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(2011) 04 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 3128 and 3849 of 2011

Weaker Sections Mutt Land Residents Association and Others — APPELLANT

Vs

Sri Swamy Hathiramji Mutt, represented by its Custodian and Others
 Chintaparthi Manchala Reddy and Others Vs Sri Swamy Hatimaji Mutt and Others — RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 29(1), 38
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 82
Land Acquisition Act, 1894 — Section 30
Registration Act, 1908 — Section 17
Stamp Act, 1899 — Section 2(10), 35

Citation : (2011) 6 ALD 427

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : C.V. Mohan Reddy for P. Nagendra Reddy, in W.P. No. 3849 of 2011 and Suresh Kumar Reddy Kalava, in W.P. No. 3128 of 2011, for the Appellant; S. Ramachandra Rao, for K.R. Prabhakar Rao, for Respondent No. 1, O. Manohar Reddy, for Respondent Nos. 2 and 3, Ch. Vedavani and G.P for Revenue for Respondent Nos. 5 and 6 in W.P. No. 3849 of 2011 and K.R. Prabhakar Rao, for Respondent No. 1, G.P. for Revenue for Respondent Nos. 2 and 3, Ch. Vedavani and O. Manohar Reddy in W.P. No. 3128 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

V. Nagarjuna Reddy, J.

Prelude:

1. Before proceeding with the adjudication of the cases on merits, it is necessary to note that the scope of these Writ Petitions is limited to the legality and validity of disconnection of electricity supply and its non-restoration. While exercising writ jurisdiction, it is neither the function nor the forte of this Court to pronounce

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on the title over properties. But, in order to decide on the Petitioners'' pleas pertaining to their right to restoration of electricity supply, it is absolutely necessary in the opinion of this Court to dwell on the prprna facie title and the nature of the possession of the Petitioners. The observations made and the findings rendered hereinafter are therefore limited to the dispute raised and relief claimed in these Writ Petitions.

W.P. No. 3849 of 2011:

2. This Writ Petition is filed for a Mandamus to declare the action of Respondent Nos. 1, 4, 5 and 6 in demolishing the compound walls of the members of Petitioner No. 1 association, disconnecting the power supply, breaking the poles and pulling the electrical wires in Sy.Nos.13, 15 and 17 of Avilala Village, Tirupati Rural Mandal, Chittoor District, without following due process of law and Respondent Nos. 2 and 3 in refusing to restore the power supply, as illegal, arbitrary and violation of the Petitioners'' fundamental rights.

Pleadings;

3. Petitioner No. 1 is a registered association comprising members claiming to be the tenants of the lands belonging to Respondent No. 1 Mutt (hereinafter referred to as "the Mutt"). Petitioner Nos. 2 to 11 are some of its members.

4. The averments contained in the affidavit filed in support of the Writ Petition are briefly summarized hereunder:

Petitioner No. 1 is formed to protect its members, who are the residents of houses in Sy. Nos. 13, 15 and 17 of Avilala Village, Tirupati Rural, Chittoor District, it has 400 members on its rolls, they have constructed about 100 houses and obtained electricity and telephone connections and they are being paid electricity charges regularly. Their names are registered in the voters'' list. The Mutt filed civil suits such as O.S. Nos. 114/71, 115/71 and 116/71 against the vendors of the members of Petitioner No. 1 association and the said suits were dismissed. The judgments in the suits were confirmed in appeals. The members of the association have purchased the plots during the years 1998 and 1999 and have constructed dwelling houses investing their life savings. Respondent Nos. 2 and 3 provided electricity connections and the members are regularly paying the electricity bills.

5. That originally the land was uncultivable. In the early part of the 19th century, the Mahant of the Mutt granted a Saswatha Patta in favour of the ancestors of the vendors of the members of Petitioner No. 1 association in Sy. Nos. 13, 15 and 17. The vendors have developed the land, prepared a layout in the year 1998 and sold the plots to the members, who are poor having migrated from the neighbouring villages and towns of Tirupati. At the time of sale, judgment dated 29.01.1977 in O.S. No. 115 of 1971 was verified. The said judgment and other similar judgments have become final. Therefore, the Petitioners are bona fide purchasers of the plots, which are in their possession and enjoyment, without

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interference from anybody. When a part of the land in Sy. No. 15 was acquired, there were rival claims for compensation, which were referred to the civil Court u/s 30 of the Land Acquisition Act, 1894 and the said reference was answered in favour of the private parties and against the Mutt. The Mutt executed an agreement of sale agreeing to sell an extent of Ac. 53.27 cents to a company by name, M/s. Billiyard Farms Private Limited, Tirupati. Though the Mutt has lost its title, the Petitioners, being middle class people, wanted to buy peace and have approached the Mutt for sale of the land in their occupation as in case of M/s. Billiyard Farms Private Limited. When Respondent No. 5 was planning to evict the Petitioners without following due process of law, they filed Writ Petition No. 24702 of 2010, which was admitted and an order of status quo was granted by this Court. Some others filed Writ Petition No. 522 of 2011, which was also admitted and an interim direction not to demolish the houses was granted. Yet another Writ Petition, namely; Writ Petition No. 25236 of 2010 was filed by some others, which was ''disposed of by this Court by recording the statement made on behalf of the revenue department that at present there was no proposal for evicting the Petitioners and that in future if they decide to evict, the revenue department will follow due process of law.

