THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

+ WRIT PETITION Nos.27655 & 27572 of 2016

AND

WRIT PETITION Nos.39704 & 42318 of 2017

% Dated 29.11.2019

W.P. No.27655 of 2016

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Takkella Lakshminarasaiah
Brindavan Gardens, Guntur ..... Petitioner

Vs.

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The State of Andhra Pradesh
Secretariat, Hyderabad ..Respondents

! Counsel for the petitioner : Sri P. Roy Reddy

^ Counsel for the respondent : Government Pleader for Endowments

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> HEAD NOTE:

? Cases referred

1. AIR 1963 SC 1667
2. 1996 SCC (2) 498
3. (1997) 8 SCC 422
4. 2003 (6) ALT 62
5. 1980 (1) ALT 107
6. AIR 1996 SC 966
7. AIR 2003 SC 1329
8. (2013) 1 SUPREME COURT CASES 745
9. (2004) 2 SCC 476, 494
10. AIR 1951 SC 41
11. AIR 1961 SC 954
12. AIR 1960 SC 554
13. AIR 1978 SC 1675
14. (2008) 2 SCC 254
15. AIR 1952 SC 196
16. AIR 1959 SC 149
17. (2007) 10 SCC 342
18. (1993) 4 SCC 441
19. AIR 1958 SC 956
20. AIR 1954 SC 224
21. AIR 1965 SC 745
22. AIR 1961 SC 232
23. AIR 1957 SC 699
24. AIR 1960 SC 554
25. AIR 1985 SC 551
26. AIR 1959 SC 648
27. AIR 1984 SC 326
28. AIR 1960 SC 1080
29. AIR 1964 SC 1515
30. AIR 1975 AP 315
31. (1998) 2 SUPREME COURT CASES 642
32. W.P.Nos.15377 of 1986 & W.P.No.20448 of 1998 dated 21.09.2001
33. AIR 1983 SC 920
34. (1981) 2 SCR 1
35. (1965) 1 SCR 82
36. AIR 1958 SC 538
37. AIR 1955 SC 191
38. (1986) 2 SCC 249
39. 1963 AOR 1019
40. 1983 SCR (2) 271
41. AIR 2008 SC 3148
42. 1975 (3) SCC 76
43. 1995 (5) SCC 482
44. 1985 (2) SCC 683
45. Civil Misc. Writ Petition No. 56447 of 2003 Dated 30.08.2007
46. (2000) 2 SCR 705
47. W.A.No.343 of 2015 & batch dated 29.01.2016
48. AIR 1988 SC 132

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
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WRIT PETITION Nos.27655 & 27572 of 2016

AND

WRIT PETITION Nos.39704 & 42318 of 2017

COMMON ORDER: *(Per Hon'ble Sri Justice M. Satyanarayana Murthy)*

WRIT PETITION Nos.27655 & 27572 of 2016

As the allegations made in both the writ petitions are one and the same, hence, we find it expedient to decide both the petitions by common order. W.P No.27655 of 2016 is taken as a leading petition.

W.P.No.27655 of 2019

This writ petition is filed under Article 227 of the Constitution of India, to declare A.P Act No.16 of 2013 insofar as the amendments brought by the said Act to Sections 4 and 7 of Andhra Pradesh (Andhra Area) Inams Abolition and Conversion into Ryotwari Act 1956 (for short 'Inams Abolition Act') as invalid and ultravires violative of Part-III of the Constitution of India, particularly Articles 14, 19(1)(g) and 21 of the Constitution of India and consequently set-aside the Order dated 21.07.2016 passed in D.Dis No.E4/1051/2014 by the 2nd respondent wherein the Order dated 03.03.2014 in D.Dis No.C/18/2012 of the 3rd respondent was confirmed.

The petitioner claims to be the purchaser of Ac.5.72 cts of land in Sy.Nos. 172/C3, 172/C1, 177/1, 177/3 and 171/1 of

Kondamur Village, J.Pangaluru Mandal, Prakasam District under Registered Sale Deed dt.20.02.2006 (Doct.No.220/2006) from Potti Sreenivasa Rao, Potti Vekata Vijaya Kumar, Vankayala Venkatadurga Prasad and Yakkala Tulasi Rao. Another extent of Ac.0.92½ cts of lands under Registered Sale Deed, dated 20.02.2008 (Doct.No.221/2006) from Potti Sreenivasa Rao, Atmakuri Prabhakar Rao, Potti Venkata Vijaya Kumar and Vankayala Venkatadurga Prasad and Ac.2-07½ cents of land under Registered Sale Deed, dated 20.02.2006 (Doct.No.241/2006) from Potti Sreenivasa Rao, Potti Venkata Vijaya Kumar, Vankayala Venkatadurga Prasad and Yakkala Tulasi Rao for Valuable consideration. The petitioner is in possession and enjoyment of the property, from the date of purchase, uninterruptedly. The revenue authorities issued Pattadar Pass Book and Title Deeds in favour to the petitioner for the said lands and he is cultivating the land from the date of purchase.

The predecessors in title of the petitioner, purchased an extent of Ac.5-72 cts of land from Chunduri Venkateswarlu and their family members on 22.12.2004 and 30.12.2004, vide registered Document Nos.2346 & 2383 of 2004. They were in possession of the property since their purchase. An extent of Ac.0-92 ½ cents of land was purchased by vendor of this petitioner from Chunduri Padmavathi and her family members on 19.11.2004 vide Document No.2125 of 2004 and the possession of property was delivered to vendors who purchased the said property from Chunduri Venkateswarlu on 09.02.2001 vide Document No.289/2001. The property was conveyed to the vendors of the petitioner by Chunduri Venkateswarlu and his family members, as

it was their ancestral property. An extent of Ac.2-07 ½ cents of land was purchased by petitioner's vendors Potti Sreenivasa Rao, Potti Venkata Vijaya Kumar, Vankayala Venkatadurga Prasad and Yakkala Tulasi Rao from Chunduri Anthalakshmamma and their family members on 12.01.2005 and from Chunduri Hari Babu on 12.01.2005 and the possession of the property was delivered to the petitioner's vendors on the same day vide Document Nos.37/2005 and 38/2005 respectively. Chunduri Hari Babu purchased the said property from Chunduri Venkateswarlu on 09.02.2001 vide Registered Document No.290/2001 and they were in possession and enjoyment of the property till conveying the property in favour of this petitioner.

