 20.07.1986 on the usual terms and conditions. Ex.A17 letter dated 01.09.1986 addressed by the defendant Devasthanam to the plaintiff trust goes to show that the Management of the defendant Devasthanam resolved on 20.08.1986 to take over the management of the school in principle and accordingly constituted a committee as stated above to negotiate with the management of the plaintiff school and in the mean time it was decided to extend the lease for one year.

13. Admittedly both the parties executed Ex.B5 lease agreement dated 02.02.1984. A perusal of the said lease agreement goes to show that the Management Committee of the defendant Devasthanam vide its resolution dated 04.09.1983 and 31.10.1983 communicated in proceedings dated 01.12.1983 has renewed the lease in respect of the vacant sites of 27 cents and 57 cents for a period of three years only commencing from 20.07.1983 to 19.07.1986 subject to the terms and conditions of increasing 10% rent for the aforesaid three years; that the plaintiff trust shall get the said lease deed registered at its cost; that it is open for the defendant Devasthanam to reduce the term of lease or terminate the lease at any time and the lessee shall deliver vacant possession of the site; that after completion of the lease period the plaintiff trust shall deliver the vacant possession of the site to the defendant Devasthanam.

LEGAL ASPECTS:

The Madras Hindu Religious and Charitable Endowments Act (XIX OF 1951) and The Rules Made Thereunder

14. The Madras Hindu Religious and Charitable Endowments Act XIX of 1951 (for short "the Act XIX of 1951") was applicable to the erstwhile State of Madras and to all Hindu public religious institutions and endowments, including the Tirumala Tirupati Devasthanams (TTD) and the endowments thereof.

(a) As per Section 29(1) of the Act XIX of 1951, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary and beneficial to the institution. Chapter IX of Act XIX of 1951 i.e. Sections 80 to 85, deals with TTD. As per Section 80 the other provisions of the Act shall apply to TTD subject to the modifications mentioned therein. Sections 58 and 63 to 69 relate to the notified religious institutions and do not apply to TTD.

Under Section 82 the Executive Officer shall have the power to manage the properties and affairs of TTD subject to such reservations as may be laid down by the Government and to the general control of the Board of Trustees. Section 99 deals with the power of the Government to call for records and pass any orders as to their regularity or correctness, legality or propriety of any decision or order passed, if it appears to the Government that any such decisions or order shall be modified, annulled, reversed or remitted for reconsideration. Section 100 deals with the powers to make rules to carryout all or any of the purposes of the Act and not inconsistent therewith and Section 100(2)(m) deals with the power of the Government to make rules in particular with regard to the manner in which and the period for which leases of properties of religious institutions shall be made.

(b) Under the Act XIX of 1951 rules have been framed in G.O.Ms. No. 1004 Rural Welfare dated 21.09.1951. Rules have been framed u/s 29(1) of Act XIX of 1951 for alienation of property relating to the exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to the religious institution by way of public auction. Various rules have been framed u/s 100 of the rule making power of the Government to carryout various purposes of the Act and in particular with regard to the matters mentioned u/s 100(2)(a) to (z). The rules made u/s 100(2)(m) relating to the manner in which and the period for which leases of the properties of the religious institutions are as follows:

Rules u/s 100(2)(m):

Rules 1 to 8 deal with the manner and the period for which the leases of the property of the religious institutions have to be made by way of public auction. Rule 9 deals with the manner in which and the period for which the leases of the properties of the religious institutions shall be made other than by public auction, which reads as follows:

9. (1) Notwithstanding anything contained in the foregoing rules, leases otherwise than by public auction may be resorted to, with the previous sanction of the Deputy Commissioner, or if the Commissioner or the Government so directs, in any case or class of cases, including in particular, the cases specified below:

(i) lease of cultivable lands belonging to religious institutions with an annual

income of Rs. 3,600 and above in favour of Welfare Co-operative Societies for the uplift of the Scheduled Castes or Backward classes or Field Labour Co-operative Societies for the rehabilitation of landless labourers;

(ii) leases of lands belonging to religious institutions which are not under cultivation or are remaining waste in favour of any such Society as is mentioned in Clause (i).

(2) In the case of any lease granted under Sub-rule (i):

(a) the fair rent may be fixed on the basis of rentals received during the three fasli years proceeding the date of the lease;

(b) the Society, if any, in each such case shall be treated as the lessee and shall be liable to pay the rent fixed;

(c) adequate security shall be insisted on from the society or lessee, as the case may be.

(3) The period of the lease in every case falling under Sub-rule (1), shall not ordinarily exceed one year, but the lease may be renewed from year to year on the same terms and conditions but in no case shall the total period exceed five years.

(4) The Deputy Commissioner may, if it is necessary in the interest of the institution, dispense with the requirements of Sub-rule (2) of Rule 2.