6. That on 05.02.2011/Respondent Nos. 1, 4, 5 and 6 and their subordinate staff came to the land along with police personnel under the personal supervision of Respondent No. 5 and damaged about 250 electrical poles and wires and demolished the compound walls of the houses of some of the members of Petitioner No. 1 association by using poclainers. They have also started digging the land on the internal roads and in between the houses with a view to prevent the residents from using the same. They have proclaimed that they will erect the fencing around the colony and prevent the Petitioners from coming outside towards the road. About 100 houses are not having electricity supply and the entire area has become dark. When the Petitioners approached Respondent Nos. 2 and 3 for restoration of power supply, they were informed that Respondent No. 6 directed them not to restore the power supply. Though the property was damaged, Respondent Nos. 2 and 3 failed to give any criminal complaint against Respondent Nos. 1, 4, 5 and 6 and their subordinates. On the above premises, the Petitioners sought for the above-noted relief.

7. At the stage of admission, this Court called upon the Respondents to file their counter affidavits. Separate counter affidavits have been filed on behalf of Respondent Nos. 1, 2 and 3, 4 and 5 and 6.

8. In the counter affidavit filed by the Mahant of the Mutt, he has inter alia stated that the Petitioners are the mere encroachers of the land of the Mutt and the majority of the members of Petitioner No. 1 association do not belong to the weaker sections and they belong to forward castes. The ongoing encroachments are being made in Sy. No. 13 of Avilala Village and they have nothing to do with the land in Sy. Nos. 15 and 17. From the list of 400 members filed by Petitioner No. 1 association, it is found that the President of Petitioner No. 1 association

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and his other family members are shown as independent members. His father is shown at Sl. No. 148, his mother is shown at Sl. No. 63 and his brother is shown at Sl. No. 290 and the President of Petitioner No. 1 association himself is Petitioner No. 2. Similarly, Petitioner No. 4, who is the Executive Member of the association, is shown at Sl. No. 15, his wife is shown at Sl. No. 9, his son is shown at Sl. No. 11, his brother is shown at Sl. No. 17 and his brother''s wife is shown at Sl. No. 332. The entire list consists of members of several families. The Petitioners have been litigating by filing various Writ Petitions for different reliefs. They are Writ Petition Nos. 2906 of 2011, 24702 of 2010 and 28452 of 2010. The Petitioners do not have any right over the property in question and some of them are recent encroachers and the rest of them are prospective encroachers.

9. That the Mutt approached A.P. Lokayuktha, who has taken up the case as complaint No. 1228/2008/B1. In pursuance of an interim order granted by the Lokayuktha, a meeting was held on 03.02.2011 in the office of the Revenue Divisional Officer, Tirupati, along with the Tahsildar, M.P.D.O. Assistant Engineer, APSPDCL, Panchayat Secretary and the officials of the Mutt, wherein the Revenue Divisional Officer directed the officials to conduct a joint inspection to identify the structures covered by the Court cases and non-dwelling sheds. Accordingly, the Joint Inspection was held on 04.02.2011. Thereafter, another meeting was held in the evening of 04.02.2011. The Revenue Divisional Officer in consultation with the Joint Collector, Chittoor District, ordered to remove the sheds, which are not covered by any Court cases with police protection. Accordingly, a joint operation was conducted on 05.02.2011 during which non-dwelling sheds, which are not covered by the Court cases, were removed and a report was submitted to the District Collector by the officials on 05.02.2011.

10. That out of the Petitioners and other members shown in the list, only 30 persons are having sheds and the remaining members have neither raised the sheds nor been in possession of the land. The 30 sheds, which are covered by the interim order of this Court, are not affected in the demolition and the Petitioners and some of the persons shown in the list, who do not have sheds, are trying to raise new sheds after obtaining interim orders. The members of Petitioner No. 1 association are not residing in the houses.

11. That the Mutt is the rightful owner of the landed property admeasuring Ac. 174.75 cents comprised in Sy.Nos.13, 15, 17/2, 17/3 and 17/5 of Avilala Village. The said lands are in one contiguous plot. These lands were granted as inam in favour of Bugga Mutt, Tirupati and Gundluri Venkamma equally for the up keep of Kasam Kaluva of Avilala Village under title deed bearing No. 2937 and that the Gundluri family leased out its half share permanently under registered document dated 23.12.1856 in favour of the Bugga Mutt without reserving the right to recover or re-enter the lands. ''The then Mahanth of Sri Swamy Hathiramjee Mutt, Tirupati, Sri Bhagavandossjee purchased full rights of half share of Sri Bugga Mutt from its Mahantjh under registered sale deed dated 17.12.1884 under document No. 985 of 1884 and on the same day the Bugga Mutt

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transferred its permanent leasehold rights in the remaining half share of the lands in favour of the Mutt under document No. 986, dated 17.12.1884. Thus, the Mutt came into lawful possession of the entire extent of the land admeasuring Ac. 174.75 cents in the abovementioned survey numbers.

12. That after acquiring title over the land, the Mutt leased out the same to the ryots in the nearby villages of Tirupati. Out of the said leased lands, an extent of Ac. 7.25 cents in Sy. No. 13 of Avilala Village was leased out to one Kalimela Peddabba, Esnakula Siddaiah and Esnakula Bhupaiah. When they have failed to pay the rents, the Mutt filed O.S. No. 115 of 1971 in the Court of the District Munsif, Tirupati for recovery of possession and payment of damages. The said suit was partly decreed directing the Defendants to pay the rents to the Mutt while denying the relief of recovery of possession on the ground of limitation. When the tenants of the Mutt made attempts to convert the land to commercial use, the Mutt filed O.S. No. 244 of 1985 in the Court of the learned Additional Subordinate Judge, Tirupati, seeking permanent injunction to restrain the tenants from converting the land leased out to them from agriculture to commercial purpose. After full fledged trial, the suit was decreed and the tenants were restrained by way of permanent injunction from converting the land into house sites or for any purpose other than agriculture. Sri Kalimela Peddabba, Esnakula Siddaiah and Esnakula Bhupaiah were arrayed as Defendant Nos. 22, 23 and 24 respectively in the said suit. The judgment and decree in the said suit has become final, as no appeal was filed by the aggrieved parties. As the original tenants themselves had no title, the Petitioners, who claimed to be the transferees from them, do not get any title. The Petitioners are recent encroachers of the land, as revealed from the joint inspection report and photographs taken at the time of inspection. The Petitioners in Writ Petition No. 18763 of 2007 have set up the Petitioners ''in this Writ Petition and out of 124 persons, whose names are shown in the list, only 30 persons have recently raised sheds with asbestos sheets and out of these 30 structures, 4 are under construction.