While the matter stood thus, respondent Nos. 5 & 6 filed petitions before the Revenue Divisional Officer, Ongole, under Section 77 of A.P. Charitable, Hindu Religious Institutions and Endowments Act, requesting to resume the above lands in the Village of Kodamur, stating that the land in Sy.No.59 to an extent of Ac. 12-30 cents and Sy.Nos. 171, 172, 177 to an extent of Ac.14-54 cents belong to temples and that they were granted to Chunduri and Kalavakuri families towards ***"Bhajantri Service Inam"*** i.e. for performing Bhajantri service in the temple, but, the Chunduri and Kalavakuri families sold the properties to different vendors.

On request of the Deputy Commissioner Endowments, Guntur, the District Registrar, Ongole issued prohibition orders on 05.04.2011 by Notice No.G1/891/2010 on the subject land. As against the prohibition orders, the petitioner approached this Court and this Court suspended the prohibition orders of District

Registrar on 10.06.2011 in WPMP.No.18628 of 2011 in W.P.No.15537/2011.

On the basis of the petition filed by respondent No.5, the Revenue Divisional Officer, Ongole issued order on 30.11.2010 in D.Dis C/49/2010, stating that the lands in the village be resumed and restored to temples and also directed to cancel the pattadar Pass Books and Title Deeds issued by Tahsildar, J.Pangulur.

Aggrieved by the order passed by the Revenue Divisional Officer, Ongole, the petitioner filed an appeal before the Joint Collector, Ongole and upon hearing the argument and based on the record, the Joint Collector, Ongole passed an order on 17.07.2011 in D.Dis.E-4-136-2011, remanding the matter to Revenue Divisional Officer, Ongole, since the said authority has not afforded any opportunity to the petitioner, to examine the sale deeds, link documents, pattadar passbooks, title deeds, notice of District Registrar, also directed to handover the documents filed by the Endowments Department. On remand, the Revenue Divisional Officer, Ongole again passed an order in D.Dis.C/18/2012 dated 03.03.2014 holding that Chunduri and Kalavakuri families alienated the properties in contravention of Section 75 of A.P.Act 30 of 1987. The petitioner preferred an appeal under Section 78(1) of the Endowments Act, 1987 challenging the resumption orders and the same was dismissed by the District Collector, Prakasam District on 21.07.2016 vide order in D.Dis.No.E4/1050/2014. Assailing the order passed by the District Collector, Prakasam, the present petition is filed challenging the amendment to Sections 4 & 7, by A.P. Act 16 of 2013 amending Sections 4 & 7 of the A.P. Act 1956.

It is the specific contention of the petitioner that, when the grant is in favour of the inamdar for performing Bhajantri services, and ryotwari patta was issued under Section 7 of A.P.Act 1956 on 18.10.1982 to the inamdar would not confer any right on the inamdar, the successor in interest by virtue of amendment brought to statue i.e. A.P. Act of 1956 by A.P. Act No.16 of 2013 and such amendment would take away the right vested on the inamdar, giving retrospective effect from the year 1956 i.e. from the date of advent of conversion of inams abolition Act and it is nothing but an arbitrary exercise of the power of the State in contravention of Articles 13(2), 14, 19(1)(g) and 21 of the Constitution of India and against the rigor of abolition of imams in Andhra area.

The ryotwari patta issued in favour of Chunduri and Kalavakuri families, though is an inam for rendering services connected with the religious institutions i.e. for performing Bhajantri service and not in support of any religious institution, it was not a grant made in favour of the temples, but in favour of the individual inamdars. Therefore, pleaded that giving retrospective effect to the amended provisions is in derogation of Article 43 of the Constitution of India.

Article 13(2) of the Constitution of India prohibits passing any legislation which takes away the rights conferred by Part-III of the Constitution of India and that the amending Act is totally in contravention of Article 14 of the Constitution of India, inasmuch as, by virtue thereof, persons granted ryotwari patta under Inams Abolition Act or their successors-in-interest for the land granted as inam in connection with erstwhile services rendered to a religious institution, prior to abolition of imams are treated

differently vis-à-vis other grantees of ryotwari pattas/their successors-in-interest and this is in derogation to the protection offered by virtue of Article 14 of the Constitution of India, particularly in view of the fact that the nature of grant of inam, which in this case is a personal grant, pales into insignificance, upon the abolition of the very inam and consequential conversion of the tenure into ryotwari from inam. Further, the amendment, discriminating the persons holding land that had been originally granted as inam in connection with services rendered to religious institutions, other citizens holding land either former inam land given for other purpose and since converted into ryotwari tenure or land that was already held as ryotwari tenure and continues to be so.

It is also contended that A.P. Act No.16 of 2013, amending Inams Abolition Act is violative of Article 19(1)(g) of the Constitution of India, as it offends fundamental rights of the citizens guaranteed under the Constitution of India and imposes restriction on the freedom of the petitioner to profess particular profession, business, trade etc, under Article 19(1)(g). It is also contended that it is in violation of Article 21 of the Constitution of India as it deprives the personal liberty of inamdars/successors-in-interest who are compelled to discharge Bhajantri service to the temples against their free will and volition for the purpose of retaining the land that was originally subject matter of grant of inam and the amendment is reconciling with the safeguards provided in Part-III of the Constitution of India.

It is also contended that, rendering of service continuously for generations together by retaining the land is contrary to the

objects and reasons of the Principal Act and that, it is contrary to the main object of the Principal Act i.e. Inams Abolition Act. The Revenue Divisional Officer and District Collector, Prakasam District did not properly appreciate the contentions of the petitioner and requested to set-aside the order passed by the Revenue Divisional Officer and confirmed by the District Collector, Prakasam District.