THE Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 17 OF 1966

15. Sections 70 to 74 of Act 17 of 1966 deals with the alienation of any immovable properties and resumption of Inam lands.

(a) Section 70 deals with lease, sale etc of the Inam lands; Section 71 deals with the resumption of Inam lands; Section 72 deals with appeals; Section 73 deals with prohibition of purchase of immovable property in certain cases and Section 74 deals with alienation of immovable property. u/s 74(1)(a) of Act 17 of 1966 any gift, sale, exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment shall be null and void unless any such transaction, not being a gift, is effected with the prior sanction of the Commissioner. Section 74(1)(d) deals with the subsisting leases on the date of the commencement of the Act 17 of 1966 which are to be continued in force till the expiration of its period on the same terms and conditions.

Section 74(1)(dd) inserted by Act 20 of 1976 reads as follows:

The authority to sanction the lease of any property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment, the manner in which and the period for which such lease shall be sanctioned, shall be such, as may be prescribed.

(b) Section 107 deals with the power to make rules. Section 109 deals with repeals and savings. u/s 109(2)(a) of Act 17 of 1966 notwithstanding such repeal all rules made, notifications or certificates issued, orders passed, decisions made, proceedings taken and other things done by any authority or officer under the repealed Act or Regulation as the case may be, shall insofar as they are not inconsistent with this Act be deemed to have been made, issued, passed, taken or done by the appropriate authority or officer under the corresponding provisions of this Act and shall have effect accordingly until they are modified, canceled or superseded under the provisions of this Act.

(c) Rules also have been made u/s 74 read with Section 107 of Act 17 of 1966 relating to notice of any sale, exchange, mortgage of immovable property of the religious institution or endowment in G.O.Ms. No. 515 dated 17.04.1969. No rules have been made under the Act 17 of 1966 relating to the leases of the properties in respect of religious institution u/s 74(1)(dd) for sanction of leases of any immovable property. Therefore, the rules made under the Act XIX of 1951 pursuant to the rule making power u/s 100(2)(m) i.e. Rule 9 as extracted above, shall be deemed to have been made under Act 17 of 1966 as the said rules made u/s 100(2)(m) of Act XIX of 1951 are not inconsistent with Section 74(1)(dd) of Act 17 of 1966 and the rules made thereunder relating to leases of immovable property of the religious institutions.

(d) For the first time rules have been made u/s 74(1) read with Section 107 of Act 17 of 1966 relating to leases of immovable property in G.O.Ms. No. 780 dated 04.08.1982 called the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties Lease Rules, 1982 (for short "the Lease Rules, 1982"). Thus, Rule 9 of the aforesaid rules made u/s 100(2)(m) of Act XIX of 1951 continues to be applicable in respect of the leases of immovable properties from 1951 till the Lease Rules, 1982 have been made on 04.06.1982. Under Rule 4(1) of the Lease Rules, 1982 no lease of immovable property shall be granted for a period exceeding five years and no lease of rights pertaining to any immovable property such as rights of usufruct, fishery, collection of coconut pieces, human hair etc. shall be granted for a period exceeding one year except with the prior approval of the Government. Under Rule 4(2) where it is proposed to grant lease of immovable property for a period exceeding five years the executive authority shall obtain the permission of the Government before causing publication of the notice for the grant of lease by way of public auction. Thus, the Lease Rules, 1982 stipulate that the Executive Officer/ the Board of Trustees are empowered to grant leases of immovable properties of the religious institutions for a period exceeding 5 years but such lease can be granted only with prior approval of the Government but not otherwise.

(e) It is pertinent to note that prior to Lease Rules, 1982 came into force a separate enactment has been made, which was called the Tirumala Tirupati Devasthanams Act, 1979 (for short "the TTD Act, 1979"). For the first time the

Commissioner became the Ex-officio Member of the Tirumala Tirupati Devasthanam Board and Committee by virtue of Sections 4(1)(i) and Section 6(2) (ii) of TTD Act, 1979. u/s 7 the administration of TTD shall vest in the committee and the committee shall manage the properties, funds and affairs of TTD and arrange for the conduct of the daily worship, ceremonies and festivals in every temple according to its custom and usage. u/s 47 of TTD Act, 1979 the provisions of Section 2(27) and Chapter XIV and the First Schedule of Act 17 of 1966 shall stand repealed and other provisions of the Act 17 of 1966 shall cease to apply to TTD but the provisions of Section 8 and 18 of Andhra Pradesh General Clauses Act 1891 shall apply.