13. That u/s 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, whose vires are upheld by the Apex Court in the year 2001, all the existing agricultural leases of land belonging to charitable institutions and endowments stand cancelled and the institutions are granted liberty to recover possession, after issuing notice in Form No. 1 through the Assistant Commissioner, Endowments Department having jurisdiction. By invoking the said provision, the Mutt issued notice in Form No. 1 to Sri Kalimela Peddabba, Esnakula Siddaiah and Esnakula Bhupaiah. Assailing the said notices, they have filed Writ Petition No. 18763 of 2007, wherein this Court in WPMP. No. 902 of 2009 directed the Respondents not to dispossess the Petitioners from their lands over an extent of Ac. 7.25 cents in Sy. No. 13 of Avilala Village with the further direction that the Petitioners therein shall not alter the nature of the land or create any third party encumbrances. The learned Judge, however, made it clear that the said order shall not preclude the Petitioners from conducting

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agricultural operations. The said Writ Petition is pending. In Writ Petition Nos. 24702 and 27877 of 2010, order of status quo was granted by this Court and the alleged purchase of the plots by the Petitioners is in disobedience of the said order of status quo. Ex.P13 document under which plot No. 18 was purportedly sold for Rs. 16,500/- in favour of B. Rajaiah on 08.02.1998 was a created one and the same cannot be looked into for any purpose, as it is hit by Section 35 of the Indian Stamp Act, 1899 and Section 17 of the Registration Act, 1908. Similarly, another sale deed filed by the Petitioners is also created to defraud the Mutt. If Kalimela Chinna Gunamma has executed the sale deeds in the year 1998, she would not have filed Writ Petition No. 18763 of 2007 claiming right over the same property. The award passed u/s 30 of the Act is the subject matter of an appeal pending before this Court. The Petitioners, who have not approached this Court with clean hands, are not entitled to the discretionary relief of this Court.

14. That the Petitioners have been coming out with different versions in different Writ Petitions i.e., Writ Petition Nos. 24702 of 2010, 27877 of 2010 and 28452 of 2010. In those Writ Petitions, they have described themselves as vegetable vendors and daily labour, whereas in the present Writ Petition they claimed to be middle class people. The addresses given in the cause title of the previous Writ Petitions and that given in the present Writ Petition are at variance. The electricity bills filed by the Petitioners do not pertain to the sheds situated in Sy. No. 13 and as per the addresses shown in those bills, the houses are situated in Gandhipuram, which is in Sy. Nos. 14 and 16, and not in Sy. No. 13 of Avilala village. The Petitioners, who are the encroachers, are not entitled to any relief.

15. The Additional Assistant Engineer (Operation), APSPDCL, Rajeev Nagar, Tirupati, Respondent No. 3, filed a counter affidavit on behalf of himself and Respondent No. 2. In his counter affidavit, he has stated that whenever a person makes an application for release of power supply to the premises, the department is giving service connection on (i) production of land/building ownership documents and (ii) municipal tax receipts or lease agreement entered into with the registered owner. In the absence of these documents or if a dispute exists, the department, without going into the civil disputes, is releasing power supply on taking indemnity bond from the , applicant to the effect that in case any dispute arises subsequently, the power supply would be disconnected without any notice. That about 1500 power connections were released in respect of the land in Sy. Nos. 13, 15 and 17 of Avilala Village and in respect of the land concerned in the present case, 60 connections were released from June 2010 to 13.01.2011. The details of service connection numbers and the names of the registered consumers are mentioned in Annexure-A to the counter affidavit. Only Petitioner Nos. 2, 3, 4, 7 and 11 were given service connections and no service connections were released to the other Petitioners. The Joint Collector, Chittoor District, addressed letter dated 30.01.2011 to Respondent No. 2 directing it to strictly comply with the prevailing regulations before giving electricity connections and also requested it to remove all the electricity connections given

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without following the regulations. On receipt of the said latter, a joint meeting convened by the Revenue Divisional Officer, Tirupati, was held on 03.02.2011 at the MPDO''s office and in that meeting Respondent No. 3 was informed that power supply should be disconnected on his receiving intimation of demolition of the houses. On 05.02.2011, the Tahsildar, Tirupati rural has directed Respondent No. 3 to stop power supply and accordingly the said direction was implemented. The revenue authorities and the panchayat secretary have demolished the existing poles and the electricity department has only disconnected the power supply at the transformer without demolishing the existing poles or the houses. The poles and the electricity wires were damaged and without replacing them, it is not possible to restore the power supply. The Joint Collector has addressed letter on 05.03.2011 enclosing a copy of order dated 18.02.2011 of the Lokayuktha directing the electricity department not to release illegal power connections and send compliance report by 19.04.2011.