Respondent No.5 – Executive Officer of Sri Malleswara Swamy Vari Temple filed counter, denying material allegations, *inter alia*, conteding that the grant was made for rendering ***"Bhajantri Service"*** and when the inamdar has violated the terms of grant, the authorities have rightly initiated eviction proceedings under the provisions of the Endowments Act and on the strength of the amended Sections 4 & 7 of Inams Abolition Act, would clearly establish that inam patta was obtained fraudulently by the petitioner and her vendor behind the Endowments Department. It is also contended that the sale deeds and other documents produced by the petitioner before this Court are non est in the eye of law for the reason that the alienations made by the petitioner's vendors are not done with the prior approval of the Commissioner of Endowments, as required under Sections 80 & 81 of the Endowments Act, 1987, hence, the purchaser from the inamdars and their successors-in-interest are not entitled to retain the property.

The specific contention of Respondent No.5 is that, the alleged violation of Article 13(2) of the Constitution of India is neither true nor correct and that the land was endowed to the temple, it is under the control of Endowments Department and

mere purchase of the property i.e service inam without verifying the title and other details would not confer any title on the respondents and question of infringement of fundamental rights guaranteed under the Constitution of India on account of amendment Act No.16 of 2013 to the Principal Act known as Inams Abolition Act is a myth and that, in any view, it cannot be declared as ultravires, in view of the principle laid down by the Apex Court in **Rai Ramakrishna and others v. The State of Bihar**[1]. It is also contended that the amendment would not infringe the fundamental right to equality and equal protection of laws guaranteed under Constitution of India, in view of the judgment of the Apex Court in **Pannalal Bansilal Pitti v. State of Andhra Pradesh**[2] and **Shri Jagannath Temple, Puri Management Committee v. Chintamani Khuntia**[3],

The other contentions urged by Respondent No.5 in the counter is that the amended provisions infringes the fundamental rights guaranteed under Articles 19(1)(g) and 21 of the Constitution of India is devoid of any merit and that this Court followed the direction issued by High Court of Andhra Pradesh in W.A.No.232 of 2012 & batch, where certain guidelines were issued for implementation of various provisions of Endowments Act.

It is specifically contended in the counter that, sale of temple land is not valid and binding on the temple, it does not confer any title on the purchaser of the property, in view of the law declared by the High Court in **The Secretary to the Government v. Sri Swamy Ayyappa Cooperative Housing Societies Limited**[4]**.**

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[1] AIR 1963 SC 1667
[2] 1996 SCC (2) 498
[3] (1997) 8 SCC 422
4 2003 (6) ALT 62

Learned counsel for the respondents has drawn attention of this Court to Section 17(6) of Act No.30 of 1987. According to which, all properties belonging to a charitable or religious institution or endowment, which on the date of commencement of this Act, are in the possession or under the superintendence of the Government, Zilla Praja Parishad, Municipality or other local authority or any company, society, organisation, Institution or other person or any committee, superintendent or manager appointed by the Government, shall, on the date on which a Board of Trustees is or is deemed to have been constituted or trustee is or is deemed to have been appointed under this section, stand transferred to such Board of Trustees or trustee thereof, as the case may be, and all assets vesting in the Government, local authority or person aforesaid and all liabilities subsisting against such Government, local authority or person on the said date shall, devolve on the institution or endowment, as the case may be. Therefore, the trust board is the competent authority to have control over the property in dispute and none others, including the inamdars or the purchasers from the inamdars are entitled to exercise any right over the property and requested to dismiss the writ petition.

During hearing, Sri Roy Reddy, learned counsel for the petitioner contended that the inam was granted for purpose of rendering Bhajantri Service in the religious institutions by Respondent Nos. 4 & 5, but grant was in favour of predecessors in title of the petitioner. Therefore, the predecessors of the predecessors in title of the petitioner was the inamdar and they cannot be compelled to render Bhajantri Service for generations

together, compelling them to render service to retain the grant is violative of Article 19(1)(g) of the Constitution of India and that the amendment by Act No.16 of 2013 is in utter disregard of the interdict contained under Article 13(2) of the Constitution of India, as it violates the fundamental rights guaranteed under Part-III of the Constitution of India, highlighted as to how various rights guaranteed under Articles 14, 19(1)(g), 21, 23 and 300-A of the Constitution of India are violated. Learned counsel would further contend that the proposed amendment which is not inconsonance with Article 300-A r/w Article 31-A of the Constitution of India, cannot over ride the second proviso to Article 31(A)(1) of the Constitution of India, he drew the attention of this Court to judgment of a Division Bench of this Court in **N. Bujjamma v. Tahsildar, Rapur**[5] to contend that, when inams are abolished, they are not governed by the provisions of Inams Abolition Act, as such, the provisions of Inams Abolition Act have no application to the land in dispute. Learned counsel for the petitioner further contended that, in view of declaring Section 76 and Explanation (2) to sub-section (2) of Section 2 of Act No.30 of 1987, Act No.16 of 2013 is enacted to overcome the law declared by the Apex Court in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh**[6]. It is also contended that the Legislative power either to introduce enactments for the first time or to amend the enacted law with retrospective effect, is not only subject to the question of competence but is also subject to several judicially recognized limitations with some of which we are at present concerned. (vide **National Agricultural Co-**

[5] 1980 (1) ALT 107
[6] AIR 1996 SC 966

operative Marketing Federation of India Ltd. and Ors. vs. Union of India (UOI) and Ors[7]) and on the strength of the principle laid down in the above judgment, learned counsel for the petitioner drawn attention of this Court to another judgment in **Namit Sharma v. Union of India**[8] to contend that the law enacted by the State Legislature by Act No.30 of 2013 is violative of fundamental rights guaranteed under Part-III of the Constitution of India, so also, contrary to proviso to Articles 31(A)(1) and 300-A of the Constitution of India, thereby requested to declare A.P Act No.16 of 2013 insofar as the amendments to the provisions of Sections 4 and 7 of Andhra Pradesh (Andhra Area) Inams Abolition and Conversion into Ryotwari Act 1956 as invalid and ultravires, violative of Part-III of the Constitution of India, particularly Articles 14, 19(1)(g) and 21 of the Constitution of India and consequently set-aside the Order dated 21.07.2016 passed in D.Dis No.E4/1051/2014 by the 2nd respondent wherein the Order dated 03.03.2014 in D.Dis No.C/18/2012 of the 3rd respondent was confirmed.