(f) In exercise of powers u/s 46(1) of TTD Act, 1979, the rules have been made in G.O.Ms. No. 1238 dated 11.10.1979 called the Tirumala Tirupati Devasthanam Rules, 1979 (for short "the TTD Rules, 1979) from Chapter I to Chapter XXXII. Chapter XXIII deals with leases of lands i.e. Rules 177 to 189. Under Rule 186 All leases of immovable properties shall be by way of public auction and the period of lease ordinarily be one year but the lease may be renewed year to year on the same terms and conditions but in no case, the total lease shall exceed 3 years. The method and manner and the period of lease in respect of leases by way of public auction are prescribed under Rules 187, 188 and 189 deals with the leases other than by way of public auction, which reads as follows:

Rule 189:

Notwithstanding anything contained in these Rules, the Commissioner shall have power to lease the buildings, lands and any other property belonging to TTD on nomination for any number of years "but not exceeding 99 years in favour of public institutions or for public purposes only after duly recording the reasons in writing and subject to ratification by the Government.

The aforesaid quoted expression was substituted by G.O.Ms. No. 1160 dated 24.07.1981.

(g) The Act 17 of 1966 and TTD Act, 1979 were repealed and the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) had been enacted which came into force with effect from 23.05.1987. u/s 155 of Act 30 of 1987 rules made, notifications or certificates issued, orders passed, decisions made, proceedings taken and other things done by any authority or officer under the repealed Acts shall insofar as they are not inconsistent with the Act shall be deemed to have been made until they are modified, cancelled or superseded. Chapter XIV deals with TTD. u/s 95 of Act 30 of 1987 the provisions of Chapter XIV shall apply only to TTD and the other provisions of the Act shall also apply subject to the provisions of Chapter XIV. u/s 96 of the Act 30 of 1987 also the Commissioner of Endowments is the Ex-officio Member of TTD and the Executive Officer is the member of the committee. u/s 97 the administration of TTD shall vest in the Board of Trustees and the Board of Trustees shall manage the properties, funds and the affairs of TTD. Rules have

been framed in exercise of powers conferred u/s 97 read with Section 153 of Act 30 of 1987 from Chapter I to Chapter XVIII. Chapter XIX deals with leases of lands from Rules 138 to 151. Rules 138 to 149 deals with the manner and method of the leases by way of public auction. Rule 150 deals with the leases of immovable property other than by way of public auction, which reads as follows:

Rule 150:

Notwithstanding anything contained in these rules, the Board of Trustees shall have power to lease the buildings, lands and any other property belonging to TTD on nomination for any number of years not exceeding 99 years in favour of public institutions or for public purposes only after duly recording the reasons in writing and subject to ratification by the Government.

16. Sri B.V. Subbaiah, learned Counsel appearing for the appellant/plaintiff trust submits that the plaintiff trust is entitled for the relief of declaration of 99 years lease at its option to get successive renewals of lease in respect of the plaint schedule property from the defendant Devasthanam. The defendant Devasthanam is estopped from its conduct from seeking to make the lease determinable one at its whims and fancies. The TTD Board is competent to lease the immovable properties of the defendant Devasthanam for a long lease of 99 years without the need of obtaining approval or sanction from the Commissioner of Endowments or the Government. The Commissioner has no power to control the Board and he is nowhere in the picture regarding the administration and granting lease of lands belonging to TTD. The resolutions by the Board only speak of limiting the period by the Government but not by the Commissioner. The Government has not exercised any powers all these years not to ratify the action of the TTD in respect of long lease as decided by the TTD Board. There is no provision under Act 17 of 1966 prohibiting the leases of immovable property and so also the TTD Act, 1979 and Act 30 of 1987. They do not contemplate any need of approval or sanction of the Commissioner. Right from Act XIX of 1951 the Legislature enacted special laws for governing the affairs and the properties of TTD. Chapter IX of Act XIX of 1951 governs the administration and management of TTD properties, so also Chapter XIV of Act 17 of 1966. Under the TTD Act, 1979 special enactment was passed exclusively for the management of TTD and its properties. Later when TTD Act, 1979 was repealed under Act 30 of 1987, again Chapter XIV is provided providing special law for governance of TTD properties. It is, therefore, submitted that only a special law as provided in Chapter XIV of Act 17 of 1966 and subsequent Acts only govern the administration of TTD properties.

17. It is further submitted that, no doubt, Section 85(2) of Act 17 of 1966 provides for the application of other provisions subject to the provisions of special Chapter to the extent that the general provisions are not inconsistent with the special provisions. The special provisions will alone apply to TTD and the general provisions applicable to other temples in the entire State are not applicable to TTD as decided by this Court in Gundala Krishna Reddy Vs.