16. A reply affidavit has been filed by Petitioner No. 2, wherein he has questioned the power and authority of the Revenue and Panchayat Raj departments to conduct joint inspection. He has denied the allegation that the occupants of the land are involved in real estate business and reiterated that they are the middle class persons, who purchased the plots and constructed the houses with their hard earned money and life savings. That the members of Petitioner No. 1 association are having authorized connections and paying electricity charges regularly after inspecting their houses in pursuance of the applications made by them and therefore Respondent Nos. 2 and 3 are liable to continue the power supply till adjudication of the disputes between the Petitioners and the Mutt by the appropriate Court. He has denied the allegation that the land grabbers and encroachers are adopting the modus operandi of erecting temporary sheds and allowing third .parties to stay in those houses. They questioned the power and authority of the Respondents in dismantling the electrical poles and disconnecting the power supply.

Submissions:

At the hearing, Sri C.V. Mohan Reddy, learned Senior counsel, submitted that Petitioner Nos. 2 to 11 and other members of Petitioner No. 1 association are bona fide purchasers of the plots for valuable consideration and therefore the Respondents are not entitled to disconnect the power supply and dismantle the electrical poles with a view to force them to vacate the houses in their occupation. The learned Senior counsel further submitted that the Respondents cannot take law into their hands by indulging in vandalism and behaving in a highhanded manner. He further submitted that even assuming that the Petitioners are not in lawful occupation of the property, the Mutt is entitled to evict them by following the procedure prescribed under the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, "the 1987 Act") and that as the electricity connections were released on the applications of the Petitioners, Respondent Nos. 2 and 3 cannot disconnect the

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same without prior notice and terminate the existing agreements.

17. Opposing the above contentions, Sri S. Ramchandra Rao, learned Senior counsel representing the Mutt submitted that Petitioner No. 1 association is not a bona fide association, that the association is mainly intended to serve the interests of a few individuals and their family members such as Petitioner No. 2, his mother, father and brother, Petitioner No. 4, his wife, son, two of his brothers and wife of one of his brothers, that the Petitioners have been coming out with changed versions of their places of residence and also on their economic status in different Writ Petitions, that the Petitioners have been abusing the process of the Courts and law by repeatedly approaching this Court for different reliefs and that the Petitioners failed to prove that power supply was released in accordance with law. The learned Senior counsel further argued that except claiming through the purported permanent lessees and filing two unregistered documents, the Petitioners failed to prima facie establish their legal title over and lawful possession of the land in question. He has further submitted that even assuming that the electricity connections were given in favour of some of the Petitioners, they were disconnected in pursuance of the directions of the Lokayukta and therefore the Petitioners are not entitled to invoke the discretionary jurisdiction of this Court, as their very occupation itself is wholly illegal and unauthorized. The learned Senior counsel lamented that huge extents of the land belonging to the Mutt are under the occupation of land grabbers and unscrupulous elements and that the Courts of law may not show any indulgence in favour of such persons.

18. Sri O. Manohar Reddy, learned Standing counsel for Respondent No. 2, submitted that except to Petitioner Nos. 2, 3, 4, 7 and 11, power supply was not released to the other Petitioners. He has also submitted that in view of the decision taken in the meeting conveyed by the Revenue Divisional Officer, Tirupati, in pursuance of the directions given by the Lokayukta, Respondent No. 3 has disconnected the power supply. He submitted that in the event of this Court deciding to direct restoration of power supply, Respondent Nos. 2 and 3 are not in a position to restore the power to the disconnected premises in view of breaking of the electrical poles and the wires. Therefore, submits the learned Counsel, in such an event, Respondent Nos. 4 and 5 may be directed to provide necessary funds for replacing all the damaged poles and wires.

19. Smt. Ch. Vedavani, learned Standing counsel, reiterated the contents of the counter affidavit filed by Respondent No. 4.

The background facts:

20. Before adverting to the respective submissions of the learned Counsel for the parties, it is not only useful, but also necessary to refer to the background leading to the disputes between the parties.

21. In the report dated 10.01.2005 of Administration (Vigilance and Enforcement) Department, a copy of which has been filed by the Mutt, the

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historical background of the Mutt has been stated. It is evident from this report that the Mutt was established about five centuries ago to propagate the tenets of Ramanda Sampradaya. During the British rule, it has authorized the then Mahant Sri Savadasjee, who was the Mahant of the Mutt to discharge the duties of Vicharanakartha to administer the temple of lord Venkateshwara and other temples at Tirumala, Sri Govindaraja Swamy temple at Tirupati and Sri Padmavathi Ammavari temple at Tiruchanur. Accordingly, the Mahant used to play the duel role of administration of both the Mutt and the temples at Tirumala and Tirupati. The Mahant of the Mutt continued in the duel role till his services were dispensed with by the composite State of Madras with the constitution of a separate Management Adversary Committee to manage the temples at Tirumala and Tirupati. Even though the provisions of the Endowments Acts, which were in force from time to time, require registration of the religious institutions and endowments, the Mutt was not registered and the extensive properties held by it were not entered in the property register maintained u/s 38 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short, "the 1966 Act"). The property register prepared for the year 1991 by Sri D.T. Narayanappa, the then custodian in the cadre of Deputy Commissioner, revealed that the Mutt possessed Ac. 2007.65 cents in Andhra Pradesh, which include an extent of Ac. 194.44 cents of dry land and Ac.81.44 cents of wet land in Avilala Village, Tirupati Rural Mandal. Evidently, certain permanent leases were granted by the Mahants at the helm of the affairs of the Mutt. No permanent lease register was maintained by the Mutt. Several civil suits were filed in connection with these permanent leases and as in 2005, as many as 26 suits were pending in various Courts at Tirupati and 4 second appeals, namely; S.A. Nos. 606 of 1999, 443 of 2000, 468 of 2000 and 472 of 2000 were pending on the file of this Court. With this background in view, the right of the Petitioners, claimed in this Writ Petition, needs to be considered.