Learned Government Pleader for Respondent Nos. 1 to 3 supported the amendment by A.P.Act No.16 of 2013, while contending that the proposed amendment would not infringe any of the fundamental rights guaranteed under Part-III of the Constitution of India and that the legislation is not in contravention of Article 13(2), in view of protection provided under Article 31-A of the Constitution of India and thereby, the petitioner is disentitled to claim any relief in this petition and requested to dismiss the writ petition.

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7 AIR 2003 SC 1329
8 (2013) 1 Supreme Court Cases 745

Considering rival contentions, perusing the material available on record, the point that arise for consideration is:

"***Whether A.P.Act No.16 of 2013 introducing proviso 1 & 2 to subsection (1) of Section 4 and proviso to Section 7 of Inams Abolition Act is in contravention of Article 13(2) of the Constitution of India and violative of fundamental rights guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India. If so, whether A.P.Act No.16 of 2013 which came into effect on 15.03.2012 giving retrospective effect be declared as illegal and arbitrary?***

P O I N T:

The core contention of the petitioner, being a purchaser of the land from the service inamdars of temple/Respondent Nos. 5 & 6 herein is that, when a patta under Section 7 of Inams Abolition Act, 1956 was issued in favour of an inamdar for rendering service, it is his absolute property and that the sale of the same is not prohibited, in view of declaring Section 76 of Endowments Act i.e. Act No.30 of 1987 by judgment of the Apex Court in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra).

Section 76 of A.P.Act No.20 of 2017 created a restriction on transfer of lands granted for rendering service to a religious or charitable institution or endowment and any person who has been granted a ryotwari patta in respect of inam, any land given to a service holder or other employee of a charitable or religious institution or endowment for the purpose of rendering service to the institution or endowment then, notwithstanding to the contrary in any other law for the time being in force or in the deed or grant or of transfer of other document relating to such land it shall be and shall be deemed never to have been granted and the lands covered by such ryotwari patta shall not be transferred and

shall be deemed never to have been transferred and accordingly no right or title in such land shall vest in any person acquiring the land by such transfer and a ryotwari patta in respect of such land shall be deemed to have been granted in favour of the institution or endowment concerned and thereafter the person in possession of such land shall be deemed as an encroacher and the provisions in Sections 84 and 85 shall apply.

But, the Apex Court in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra), while deciding the legality and arbitrariness of Section 76 of Act No.30 of 1987, observed that, without amending the law under Inam abolition Act and without properly removing the foundation of the judgments rendered by the High Court, the legislature sought to destroy the effect of the law in Inam Abolition Act, on erroneous belief or assumption that it did not bind the religion or charitable institutions or endowment or that the holder of land did not acquire title or no patta was granted to him and the land was still with the institution and treated the occupant as encroacher. The legislation founded on such an erroneous assumption does not have the effect of depriving the holder of the land of their vested rights acquired under the Inams Abolition Act. The legislature has plainly misfired. Accordingly, held that Section 76 and explanation II to Section 2(22) of the Act to that extent are invalid and unconstitutional. In view of the law declared by the Apex Court, since the Inams Act was not suitably amended, Section 76 was struck down. To nullify such principle laid down by the Apex Court in the above judgment, this

enactment was passed by the State Legislature i.e A.P.Act No.16 of 2013.

The basis for the contention of this petitioner is that the law enacted by the State Legislature is violative of Part-III of the constitution of India i.e. fundamental rights guaranteed under the Constitution and no law which takes away the fundamental rights guaranteed to a citizen of India is invalid and illegal.

Article 13 of the Constitution of India deals with power of State or Union of India to pass appropriate legislations, not inconsistent with or in derogation of the fundamental rights. Clause (2) of Article 13 of the Constitution of India clearly prohibits the making of any law by the State which takes away or abridges rights, conferred by Part III of the Constitution. In the event of such a law being made, the same shall be void to the extent of contravention. While relying on Article 13(2) of the Constitution of India, learned counsel for the petitioner contended that the legislation, i.e. A.P.Act No.16 of 2013 violates the fundamental right guaranteed to this petitioner under Articles 14, 19(1)(g) and 21 of the Constitution of India.

Whereas, Sri G. Vivekananda, the learned Special Government Pleader for Respondent Nos. 1 to 3 would contend that, none of the provisions violate any fundamental rights guaranteed under Part III of the Constitution of India, thereby, A.P. Act No.16 of 2013 cannot be declared as arbitrary or illegal.

In view of the specific contention as to the competency of the State Legislature to pass such enactment i.e A.P.Act No.16 of 2013, it is appropriate to advert to other provisions of the Constitution to find out whether the law enacted by Act No.16 of

2013 is permissible under the Constitution. When a law is enacted by the Statute passed by the Legislature, such statutes carries with it a presumption of constitutionality. Such a presumption extends also in relation to a law which has been enacted for imposing reasonable restrictions in the fundamental right. A further presumption may also be drawn that the statutory authority would not exercise the power arbitrarily. (vide **People's Union for Civil Liberties v. Union of India**[9]). The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles (vide **Chiranjit Lal Chowdhuri v. Union of India**[10]**).** By reason of presumption in considering the validity of the impugned law, the Court will not be restricted to the pleadings of the respondent and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained, having regard to the circumstances in which it was enacted. (vide **Burarkar Coal Company v. Union of India**[11] **and Hamdard Dawakhana v. Union of India**[12]**).** For the same, the Court should, if possible, make such a progressive or narrow construction of the impugned statue as would sustain its constitutional validity (vide **Sunil Batra v. Delhi Administration**[13]). A law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity." Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the