Tirumala Tirupati Devasthanams and Another, wherein it was held that TTD has got power of alienation of its properties without the sanction of the Commissioner and therefore, the sale by TTD without the sanction of the Commissioner was held as not invalid. The Board of Trustees of TTD alone have got power for sale, exchange or mortgage and leases of properties and the general provisions have no application in view of special provisions enacted for TTD. It is stated that the Division Bench of this Court in Duvvur Ramakrishna Reddy v. The Commissioner, Endowments Department 1972 (2) An.W.R 400 held that there is no restriction in Act 17 of 1966 regarding the period of lease for which leases can be granted by the trustees of the temple alone nor there is any particular necessity of obtaining any sanction from the Commissioner for leasing out the said lands by the trustees.

18. It is further submitted that there is no provision under Act 17 of 1966, which governs the leases either with regard to the period of lease or with regard to sanction of the Government. Section 29 of Act XIX of 1951 deals with the leases but the similar provision was specifically omitted by the Legislature u/s 74 of Act 17 of 1966 so also in TTD Act, 1979 and Act 30 of 1987. Therefore, it is stated that the Board of Trustees and the TTD alone have got unlimited powers to grant leases for any number of years till 24.07.1981 and later, of course, not exceeding 99 years with the prior approval of the Government.

19. It is further submitted that the rules framed u/s 100(2)(m) of Act XIX of 1951 deals with the manner of leases either by public auction or by private negotiations but they do not deal with the possession or exercise of powers of Board of Trustees even in regard to other temples in the State of AP. Rules 1 & 9 framed u/s 100(2)(m) only speak about the manner of conducting leases either by public auction or by private negotiations. The Act 17 of 1966 does not govern the period of lease and it also does not require the sanction of the Commissioner even in the matters of granting leases by private negotiations. The rules made under Act 17 of 1966 do not prohibit the grant of leases of temple properties and there are no other rules under Act 17 of 1966. The rules are only delegated legislation, which are framed only to sub-serve the object and purpose of the substantial provisions of the main Act and the rules cannot go beyond and above the substantial provisions of the Act and they are always subsidiary in the matter of providing law. They are only framed to implement the substantive provisions of law. Section 74 of Act 17 of 1966 does not speak of any leases and the word lease is purposefully omitted in the said Act. Thus, when the Act itself does not govern the grant of leases the rules cannot provide any machinery prescribing the limitation on the authority of the Board of Trustees of TTD.

After repeal of Act 17 of 1966, the TTD Act, 1979 also does not impose any restriction on the power of the Board of Trustees to grant lease for any number of years. Section 5 of TTD Act, 1979 gives unlimited power to TTD to grant leases for any number of years but, of course, the restriction was imposed for grant of 99 years as per the substituted provision with effect from 24.07.1981.

20. It is stated that the Board of Trustees of TTD decided to grant lease but they never spoke about the approval of the Government and the Government also has not exercised its powers restricting the period of lease and in this context, the intention of the Government is very clear that the proposals of the TTD for granting lease of 99 years for public purpose of running educational institution should be taken as approved and it is not necessary to obtain any such approval because the amendment came into force only in 1981 and we are concerned with the provision of law as existing prior to 1981. It is further stated that the institution has been developed by constructing huge buildings with all necessary required equipment for the purpose of imparting competent education and the TTD having encouraged for the construction of the buildings, its attitude in refusing the renewal of lease is malafide, motivated, vindictive and against the object and purpose for which the land was given for long lease and therefore, it is too technical to say that there is no provision for the renewal of successive leases each for a period of 6 years. It is stated that the defendant Devasthanam is estopped from going back from its promise of granting long lease. It is further stated that some of the students of the institution are Gold Medallists and the Education Department is appreciating the functioning of the institution and if for any reason the plaintiff trust has to vacate the plaintiff schedule premises, the TTD has to pay the value of the constructions and for all ancillary equipment and laboratory and the functioning of the school cannot be obstructed, disrupted and it shall be continued.

21. On the other hand, Sri M. Adinarayana Raju, the learned Counsel appearing for TTD submits that the lease expired by 19.07.1983. The rules made require sanction of the Commissioner for grant of lease of more than 5 years as per Rule 9 and the rules framed under Act XIX of 1951, therefore, Ex.B3 lease deed for grant of lease of 27 cents and 57 cents itself is illegal and invalid. However, Ex.B5 lease agreement for a period of 3 years from 20.07.1983 to 19.07.1986 requires compulsory registration and it also provides for termination of lease and after completion of lease period the plaintiff trust agreed to deliver the vacant possession, which provides no clause for renewal of lease and therefore, by virtue of Ex.B3 lease deed the plaintiff trust had waived/abandoned any right or claim accrued on it under the earlier lease deeds. It is stated that the plaintiff trust abandoned its right expressly by executing Ex.B5 lease agreement and having waived the right, if any, accrued on the plaintiff trust, it is not entitled for renewal of lease. It is stated that the plaintiff trust has not objected for clauses of Ex.B5 agreement and if there is any right of renewal, the remedy open to the plaintiff trust is to approach the civil Court by way of filing a suit for specific performance for renewing the period of lease for a period of 6 years each for successive renewals but by reason of executing Ex.B5 lease agreement the plaintiff trust clearly waived by abandoning any right or claim accrued in its favour.