The legal provision:

22. Respondent No. 2 is a distribution company constituted under the provisions of the Electricity Act, 2003. The supply of electricity to its consumers by Respondent No. 2 is governed by the general terms and conditions. It is not in dispute that the A.P. Electricity Regulatory Commission (for short, "the Commission") has approved the general terms and conditions of supply of all the distribution companies in the State under its proceedings No. Secy/01/2006, dated 06.01.2006. Condition No. 5.2.2 prescribes that the requisition for supply shall be made by the owner or occupier of the premises for which supply is required. Under Condition No. 5.2.3, an applicant, who is not the owner of the premises in respect of which he intends to avail supply, shall submit an indemnity bond drawn by the owner of the premises in favour of the company whereby the owner undertakes to indemnify the company for any loss caused to it by the applicant arising out of the release of service to the tenant/occupant. In the absence of such indemnity bond, the applicant shall be required to pay three times the normal security deposit apart from providing proof of his being in

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lawful occupation of the premises. Appendix-I of the general terms and conditions of supply prescribes application form. Clause 11 of the form specified the following documents to be enclosed.

Category Supporting documents to be furnished

Common to all LT categories except Commercial & Industrial

1. Completed & signed Application Form along with the signed declaration.

2. Proof of ownership (sale deed, allotment/possession letters lease deed, municipal tax payment receipt) or proof of occupancy (Lease/Rental deed with landlord, Electoral identify card or passport or PAN card along with proof of ownership of landlord)

3. Indemnity Bnd (Letter of consent from landlord to tenant/lessee/occupier)

4. Wiring Completion Report (from a licensed electrical contractor)

5. Test Report

6. Demand Draft for new connection charges

Commercial 1. In addition to the above 2. Valid municipal license for running commercial establishment

Industrial 1. In addition to the above

2. Valid Industrial license

Additional Documents to be provided

SC or ST Necessary community certificate enclosed.

Partnership Location, Head Office, names & address of Partners 85 copy of partnership deed enclosed.

Company 1. Name of Present Directors & Copy of Memorandum of Articles 2. Indemnity bond and Declaration

Whether the Petitioners established their prima facie title and lawful possession.

23. In order to decide whether the Petitioners have satisfied the requirements of the above discussed statutory provision, their prima facie title or lawful possession needs to be examined.

24. Petitioner No. 2, who claimed to be the President of Petitioner No. 1 association, pleaded that the latter comprises (sic) members on its rolls and there are about 100 houses constructed by its members in Sy. Nos. 13, 15 and 17. He has further pleaded that the members have purchased the plots during the years 1998 and 1999 and constructed dwelling houses investing their life savings. Respondent Nos. 2 and 3 have provided electrical connections and the Petitioners are paying electricity bills regularly. It is their further pleaded case

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that at the end of the 18th century or in the early part of the 19th century, the then Mahant of the Mutt granted Saswatha patta in favour of the ancestors of the Petitioners'' vendors in Sy. Nos. 13, 15 and 17 and their vendors have developed the land, prepared the layout in the year 1998 and sold the same in their favour. The Petitioners also placed reliance on judgment dated 29.01.1977 in O.S. No. 115 of 1971.

25. The Petitioners have filed a copy of the Memorandum of Association of the Mutt. Clause 5(1) of the Memorandum of Association mentioned as one of the objects to promote a forum for the welfare of the tenants of the Mutt lands. As rightly pointed out by the learned Senior counsel for the Mutt that there is a serious anomaly in the stand taken by the Petitioners. While on the one hand, they have pleaded that they have purchased the plots from the successors-in-interest of the alleged permanent lessees on the other hand Petitioner No. 1 association was formed for the welfare of the tenants of the Mutt.

26. It is not the pleaded case of the Petitioners that the Mutt has conferred tenancy rights on the members of Petitioner No. 1 association nor it is their case that they have obtained such rights from the successors-in-interest of the alleged permanent lessees of the Mutt and got their leasehold rights attorney by the Mutt. Therefore, having regard to the very object with which Petitioner No. 1 association is formed, it cannot represent the other Petitioners, who are not the tenants of the Mutt. What is more, the pleadings pertaining to the right and title of the Petitioners over the plots are as vague as vagueness could be. They have not disclosed who is the permanent lessee in respect of the lands, which are stated to have been purchased by them and in their occupation. They have also failed to disclose the persons, who sold the plots to them. Except the two unregistered documents dated 03.01.1998 and 08.02.1998 allegedly executed in favour of Respondent No. 3 and another person by name Ramaiah, who did not figure as Petitioner in the Writ Petition, no other documents have been filed to substantiate their plea that they have purchased the plots in their occupation. Even a perusal of these two documents would show that they were executed on Rs. 10/- stamp paper by three persons by name, Chinna Gunamma @ laxmamma, wife of Kalimili Peddabba and her two sons K. Chenfeal Ramulu and K. Venkataiah. It is recited in the said documents that their rights over the two plots mentioned in the schedule of the documents were declared in O.S. No. 115 of 1971 that the land, which was the subject matter of the said suit, was divided into plots and they agreed to sell the said plots for the sums of Rs. 10,000/- and Rs. 6,000/- on 04.02.1997 and 13.02.1997 respectively and handover the plots in favour of the vendees and that on receipt of the balance sale consideration of Rs. 6,500/-and Rs. 10,500/-, the documents are being executed. It is further recited that due to certain problems, registration of the documents is not being done and that in future on demand by the vendees, the documents will be registered.