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[9] (2004) 2 SCC 476, 494
[10] AIR 1951 SC 41
[11] AIR 1961 SC 954
[12] AIR 1960 SC 554
13 AIR 1978 SC 1675

other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or un-wisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a Legislature and violates no restrictions on that power, the law must be upheld whatever a Court may think of it. (vide **Karnataka Bank Limited v. State of A.P[14]**). Thus, the Court has to keep in mind the presumption of the constitutionality and such statute passed by Legislature. If, for any reason, the Statute passed by the Legislature is violative of any fundamental rights guaranteed under Constitution of India which expressly confers upon the Courts the power of judicial review and as regards fundamental rights, the Court has been, by the present Article, assigned the role of a sentinel on the 'qui vive'. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute (vide **State of Madras v. Raw[15]** and **Basheshar Nath v. C.I.T[16]**). Every law has to pass through the test of constitutionality, which is nothing but a formal test of rationality. (vide **State of U.P. v. Deepak Fertilizers & Petrochemical Corporation Limited[17]**). The foundation of this power of judicial review, as explained by a nine-Judge Bench is the theory that the Constitution, which is the fundamental law of the land, is the will of the 'people', while a statute is only the creation of the elected representatives of the people; when therefore, the will of the Legislature as declared in a statute, stands in opposition to that of the people as declared in

14 (2008) 2 SCC 254
15 AIR 1952 SC 196
16 AIR 1959 SC 149
17 (2007) 10 SCC 342

the Constitution, the will of the people must prevail. (vide **S.C. Advocates on Record Association v. U.O.I**[18]). The power to annul the acts of the executive and the judiciary which violate the Constitution is vested by the Constitution itself in the Judiciary and not the Legislature which is a creature of the Constitution. In determining the constitutionality of a provision alleged to be violative of a fundamental right, the Court must weigh the substance, the real effect and impact thereof on the fundamental right and would not allow the Legislature to bypass a constitutional prohibition by employing indirect methods. (vide **S.C. Advocates on Record Association v. U.O.I** (referred supra), **Re Kerala Education Bill**[19] and **Dwarka Prasad Laxmi Narain v. State of U.P**[20]**)**. In view of the law, it is for the Court to keep in mind the principles laid down in various judgments as to the scope of judicial review to decide the constitutionality of any statute passed by either the Union of India or the State. Broadly, the grounds of unconstitutionality of a statute can be stated as under:

i. Contravention of any fundamental right, specified in Part III of the Constitution (vide **Ref under Article 143**[21])

ii. Legislating on a subject which is not assigned to the relevant Legislature by the distribution of powers made by the 7th Schedule read with the connected Articles (vide **Ref under Article 143** (referred supra))

iii. Contravention of any of the mandatory provisions of the Constitution which impose limitations upon the powers of a Legislature e.g., Article 301 (vide **Atiabari Tea Co. V. State of Assam**[22])

iv. In the case of a State law, it will be invalid in so far as it seeks to operate beyond the boundaries of the State (vide **State of Bombay v. Chamarbaughwala R.M.D**[23])

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18 (1993) 4 SCC 441
19 AIR 1958 SC 956
20 AIR 1954 SC 224
21 AIR 1965 SC 745
22 AIR 1961 SC 232
23 AIR 1957 SC 699

v. That the Legislature concerned has abdicated its essential legislative function as assigned to it by the Constitution or has made an excessive delegation of that power to some other body. (vide **Hamdardn Dawakhana Wakf v. Union of India**[24]

The list of examples is not exhaustive, but elliptic.

On the other hand, a law cannot be invalidated on the following grounds:

(a) That in making the law including an ordinance, the law making body did not apply its mind even though it may be a valid ground for challenging an executive act, or was prompted by some improper motive (vide **Nagaraj K. v. State of A.P**[25])

(b) That the law contravenes some constitutional limitation which did not exist at the time of enactment of the law in question. (vide **Nagaraj K. v. State of A.P** (referred supra))

(c) That the law contravened any of the Directives contained in Part IV of the Constitution. (vide **Deep Chand v. State of U.P**[26]**, State of T.N. v. Abu Kavur Bai L.**[27])

The main endeavour of the learned counsel for the petitioner is that, in view of the bar under Clause (2) of Article 13 of the Constitution of India, the amendment is invalid. But, it is difficult to sustain this contention on different grounds, since such power to pass any legislation, though it violates Part III of the Constitution of India. The exception contained in Article 31-A of the Constitution of India is relevant for deciding the real controversy before us.

Article 31-A of the Constitution of India deals with saving of laws providing for acquisition of estates etc., it reads as under:

(1) Notwithstanding anything contained in Article 13, no law providing for -

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[24] AIR 1960 SC 554
[25] AIR 1985 SC 551
[26] AIR 1959 SC 648
[27] AIR 1984 SC 326

a. the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
b. the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
c. the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
d. the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of share-holders thereof, or
e. the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of and such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

In this article, -

a. the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenure in force in that area and shall also include -
    i. any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

ii. any land held under ryotwari settlement;

iii. any land held or let for purposes of agriculture of for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

b. the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

Initially, Article 31-A of the Constitution of India was originally inserted by Section 4 of the Constitution (First Amendment) Act,1951, and later amended by the Constitution (Fourth Amendment) At, 1955, as shown in italics. *Both the amendments were given retrospective effect from the commencement of the Constitution.* Further, amendments have been made by the Seventeenth Amendment Act, 1964 by adding a second proviso to Clause (1) and by Clause (2)(a) which is relevant for deciding the real controversy. According to proviso, provides that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof. Shortly speaking, the object of the introduction of Article 31A by the Constitution (First Amendment) Act, 1951, was to validate acquisition of

Zamindaries or the abolition of the Permanent Settlement without interference from Courts. Article 31A provided that no law (past or future) affecting rights of any proprietor or intermediate holder in any estate shall be void on the ground that it is inconsistent with any of the fundamental rights included in Part III of the Constitution. That is to say, no such law would be liable to be attacked on the ground that no compensation or illusory compensation has been provided for, or that there is no public purpose or that it violates some other provision of Part III, e.g. Article 14 of the Constitution of India.