22. Insofar as legal aspects are concerned the learned Counsel submits that Section 29(1) of Act XIX of 1951 provides for grant of lease exceeding 5 years

with the sanction of the Commissioner if it is beneficial to the institution and the rules made u/s 100(2)(m) of the Act XIX of 1951 provides prohibiting the grant of lease exceeding 5 years without previous sanction of the Commissioner or the Government. The said rules have been continued even after Act 17 of 1966 came into force as no rules have been framed relating to grant of leases u/s 74 of Act 17 of 1966. It is further stated that even under Chapter XXIII of TTD Act, 1979 leases shall be by way of public auction alone not exceeding 3 years but leases other than by way of public auction can be granted for any number of years by duly recording the reasons in writing and thereafter as per the substituted provision in 1981 the leases not exceed 99 years and cannot be granted without the ratification of the Government even after recording reasons in writing. It is stated that there is specific prohibition for grant of leases or renewal of leases of immovable property for more than 6 years at the relevant point of time and thus, the plaintiff trust is not entitled for any declaration for renewal of lease for 99 years successively for each period of 6 years.

23. Sections 80 to 85 of Act XIX of 1951 are the special provisions exclusively applicable to TTD with regard to the constitution of Board of Trustees and appointment of Executive Officer and the qualification, payment of salaries etc and the duties of the Executive Officer; Tirumala to be treated as village panchayat, utilization of funds for the maintenance, management and administration of the TTD, maintenance of educational institutions, hospitals, cholutries etc.

But wherever the special provisions are not covered the other provisions of the Act shall apply to TTD. There is no separate chapter dealing with the special provisions of TTD under Act, 1966. Therefore, the entire Section 74 was applicable to TTD including Section 74(1)(dd) as extracted above and the rules made u/s 100(2)(m) of Act XIX of 1951 till TTD Act, 1979 was enacted. In view of the said enactment of TTD Act, 1979 the said special provisions and the rules made thereunder are only applicable to TTD. Thereafter a comprehensive Act 30 of 1987 has been enacted and under which Chapter XIV applies exclusively to TTD. Chapter XIV i.e. Sections 95 to 131 exclusively deal with TTD. No doubt, u/s 95 it is stated that special provisions of the Act shall apply subject to the provisions of Chapter XIV but if any matter is covered by special provisions the general provisions have no application. Separate rules have been made in exercise of powers conferred u/s 97 and Rule 138 specifically deals with leases of the lands. u/s 97-B the committee shall manage the properties of TTD which includes the power of alienation and the leases also and for grant of leases separate rules have been made under Chapter XIX i.e. Rules 138 to 151. Thus, the other general provisions have no application in respect of alienation and the leases covered by separate chapter applicable to TTD and the rules made thereunder. In view of the aforesaid facts and circumstances of the case, the learned Judge of this Court in Gundala Krishna Reddy's case (1 Supra) rightly held that wherever the special provisions and the rules made thereunder, are applicable comprehensively, the general provisions are not applicable.

24. A perusal of Ex.B1 resolution No. 619 dated 20.07.1971 goes to show that the request of the plaintiff trust to provide the site on nominal rent of Rs. 10/- per annum to enable them to construct school building for the benefit of school going children without any rights for the site subject to executing an agreement duly, was agreed and the extent of the site and the period of lease was not all the subject matter of the said resolution. Ex.B2 resolution No. 999 dated 22.11.1971 goes to show that the extent of site of 27 cents in R.S. No. 642 was identified and with regard to the period of lease the plaintiff trust requested the TTD to grant lease for 99 years. The grant of lease in respect of the site was subject to the terms and covenants mentioned therein and the covenant No. 3(iv) goes to show that TTD at the request and cost of the plaintiff trust at the end of the term of years thereby granted and so on from time to time thereafter at the end of each such successive further term of years, as shall be granted, execute to the lessee (plaintiff trust) a new term and on such covenants and provisions as the TTD may then resolve. Insofar as the request of the plaintiff trust to grant lease for 99 years with the so-called successive renewals of lease is concerned, it was resolved to recommend to the Government for decision to fix the period. Therefore, it is clear from Ex.B2 resolution that the defendant Devasthanam never accepted or agreed for the long lease of 99 years but while recommending the lease resolved to fix the period of lease by the Government alone. The condition No. 3(iv) of the note submitted in the subject matter of the agenda 999 was incorporated in the lease deed Ex.A6 at Clause 3(iv) which was also reiterated in the other lease deed Ex.B3 dated 18.10.1979 while granting lease for the aforesaid two sites for a period of 6 years. It is also pertinent to note that though permission was granted by the Commissioner of Endowments vide his proceedings 15.07.1972 for grant of lease in respect of 27 cents for 6 years in exercise of his powers under Rule 9 of Rules framed u/s 100(2)(m) of Act XIX of 1951 but similar sanction was not at all accorded by the Commissioner of Endowments in respect of lease for an extent of 57 cents for a period of six years under Ex.B3 lease deed dated 18.10.1979, though Rule 9 of the rules framed u/s 100(2)(m) of Act XIX of 1951 requires for the specific sanction of Commissioner for grant of lease not exceeding 5 years. Thus, the lease deed Ex.B3 in respect of 57 cents in S. No. 592 part itself is in violation of Rule 9 of the rules made u/s 100(2)(m). Except Ex.B2 resolution recommending the period of lease to be decided by the Government there is no other decision or order fixing the lease period by TTD. The grant of lease for one year and renewal from year to year shall not exceed the total period of 5 years. The lease of immovable properties of the religious institutions shall be done by way of public auction with the previous sanction of the Commissioner or the Government and there was a prohibition for grant of lease for a period of exceeding 5 years.