27. Transfer of immovable properties by way of sale is governed by the

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provisions of the Transfer of Property Act, 1882, Registration Act, 1908 and the Indian Stamp Act, 1899. Section 54 of the Transfer of Property Act, which defined sale of immovable property, prescribed that in case of tangible immovable property of the value of one hundred rupees and upwards sale can be made only by a registered instrument. Section 17 of the Registration Act inter alia made registration of non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property, compulsory. Under Clause 20 of Schedule 1A of the Indian Stamp Act, every deed of conveyance as defined u/s 2(10), which includes conveyance of sale, shall be charged with stamp duty at the rate prescribed therein. Section 35 of the Indian Stamp Act, 1899 renders instruments not duly stamped inadmissible in evidence. On application of these legal provisions, the two documents on which reliance has been placed in the Writ Petition do not conform to the legal requirements either for recognition or for enforcement of the purported rights of the vendees. Consequently, Petitioner No. 3, who is a vendee in one of the two documents, cannot claim to be in lawful owner or in lawful possession of Plot No. 18. The possession with respect to the other Petitioners is worse, in that, as noted, they have neither given the details of the documents under which they have purchased the plots nor filed copies thereof.

Whether the judgment in O.S. No. 115 of 1971 enures to the Petitioners'' benefit.

28. The suit was filed by the Mutt against three persons by name, Kalimula Peddabba, Yelakkayala Sirriah and Yelakkayala Bhupaiah for recovery of possession and damages for use and occupation. The Mutt was represented by the Assistant Commissioner, Endowments Department, Tirupati, in the said suit, wherein it was pleaded that just prior to the filing of the suit, it came to light that the predecessors of the Defendants have obtained permanent lease over an extent of Ac. 10.30 cents on a nominal rent from the then Mahant Prayagdossji around 1940, that no prior sanction of the lease was obtained u/s 29(1) of the 1966 Act as such prior sanction was needed for leases in excess of five years and that therefore in the absence of such prior sanction, the lease was void.

29. Several issues were framed by the civil Court, which included whether the Mutt was the owner of the property? (issue No. 1), whether the permanent lease granted in favour of the predecessors of the Defendants was void? (issue No. 4), whether the Defendants have perfected their title by adverse possession? (issue No. 9), and whether the Mutt is entitled to receive rents? (issue No. 13). The civil Court held all these issues except issue No. 9 in favour of the Mutt and accordingly it has partly decreed the suit for rents while dismissing the suit for recovery of possession. Though I find the findings on various issues mutually conflicting and contradictory, as the validity of this judgment is not the subject matter of the Writ Petition, I refrain from rendering findings thereon. It will suffice to note that the Mutt filed O.S. No. 245 of 1985 in the Court of the

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learned Additional Senior Civil Judge, Tirupati, for permanent injunction restraining the permanent lessees from converting the land admeasuring Ac. 174.75 cents in Sy. Nos. 13, 15 and 17 as house sites from agriculture and the said suit was decreed. The appeal filed by the lessees was allowed and a second appeal is pending in this Court. The Mutt has, however, issued notice dated 09.01.2007 to the six persons, who are claiming to be the permanent lessees in respect of Ac. 7.25 cents in Sy. No. 13, to the effect that the lease was cancelled and that the possession should be handed over. They have filed Writ Petition No. 18763 of 2007 in this Court. Ih WPMP. No. 902 of 2009 filed by the Petitioners therein, this Court granted an order on 30.01.2009 directing the Mutt and the Endowments Department not to dispossess the Petitioners from their lands admeasuring Ac. 7.25 cents, subject to the condition that the Petitioners shall not alter the nature of the land or create any third party encumbrances and the Petitioners are not precluded from conducting agricultural operations. What this Court is unable to comprehend is if Petitioner Nos. 2 to 11 and other members of Petitioner No. 1 association have purchased the plots in the year 1998-99, as pleaded by them, what was the right of the successors of the permanent lessees to file Writ Petition No. 18763 of 2007. Interestingly, in the affidavit filed by Kelimela Chengalrayulu, son of Kelimela Peddabba on his and on behalf of the other five Petitioners, he pleaded and asserted that they are in possession and enjoyment of the land admeasuring Ac. 7.25 cents in their own right and their possession was recognized by the revenue department as pattadars by issuing pattadar passbooks in their favour. They have never pleaded that they have converted the land into the plots and sold the same to anyone much less to the members of Petitioner No. 1 association. No iota of documentary evidence is placed by the Petitioners to show that their so-called vendors have converted the land into house sites and prepared the layout by obtaining sanction from the competent authority. In the teeth of these undeniable facts, the Petitioners cannot claim that any benefit accrued or right is conferred on them by the judgment and decree in O.S. No. 115 of 1971.

Whether the Petitioners are bona fide purchasers for valuable consideration.

30. Even in the absence of legal title, whether the Petitioners are bona fide purchasers as claimed by them in this Writ Petition needs to be examined. A bona fide purchaser is the one, who purchases the property on the bona fide belief that his vendors have a perfect title over the property. Except the judgment in O.S. No. 115 of 1971, the successors in interest of the original lessees did not have any document to support their title over the property. As noted above, the only ground on which the decree for recovery of possession was rejected was that the Defendants in the suit have perfected their title by adverse possession. The civil Court has held on issue No. 4 that the permanent lease granted in favour of the predecessors of the Defendants was void. By no stretch of imagination, the Petitioners or for that matter any other purchaser should have a bona fide belief that the so-called vendors had title over the property. Moreover, under the A.P. Urban Areas (Development) Act 1975 and also the

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similar enactments, such as, the Andhra Pradesh Panchayat Raj Act, 1994 and the Andhra Pradesh Town Planning Act, 1920, approval of layouts by the competent authority is the most indispensable legal requirement and no house plot can be visualized without conversion of land into house plots under sanctioned layouts. In the light of these facts, it lies ill in the mouth of the Petitioners to claim that they are the bona fide purchasers for valuable consideration. The litigation spree in which the Petitioners have indulged, the details of which are discussed infra, would leave no doubt in the mind of this Court that they have managed to acquire the plots in the hope of getting their possession legalized in future.