In view of the object of the Government, the Legislation if any passed by the Centre or the State cannot be held to be invalid on account of violation of any fundamental rights guaranteed under Part-III of the Constitution of India. The words in Article 31(A)(1) prior to amendment by the Constitution (Fourth Amednment) Act, 1955, were ***'notwithstanding anything in the foregoing provisions of this Part'.*** The change is rather verbal, for either expression excludes the application of any of the fundamental rights conferred by the articles which are specified i.e. Articles 14 and 19. But, a challenge on the ground of contravention of other articles is not precluded, e.g., that certain provisions of law authorising State management of the property of a Mutt infringed the provisions of Articles 25 & 26; or that the law was beyond the legislative competence of the Legislature concerned. Therefore, the bar under Article 13(2) of the Constitution is not applicable to the agrarian reforms enacting laws to abolish the estates and permanent settlements with a view to abolish them and confer rights on the intermediate holders. Agrarian reforms have been

liberally interpreted since **Kavalappara Kottarathil Kochuni v. The State of Madras**[28] to include –

(i) Provisions for the development of rural economy, including consolidation of holding;
(ii) Increasing agricultural production;
(iii) Encouraging self-cultivation;
(iv) Equitable distribution of lands and agricultural income between landlord and tenant, in order to prevent concentration of lands in the hands of a few landholders;
(v) Provisions ancillary to agrarian reform, eg. Annulment of anticipatory transfers to defeat a law of agrarian reform, transfer of surplus land to the village Panchayat for the use of the general community, such as promotion of agriculture or welfare of the agricultural population, acquisition of private forest lands belonging to a Jagir or inam for such purposes; for settlement of agricultural labour, fixing a ceiling area and providing for distribution of the surplus amongst the tillers of the soil; acquisition of the land together with standing crops and improvements;
(vi) Increase in employment opportunities.

Agrarian reforms cannot take the same pattern throughout the country but must vary with various local conditions – climate, availability of surplus lands, of modern methods of cultivation and the like. Any measure will come under this category if it aims at increasing agricultural production, or equitable distribution of lands amongst the agricultural population and their welfare. The Court has to examine the provisions of the Act as a whole to determine whether it contains a scheme of agrarian reforms; the label given by the Legislature to the Act is not conclusive. Therefore, to bring it within the explanation of proviso (2) of Article 31(A) of the Constitution of India, the Court has to satisfy itself where compensation is required to be paid to the landholder or

[28] AIR 1960 SC 1080

Zamindar in the Zamindari Estate, village or inam holder in the inam village.

In any view of the matter, ryotwari settlement was considered to be an agrarian reform. The Ryotwari settlement was inserted by the Constitution (17th Amendment) Act, 1964. Prior to that, the definition of 'estate' in Clause (2)(a), as introduced by the Constitution (1st Amendment) Act, 951, referred to the existing law relating to land tenures which, obviously, referred to an estate under the Permanent Settlement, and the interest of a zemindar or an intermediary under the law, so that ryotwari lands were excluded from the purview of Article 31A(1)(a). (vide **Krishnaswami Naidu, A.P. v. State of Madras[29])**. That loophole has been plugged by the substitution of Clause (2)(a) by the amendment of 1964 as a result of which even lands under a ryotwari settlement would be entitled to the protection of Article 31A(1)(a) provided, of course, the requirement of the second proviso to Article 31A(1), which was inserted by the same amendment of 1964 is complied with. (vide **Venkatarao Maddukuri v. State of Andhra Pradesh[30]**).

From the law laid down by the Apex Court in various judgments referred supra, the principal enactment is enacted by the State Legislature in 1956, which is known as A.P. Andhra Area Inams Abolition Act. But, in view of declaration of Section 76 of A.P. Act No.30 of 1987, the Legislature thought it fit to protect the property of a deity jealously, brought into existence of amendment of Sections 4 & 7 of Inams Abolition Act by A.P. Act No.16 of 2013, the provisions of Sections 4 & 7 of the Inams Abolition Act are extracted herein for better appreciation of the case.

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[29] AIR 1964 SC 1515
[30] AIR 1975 AP 315

4. Conversion of inam lands into ryotwari lands:. - (1) In the case of an inam land in a ryotwari or zamindari village the person or institution holding such land as inamdar on the date of commencement of this Act shall be entitled to a ryotwari patta in respect thereof.

(2) In the case of inam land in an inam village:

(a) if such a land is held by any institution on the date of commencement of this Act, such institution shall be entitled to a ryotwari patta in respect of that land;

(b) If such a land is held by an inamdar other than an institution on the date of commencement of this Act, and is in his actual occupation on the said date, the tenant who is declared to be in occupation of that land on the 7th January, 1948, by the Revenue Court under sub-section (3) of Section 5, or the Collector under sub-section (5) of that Section, as the case may be, shall be entitled to a ryotwari patta for two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof: and if no tenant has filed an application before the Revenue Court under sub-section (2) of that Section within the period specified therein, the inamdar shall be entitled to a ryotwari patta in respect of that land:

(c) if such a land is held by an inamdar other than an institution on the date of commencement of this Act, but is in the occupation of a tenant on the said date, the tenant who is declared to be occupation of that land on the 7th January, 1948, by the Revenue Court under sub-section (3) of Section 5, or the Collector under sub-section (5) of that Section, as the case may be, shall be entitled to a ryotwari patta of two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof and if no tenant has filed an application before the Revenue Court under sub-section (2) of that Section within the period specified therein the tenant in the occupation of the land on the date of commencement of this Act, shall be entitled to a ryotwari patta for two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof.

(3) The one-third share of the inam land in occupation of tenant in respect of which the inamdar is entitled to a ryotwari patta under clause (b) or clause (c) of sub-section (2) shall be deemed to be the compensation payable to the inamdar in lieu of the extinguishment of his rights in the two-thirds share of such land.

7. Grant of Ryotwari Pattas:. - (1) As soon as may be after commencement of this Act and subject to the provisions of sub section (4), the Tahsildar may *suo motu* and shall, on application by a person or an institution, after serving a notice in the prescribed manner on all the persons or institutions interested in the grant of ryotwari pattas in respect of the inam lands concerned and after giving them a reasonable opportunity of being heard and examining all the relevant records, determine the persons or institutions entitled to ryotwari pattas in accordance with the provisions of Section 4 and grant them ryotwari patta in the prescribed form.