25. A perusal of Rule 9 goes to show that the grant of lease even for one year and up to 5 years also requires previous sanction of the Commissioner or the Government as the case may be and there is no power under Rule 9(1) read with Rule 9(3) for grant of lease exceeding 5 years. Without fixing the period and

without deciding the period by the Government, the grant of lease as resolved by TTD under Ex.B2 and the mere incorporation of Clause 3(iv) in Ex.A6 and Ex.B3 lease deeds with regard to the right of the plaintiff trust to get successive renewals of the lease are not supported by any legal provisions. Moreover even the said clause goes to show that the right of renewal by the plaintiff trust shall be on new terms and on such covenants and provisions as the defendant Devasthanam may then resolve. There is no further resolution fixing the period of lease in any successive board meetings. Therefore, it cannot be said that TTD Board has resolved to grant long lease of 99 years. As rightly contended by the plaintiff trust in the plaint itself that there being a legal hitch for grant of lease of the site for more than 5 years the lease deed was executed for a period of 6 years alone. As already stated after the expiry of Ex.B3 lease deed by 19.07.1983 the defendant Devasthanam resolved vide its resolution No. 387 dated 31.10.1983 as communicated vide Ex.A12 proceedings dated 01.12.1983 to grant lease for 3 years alone from 20.07.1983 to 19.07.1986 on increase of 10% rent subject to the conditions that the plaintiff trust shall execute registered lease deed incorporating the terms and conditions in the lease deed and after completion of the lease period the plaintiff trust shall deliver vacant possession of the site to the defendant Devasthanam.

26. It is also not in dispute that the plaintiff trust executed a lease agreement Ex.B5 dated 02.02.1984 wherein the lease was granted for a period of 3 years alone commencing from 20.07.1983 to 19.07.1986 subject to the terms and conditions mentioned therein and as per the said lease agreement the plaintiff trust shall execute the lease deed and get it registered at its costs and that it is open for the defendant Devasthanam to reduce the term of the lease or terminate the lease at any time and the plaintiff - lessee shall deliver the vacant possession of the site. After completion of the term the plaintiff shall deliver vacant possession of the site to the defendant Devasthanam. Having accepted the said conditions in the lease agreement and in the absence of execution of any registered lease deed, I am of the opinion that the plaintiff trust has not accrued any right to get the renewal of lease for a period of 6 years after expiry of Ex.B3 lease deed. However, the plaintiff trust was granted lease for 3 years under Ex.B5 lease agreement.

27. The question that arises for consideration is as to whether the rules framed u/s 100(2)(m) of Act XIX 1951 do apply or not.

28. Initially the TTD Act, 1932 was enacted for the administration of defendant Devasthanam and prior to that the Madras Hindu Religious Endowments Act, 1926 used to apply. Section 105 of Act XIX of 1951 repealed the TTD Act, 1932. As per Section 29 of Act XIX of 1951 any lease of immovable property exceeding 5 years of the religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary and beneficial to the institution. Though Section 29 deals with exchange, sale, mortgage and leases exceeding 5 years but Section 100(1) deals with powers to make rules to carryout all or any other

purpose of the Act and Section 100(2) deals with the power of the Government in particular and without prejudice to generality of the general rule making power u/s 100(1) with reference to so many matters and particularly Section 100(2)(m) deals with the rule making power of the manner in which and the period for which the leases of properties of religious institutions are granted. Under the rule making power u/s 100(2)(m), Rule 9 has been made and as per Rule 9 the lease otherwise than by public auction may be restricted with the previous sanction of the Deputy Commissioner or if the Commissioner or the Government so directs in any case or class of cases and under Rule 9(3) the period of the lease in every case shall not ordinarily exceed one year but the lease may be renewed from year to year on the same terms and conditions but in no case shall the total period exceed 5 years. Thus, Rule 9 also do not provide for grant of lease exceeding 5 years even by the Commissioner or the Government though Section 29 of Act XIX of 1951 empowers the Commissioner for grant of lease exceeding 5 years.