31. Writ Petition No. 24702 of 2010 was filed by Petitioner Nos. 2 to 11 and several others to declare the action of the Respondents in trying to evict them from their house sites in Sy. No. 13 of Avilala village, as illegal and to direct the Respondents to convey the land in their favour. Another Writ Petition for similar prayer i.e., Writ Petition No. 27877 of 2010 was filed by 36 persons including Petitioner No. 4 for the same relief. These two Writ Petitions were filed on 01.10.2010 and 01.11.2010 respectively. In these two Writ Petitions, the Petitioners pleaded that they are in possession and enjoyment of small extents of land having purchased the same from their vendors, who are Saswatha pattadars in Sy. No. 13 and that some of the Petitioners have constructed small houses, asbestos sheet sheds and thatched sheds. In both the cases, this Court by interim orders directed status quo to be maintained. The Petitioners in those two Writ Petitions have joined to file Writ Petition No. 28452 of 2010 seeking a Mandamus to set aside the notices issued by the Avilala Gram Panchayat to remove the structures, wherein they have inter alia pleaded that they are the bona fide purchasers of the plots in their occupation, that some of them used to reside in those plots by raising small houses, asbestos sheet sheds and thatched sheds and that they were lawfully inducted into possession by their vendors and are proposing to construct pucca houses in their respective houses. In Writ Petition No. 24702 of 2010, Petitioner No. 46 is Petitioner No. 3 in the present Writ Petition. He is shown as resident of Plot No. 43, Thyagaraja Nagar, Door No. 23-2-293, Vedaiah Palem, R.S. Road, Nellore District. Petitioner No. 58 therein is Petitioner No. 7 in this Writ Petition, who is shown to be a resident of Plot Nos. 53 and 54, Door No. 7/723, New Krishna Nagar, Railway Koduru (MD) Town, Kadapa District. Petitioner No. 5 in the said Writ Petition is Petitioner No. 10 in the present Writ Petition and he is shown to be a resident of Plot No. 5, Thallamvaripalli Village, Gaddela Post, Obulavaripalli Mandal, Kadapa District. Petitioner No. 31 in that Writ Petition is Petitioner No. 6 in the present Writ Petition and she was shown to be a resident of Plot No. 29, Door No. 5, Vasantha Vihar, Apparao Thota, Madanapalli, Chittoor District. These uncontroverted facts would demonstrate that there are no bona fides in the conduct of the Petitioners and their sole aim appeared to be to wrest the property of the Mutt by unlawful ineans.

Whether the Petitioners are legally entitled for electrical connections and the

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disconnection of such electrical connections without prior notice warrants interference by this Court.

32. In his counter affidavit, Respondent No. 3 conceded that whenever a person makes an application for release of power supply to a premises, supply is sanctioned on the applicant producing land/building ownership documents, municipal tax receipts or lease agreement entered into with the registered owner and that in the absence of any of these documents or where a dispute exists, supply is being released on its taking indemnity bond from the applicant to the effect that if any dispute subsequently arises, the power supply will be disconnected without any notice. The procedure being followed by Respondent Nos. 2 and 3 in cases where the applicant is not the owner of the building and where the lease deed is not produced by accepting indemnity bond, is in blatant violation of the regulations framed by the Commission. As noted above, the distribution licensee is bound to insist upon the indemnity bond to be executed by the owner of the property and in the absence of such indemnity bond, the applicant must show that he is in lawful possession of the premises. Even though the distribution licensee and its functionaries cannot embark upon deciding the ownership, nevertheless they should be prima facie satisfied that the applicant is either a lawful owner or in lawful possession if he is not the lawful owner. On the Petitioners'' own showing, none of them or any other member of Petitioner No. 1 association holds registered sale deeds. In the absence of a registered sale deed, they cannot claim to be the lawful owners. It is also not the case of the Petitioners that they are the lawful tenants of the plots. The Petitioners failed to claim their lawful possession on the strength of any document. By releasing supply to some of the Petitioners, Respondent Nos. 2 and 3 have committed serious infraction of the regulations framed by the Commission and breach of their lawful duty to make strict adherence to the requirement of law. In the absence of any definite evidence, it cannot be conclusively held that the functionaries of Respondent No. 2 have colluded with the Petitioners and other applicants in whose favour the power services were released, but it is reasonable to hold that there is complete dereliction on their lawful responsibilities in discharging their official functions. This Court thus strongly feels that proper investigation into the conduct of the officials of Respondent No. 2, who are responsible for release of power supply contrary to the regulations framed by the commission, is necessary.

33. Be that as it may, in his counter affidavit, Respondent No. 3 stated that 60 connections were given on various dates from June 2010 to 13.01.2011 and the details relating thereto are mentioned in Annexure-A to the counter affidavit and that service connections were released only to Petitioner Nos. 2, 3, 4, 7 and 11 and no such connections were released in case of other Petitioners. The learned Senior counsel for the Mutt has submitted and the same is not disputed by the learned Senior counsel for the Petitioners that out of the list of 60 persons, persons at Sl. Nos. 11 to 17, 26 to 30, 34 to 39, 41, 46 to 48 and 55 to 58 alone are the members of Petitioner No. 1 association, as could be verified from the list

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filed by the Petitioners along with the Writ Petition. Respondent No. 3 has taken the stand that Respondent No. 5 addressed letter dated 30.01.2011 to Respondent No. 2 directing it to strictly comply with the prevailing regulations before giving electricity connections and also requested to remove all the connections, which were given without following the regulations. He has further maintained that a joint meeting was held on 03.02.2011 by the Revenue, Panchayat and Electricity officials, wherein a decision was taken to disconnect the power supply and accordingly on 05.02.2011 the Tahsildar, Tirupati Rural directed Respondent No. 3 to stop the power supply, that after disconnection of the power supply, the revenue authorities and panchayat secretary have demolished the existing poles.