(2) Any person or institution aggrieved by the grant of a ryotwari patta by the Tahsildar under sub-section (1) may appeal to the Revenue Court within sixty days from the date of such grant, and the Revenue Court may, after giving the parties to the appeal a reasonable opportunity of being heard pass such orders on the appeal as it thinks fit.

(3) The decision of the Revenue Court under sub-section (2) and where no appeal is filed, the decision of the Tahsildar under sub-section (1) shall be final.

(4) Where the Revenue Court declares under sub-section (2) that a person or an institution different from the person or institution to whom a Tahsildar has granted a ryotwari patta under sub-section (1) is entitled to a ryotwari patta the Tahsildar shall cancel the ryotwari patta granted by him and grant a fresh ryotwari patta in accordance with the decision of the Revenue Court under sub-section (2).

> (5) In the case of inam lands held by an inamdar other than an institution in an inam village, if an application is filed under sub-section (2) of Section 5 within the period specified in that sub-section, no tenant or inamdar shall be granted a ryotwari patta under sub-section (1) until the decision of the Revenue Court under sub-section (3) of Section 5 or of the Collector under sub-section (5) of that Section, as the case may be, is given.

Earlier, in view of amendment to Section 76 of A.P. Act No.30 of 1987, there was a clear prohibition against alienation of any lands granted for rendering service to religious institutions or endowments. But, on account of declaration of Section 76 as arbitrary, vide **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra), the service inamdars are entitled to alienate the property granted in their favour for rendering services. If, such course is permitted, no inamdar will render service and alienate the property to third party and the institutions will be remedyless to insist service or to recover the property i.e, land granted in their favour for rendering services.

Though Sections 75 and 77 of A.P. Act No.30 of 1987 prohibits any lease and any gift, sale, exchange or mortgage of an inam land granted for the support or maintenance of charitable or religious institution or endowment or for the performance of a religious or public charity or service, shall be null and void unless any such transaction not being a gift, is effected with the prior sanction of the Government. In case, any alienation in contravention of Section 75 is done, the remedy open to the institution or trustee of a charitable or religious institution or endowment or of the Commissioner or of any person having interest in the institution or endowment authorized by the Commissioner is to invoke Section 77 for resumption of Inam lands.

Chapter X of A.P. Act No.30 of 1987 clearly drawn distinction between imams for the support or maintenance of charitable or religious institution or endowment or for the performance of a religious or public charity and service imams or imams burdened with obligation, under Sections 75 and 76. Though, Section 76 and Explanation (II) of subsection (22) of Section 2 of A.P. Act No.30 of 1987 are declared as arbitrary by the Apex Court in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra), still the Explanation to Section (3) of Section 2 is not declared as illegal.

Section 2(3) defined "Charitable Endowment", it means all property given or endowed for any charitable purpose.

Explanation II of Section 2(3) clarified that, any Inam granted to a service holder or to an employee of a Charitable Institution for the performance of any charity or service in connection with a charitable institution shall not be deemed to be a personal gift to the service holder or to the employees notwithstanding the grant of ryotwari patta to such service holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, but shall be deemed to be a charitable endowment.

From bare reading of definition of "charitable institution" under Section 4, along with "Explanation II of sub-section 3 of Section 2 of A.P. Act No.30 of 1956, even though a patta was granted under Section 7 of Inams Abolition Act, in favour of any person for rendering service or an employee of the charitable institution, such patta is deemed to have been granted in favour of the charitable institution in favour of an employee. Therefore, such

grant is deemed to be a grant in favour of the charitable endowment.

In ***Sayyed Ali and others vs. A.P Wakf Board, Hyderabad and Others***[31], the Apex Court held that wakf is a permanent dedication of property for purposes recognized by Muslim law as pious, religious or charitable and the property having been found as wakf would always retain its character as wakf. In other words, once a wakf always a wakf and the *grant of patta in favour of Mokhasadar under the Inams Abolition Act does not, in any manner, nullify the earlier dedication made of the property constituting the same as wakf. After a wakf has been created, it continues to be so for all time to come, further continues to be governed by the provisions of The Act and a grant of patta in favour of Mokhasadar does not affect the original character of the wakf property.*

In view of the principle laid down in the above judgment, whether it is a grant in favour of an inamdar for rendering service either in favour of charitable endowment or charitable institution or a religious endowment, such grant is deemed to be a grant in favour of the institution, but not in favour of a grantee i.e. a service inamdar. Such inamdar is entitled to enjoy the property as along as he is rendering service to the institution. Therefore, such service inam land cannot be alienated in view of the restriction imposed under Section 76 which was declared as arbitrary and illegal, in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra).

Section 4(4) was repealed earlier and now, substituted by another clause shown in italics. According to sub-section (4) of

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[31] (1998) 2 Supreme Court Cases 642

Section 4, substituted by Act No.16 of 2013 is given effect from 26.11.1956 i.e. giving retrospective effect from the date of commencement of original enactment, where an inam land is with a burden to render service, or for performance of a religious or public charity, or as a remuneration for performance of certain customary service, to an institution or endowment, no person shall be entitled to Ryotwari patta, and the institution or Endowment alone shall be entitled to Ryotwari patta for such Inam land without any restriction of extent and without the condition of personal cultivation.

A proviso thereto made it clear that, where any person other than concerned charitable or religious institution or endowment obtained a patta for such Inam Land after the commencement of the Andhra Pradesh (Andhra Area) Inam (Abolition and Conversion into Ryotwari) Act, 1956, such patta shall and shall be deemed always to have been null and void and no effect shall be given to such patta granted. Provided further that, no person, other than the person to whom the Inam Land was given to render service, or for performance of a religious or public charity or as remuneration for performance of certain customary service, and who is in enjoyment of such Inam land, shall be entitled to continue in enjoyment of such land as long as they render such service for which that inam land was originally given.

At the same time, Section 10-B, added by Act No.20 of 1975, deals with conferment of ryotwari pattas on transferees of unenfrachised imams. According to Section 10-B, where, before commencement of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1975 an

inamdar, other than an institution, of any unenfranchised inam has sold or otherwise institution, of any unenfranchised inam has sold or otherwise transferred his interest in the inam land held by him, the transferee, who has acquired the said interest in good faith and for valuable consideration, or his successor in title, who is in possession of such land on the date of such commencement, shall be, deemed to be the inamdar for the purpose of this Act.