29. Admittedly Section 29 of Act XIX of 1951 stands repealed by Act 17 of 1966 by virtue of Section 109. But by saving clause of Section 109(2), all rules made and issued under the repealed Act XIX of 1951 insofar as they are not inconsistent with Act 17 of 1966 shall be deemed to have been made and issued under the corresponding provisions of Act 17 of 1966 and shall have effect accordingly until they are modified, cancelled or superceded. No doubt, there is no corresponding Section to Section 29 of Act XIX of 1951 under Act 17 of 1966 but Section 74 alone deals with alienation of immovable property. Section 74(1) (a) deals with gift, sale, exchange and mortgage of immovable property whereas Section 74(1)(d) deals with subsisting leases of immovable property and Section 74(1)(dd) deals with sanction of lease of property of the religious institution and the manner in which and period for which such leases shall be sanctioned, shall be such as may be prescribed. No rules have been prescribed with regard to the manner and the period u/s 74(1)(dd) of Act 17 of 1966. Therefore, Rule 9 framed u/s 100(2)(m) of repealed Act XIX of 1951 shall be deemed to have been made u/s 74(dd) of Act 17 of 1966 and shall continue, as the said rule is not inconsistent with Section 74(dd). As the said rule has been specifically made by virtue of particular rule making authority u/s 100(2)(m) of Act XIX of 1951 with regard to the manner in which and the period for which the leases of the properties of the religious institutions shall be made. As Section 100(2)(m) is in parametaria and in consistence with Section 74(1)(dd), the said Rule 9 does apply and continue and shall be deemed to have been made u/s 74(dd) of Act 17 of 1966.

30. Rule 9, which is deemed to have been made u/s 74(1)(dd) of Act 17 of 1966 was the only relevant provision of the Rules for grant of lease when the Board passed its resolution and that is the reason why the TTD Board recommended to fix the period of the lease by the Government alone. However, the Commissioner sanctioned the grant of lease of the site for a period of 6 years only and after the permission was accorded in respect of 27 cents Ex.A6 lease deed was executed

for a period of 6 years alone and as already pointed out there was no any sanction by the Commissioner for grant of lease in respect of 57 cents by Ex.B3 lease deed for a period of 6 years. However, the said rules are deemed to have been in force and made under Act 17 of 1966 till the TTD Act, 1979 was enacted and the rules made thereunder. After TTD Act, 1979 came into force the specific powers conferred on the Commissioner for sanction was taken away as he himself constituted the Ex-officio Member of the Board of Trustees u/s 4 of the Act and also he shall be the Ex-officio Member of the Committee also. The Committee shall manage the properties, funds and affairs of TTD. Therefore, the said rules are deemed to have been continued till the TTD rules have been framed under Chapter XXIII relating to leases of lands under TTD Act, 1979. Under Rule 189 of TTD Rules, 1979 the committee of TTD shall have power to lease the lands on nomination for any number of years, of course, not exceeding 99 years in favour of public institutions or for public purposes after duly recording the reasons in writing and subject to ratification by the Government from 24.07.1981 onwards.

31. The defendant Devasthanam Board resolved to recommend to the Government for its decision to fix period of lease in 1971 during which period the rules made under Act XIX of 1951 apply and admittedly the defendant Devasthanam Board has not made any resolutions in exercise of its powers vested either under TTD Act, 1979 or the Rules made thereunder. However, under Rule 189 of TTD Rules, 1979 the Committee of the TTD is empowered to grant long leases not exceeding 99 years only after duly recording the reasons in writing and subject to ratification by the Government. The leases generally shall be granted by way of public auction not exceeding one year but may be renewed from time to time not exceeding 3 years. There is a specific prohibition for grant of leases by way of public auction exceeding 3 years. There is a specific power conferred for grant of lease for more than 3 years and for any number of years after recording reasons, not exceeding 99 years in favour of public institutions and for public purposes after duly recording reasons in writing and subject to ratification by the Government. Of course, in the instant case, though a note has been put up showing the reasons for grant of lease, absolutely no reasons have been recorded in writing and admittedly there is no sanction or ratification by the Government with regard to the period of lease.