34. The Mutt has filed a copy of order dated 22.10.2010 passed by the A.P. Lokayukta, wherein it is mentioned that a report submitted by the Mutt discloses that its properties were subjected to several encroachments some of which are the subject matter of various Court proceedings, that the encroachments numbering 182 are relatively new, which are not the subject matter of any litigation and that out the said encroachments, there are very few RCC buildings and majority of them are temporary sheds. It is further stated that one Narasa Reddy is stated to be in occupation of as many as 25 plpts shown at Sy. Nos. 145 to 170 of the report and that except in two plots where RCC buildings are in existence, the rest are covered by Zinc Sheds and it was alleged that the labourers working under him are put up in those sheds obstructing the authorities from evicting the encroachments. The Lokayukta has accordingly directed Respondent No. 5 and the Tahsildar, Tirupati Rural Mandal to take appropriate action for removal of those encroachments in Sy. Nos. 13, 15 and 17/2, 3 and 5 of Avilala Village and restore the land to the Mutt expeditiously and submit a report. The Panchayat Secretary, Avilala was also directed not to issue any house numbers to the encroachments of the Mutt land in the abovementioned survey numbers.

35. On 30.12.2010, the Lokayukta has passed another order on submission of report dated 16.12.2010 by the Panchayat Secretary. On consideration of the said report, the Lokayukta directed that as no interim orders were passed by this Court in the Writ Petitions filed against the notices issued by the Gram Panchayat, the revenue authorities were directed to take appropriate action for eviction of the encroachments, after following due process of law. In the light of these orders passed by the A.P. Lokayukta, I do not find any merit in the submission of the learned Senior counsel for the Petitioners that the revenue and panchayat departments are not legally concerned with the possession and enjoyment of the property by the Petitioners. These functionaries have swung into action in order to comply with the lawful directions of the A.P. Lokayukta. If the Petitioners feel aggrieved by these orders, they can only avail appropriate legal remedies. Having regard to the undeniable fact that the power connections were released in favour of some of the Petitioners herein and some other persons, who are stated to be the members of Petitioner No. 1 association in

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flagrant violation of the regulations framed by the Commission, no rights have accrued to the beneficiaries of such illegal action. Hence, they are not entitled to question the disconnection of power supply. By resorting to disconnection, Respondent Nos. 2 and 3 albeit under compulsion to act following the directions issued by the Lokayukta have merely undone their unlawful act of releasing power supply in violation of the statutory regulations. If any direction is issued for restoration of power supply that would, in my opinion, revive the patently unlawful act of release of power supply by Respondent Nos. 2 and 3.

36. It is trite that the jurisdiction of this Court to issue prerogative writs is discretionary in nature and such a discretion will never be used in favour of the persons whose conduct is not bona fide. The jurisdiction of the High Court is normally exercisable keeping in mind the equity and to promote honesty and fair play see Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, By interfering with the action of Respondent Nos. 2 and 3, this Court would not like to confer unfair advantage on the persons, who have no lawful authority to remain in possession of the property and who obtained illicit electricity connections in violation of the statutory regulations.

37. Before parting with this case, I would like to place on record the conduct of the Revenue and Panchayat Raj Departments.

38. The photographs filed by the Petitioners would show that there was near vandalism at the disputed property. The electrical poles were broken, electrical conductors were cut and on top of all, poclainers were deployed for digging trenches obviously to cause serious inconvenience to the residents of the area. Such conduct on the part of the functionaries of the State is reprehensible. While it is absolutely necessary to prevent encroachments of public properties by unscrupulous elements with heavy hand, the executive apparatus cannot be permitted to indulge in acts of vandalism and violence. Such disdainful actions will promote anarchy in the society and make the people lose faith in the system.

39. Even though specific allegations were made against Respondent No. 6, who is holding the office of Respondent No. 5, in his affidavit he has not denied the acts attributed to him. While directing removal of encroachments, the Lokayukta has directed that the encroachers should be evicted by following due process of law. By no means, the acts narrated above could form part of due process of law. Even though the Petitioners and other encroachers are not entitled to have power supply, unless they establish their title in a competent Court of law, there can be no justification whatsoever for damaging the public property. The acts of these Respondents remind me of an unwise person setting fire to his own hut in order to drive away a rat. Indeed, Respondent No. 3 has lamented in the counter affidavit that because of the damage done by the revenue and panchayat functionaries, huge loss is caused and they will not be in a position to extend power supply even if a direction is given for restoration. These Respondents are seriously cautioned not to repeat such acts in future.

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40. For all the above reasons, the Writ Petition fails and is accordingly dismissed.

Writ Petition No. 3128 of 2011.

41. This Writ Petition is filed by 22 persons, who also claim to be in the same position as the Petitioners in Writ Petition No. 3849 of 2011.

42. Sri Kalava Suresh Kumar Reddy, learned Counsel for the Petitioners, has adopted the submissions of the learned Senior counsel for the Petitioners in Writ Petition No. 3849 of 2011. Therefore, for the same reasons as are assigned for dismissing Writ Petition No. 3849 of 2011, this Writ Petition is also dismissed.

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