32. The contention of the learned Counsel for the plaintiff trust that Sub-rule 3 of Rule 9 of rules made under Act XIX of 1951 has no application cannot be accepted for the aforesaid reasons and in view of the Division Bench judgment of this Court in Duvvur Ramakrishna Reddy's (2 supra) wherein having observed in Para 19 that neither there is any restriction in Act, 1966 regarding the period of lease for which leases can be granted by the trustees of temple of a land belonging to religious institution, nor there is any particular necessity of obtaining any sanction from the Commissioner for leasing out such lease by the trustees held in Para 20 that Section 109(2)(a) of Act, 1966 states that all rules made under the repealed Act (Act 1951) shall insofar as they are not inconsistent

with Act, 1966, be deemed to have been made under the corresponding provisions of Act, 1966, and such rules shall have effect accordingly until they are modified, cancelled or superceded under the provisions of Act, 1966. The result of this Section is that Rules 1 and 9 made u/s 100(2)(m) of Act XIX of 1951 continue to be in force although in the Act, 1966, there is no provision, as seen already, corresponding to Section 29 of Act XIX of 1951. Thus, Rules 1 and 9 in spite of repeal of the Act XIX of 1951 and in spite of the fact that Act, 1966 does not contain any parallel provision to Section 29 of Act XIX of 1951 continue to be in force. Though there is an observation that Act, 1966 does not contain any parallel provision to Section 29 of Act XIX of 1951 as already noticed, in fact, Section 74(1)(dd) deals with the authority to sanction lease of any property belonging to religious institution and the manner in which and the period for which such leases shall be sanctioned shall be such as may be prescribed. Section 74(1)(dd) is similar to the rule making power u/s 100(2)(m). May be there is no parallel provision but there is a specific provision in Act, 1966 but no rules have been framed with regard to the grant of leases in Act, 1966, therefore, the Rule 9 does apply and deemed to have been made under Act, 1966.

33. The power of the Board to grant lease leases under Rule 189 is also restricted by reason of duly recording reason in writing and subject to ratification by the Government. The said power of the committee of the defendant Devasthanam was dealt in detail by a Division Bench of this Court in M. Deva Narayana Reddy and Others Vs. Government of A.P. and Others, . Admittedly in the instant case no reasons have been recorded with regard to the grant of lease for 99 years or for the successive renewals of lease each for a period of 6 years. Even if any decision is taken for grant of long lease for more than 3 years reasons shall be recorded in writing and subject to the ratification by the Government and in the instant case, as there is no decision fixing the period of lease, I am of the opinion that in the absence of any resolution, agreement or promise, the plaintiff trust cannot compel the defendant Devasthanam for successive renewals of lease each for a period of 6 years for the total period of 99 years.

34. In view of the aforesaid facts and circumstances and for the foregoing reasons, I am of the opinion that the plaintiff trust is not entitled for successive renewals each time for a period of 6 years and the recommendation of the defendant Devasthanam agreeing to grant long lease for successive years each time for a period of 6 years for the total period of 99 years is illegal and, however, the defendant Devasthanam's recommendation to the Government for its decision to fix the period of lease was not at all decided. However, at the relevant point of time there is a specific prohibition in law for grant of long leases for more than 5 years. Therefore, I am of the opinion that the trial Court rightly appreciated the oral and documentary evidence in view of the law laid down in various decisions by this Court and the Apex Court with regard to the contention of the plaintiff trust for grant of long lease and for successive renewals each for a

period of 6 years and with regard to promissory estoppel as there cannot be any estoppel against a statute and as the statute clearly prohibits grant of long lease and the suit filed by the plaintiff trust was rightly dismissed. Therefore, I do not see any grounds to interfere with the judgment and decree of the trial Court.

35. However, I would like to observe that admittedly TTD Board permitted the plaintiff trust to construct huge buildings, compound wall; permitted to transport the building material from Tirupati to Tirumala and also granted necessary permissions and sanctions from time to time and exempted payment of property tax, with a view to provide education to the children of the permanent residents of Tirumala and also the employees of the TTD and the evidence also goes to show that the school is being run without any complaints and with appreciation from one and all, therefore, there is every need and necessity for continuous running of the school by the defendant Devasthanam with qualified staff by taking over the management of the school, as intended by it, after necessary negotiations with the plaintiff trust for the payment of compensation for the structures, ancillary equipment and laboratory etc. in the interest of the students and public. In fact, the evidence adduced on behalf of the defendant Devasthanam goes to show that the children of TTD employees and the children of permanent residents of Tirumala are studying in the school run by the plaintiff trust including the children of D.W.1, whose son and daughter studied in the said school and in view of the fact that there is great demand to study in the educational institutions run by the plaintiff trust in spite of other educational institutions run by the TTD, it is desirable to continue the educational institution under the management of the defendant Devasthanam to impart education to the children which is one of the objects of TTD and which has a University for itself.

With the aforesaid observations, the appeal suit is accordingly dismissed.

There shall be no order as to costs.