Thus, the law under Inams Abolition Act by itself is a complete code. However, the second proviso to Section 7 created a bar from alienating the land granted in favour of the inamdar under Section 7 as null and void and it annuls the judgment, decree, compromise, order of any judicial or quasi-judicial authority, any Ryotwari patta granted before the commencement of Amendment Act, 2011, to any service holder or other employee of a charitable or religious institution or endowment shall be valid so long as themselves or their lineal qualified descendants render service for which the inam is given. Therefore, the amendment has given retrospective effect to the Act and completely takes away the right of inamdar to alienate the property granted for rendering service. The amendment is questioned on the ground that it is in contravention of Article 13(2) of the Constitution of India. Earlier, Section 4(4) of Inams Abolition Act, 1955, was repealed with retrospective effect by the State and the same was questioned before the Division Bench of this Court in **S. Kishan Rao v. State of Andhra Pradesh**[32]. On account of repeal of sub-section (4) of Section 4, the amendment takes away the right of the petitioners with respect to the property of which they became owners. But, the

[32] W.P.Nos.15377 of 1986 & W.P.No.20448 of 1998 dated 21.09.2001

Division Bench of the High Court at Hyderabad held that, the golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. In the facts of the above judgment, amendment was given retrospective application. Reliance was placed on the judgment of the Supreme Court in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra), wherein the Supreme Court held that "the competency of the legislature to make the law, its deep impact on vested rights and its sweep would be properly gazed and appreciated when we would look into the provisions of the Inams Abolition Act which is a part of agrarian reform, forming part of the scheme to abolish an estate, conferment of ryotwari patta on the tiller of the soil and the institution respectively and creation of direct relationship of him with the State paying revenue assessment thereof. The Inams Abolition Act was enacted under Entry 18 of List-II of the Seventh Schedule of the Constitution viz., Rights in or over the land, land tenure including the relationship of the landlord and the tenant, transfer and alienation of agricultural lands etc". The preamble of the Inams Abolition Act envisages "an act to abolish and convert certain inam lands into ryotwari lands". The title of the Act itself indicates abolition of the inam lands and conversion thereof into ryotwari lands. The Act had come into force on December 14, 1956 and it had been amended from time to time. Similar provision is available in Telangana area of Andhra Pradesh. ……". Further it was held that, "it is not a question for debate

as to whether the Inams Abolition Act is an Act for the purpose of agrarian reforms or not. It is held by the Supreme Court that it is a piece of legislation under Entry 18 of List II of the Seventh Schedule of the Constitution. Since the impugned legislation has received the Presidential assent and a procedure has been laid down for determination, apportionment and payment of compensation under Chapter-III of the Act, therefore, ***it will not be subject to any challenge for violation of rights guaranteed under Part-III of the Constitution."***

The Apex Court in the earlier judgment in **Prem Nath Raina and others v. State of Jammu & Kashmir and others**[33], where the Jammu and Kashmir Agrarian Reforms Act, 1976, was challenged and the Apex Court by considering various earlier judgments, held as follows:

> "Before parting with this case, we would like to observe that Section 7(2)(b) of the Act creates an anomalous situation, especially in the contest of the definition of 'personal cultivation' in Section 2(12) of the Act. One of the conditions imposed by Section 7(2)(b) on the right of a land-holder to resume land is that, unless he is a member of the defence forces, he must take his residence in the village in which the land is situated or in an adjoining village. "Personal Cultivation" is defined in section 2(12) to mean cultivation by any member of one's family or by a khana-nishin daughter or a khana-damad or a parent of the person or by other relations like the son, brother or sister who are specified in the various clauses of Section 2(12). Under clause (g) of section 2(12), a land-holder who is a minor, insane, physically disabled, incapacitated by old age or infirmity, a widow or a person in detention or in person can cultivate the land through a servant or hired labourer under the personal supervision of his or her guardian or agent. If it is permissible to cultivate a land through another person as specified in clauses (b) to (g) of section 2(12), it is difficult to understand why residence in the village where the land is situated or in an adjoining village should be compulsory for all persons, even for minors, widows, insane persons and persons in detention. The exception made by the legislature in favour of the members of defence forces ought to be extended to these other persons also, The exclusion of a constitutional challenge under Articles 14, 19 and 31 which is provided for by Article 31A does not justify in equity the irrational violation of these articles. This Court did observe in **Waman Rao v. Union of India**[34] that: "It may happen that while existing inequalities are being removed, new inequalities may arise marginally and incidentally" but the legislature has to take care to see that even marginal and incidental inequalities are not created without rhyme or reason. The Government of Jammu & Kashmir would do well to give fresh consideration to the provisions contained

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[33] AIR 1983 SC 920
[34] [1981] 2 SCR 1

> in section 7 (2) and modify the provisions regarding residence in order that they may accord with reason and commonsense."

A converse situation came up before the Division Bench of this Court, In **S. Kishan Rao v. State of Andhra Pradesh** (referred supra), where sub-section (4) of Section 4 was repealed with retrospective effect. But, in the present case, Sections 4 & 7 were amended giving retrospective effect. But, Division Bench of this Court upheld repeal of sub-section (4) of Section 4 with retrospective effect by applying the principle laid by the Supreme Court in **Prem Nath Raina and others v. State of Jammu & Kashmir and others** (referred supra). The same principle can be applied even to the amendments since, the judgment of Division Bench is binding on this Court.

In **Ranjit Singh v. State of Punjab**[35], an identical question with regard to nature of legislation like the present Act came up for consideration, and the Apex Court while considering Articles 14, 19 and 31A of the Constitution of India, held as follows:

> "On a review of authorities that a large and liberal meaning must be given to the several expressions like 'estate', 'rights in an estate' and extinguishment and modification' of such rights which occur in Article 31A. The decision in **Kavalappara Kottarathil Kochuni v. The State of Madras** (referred supra) to which our attention was drawn by Shri Tarkunde, was treated in **Ranjit Singh v. State of Punjab** (referred supra) as a special case which cannot apply to cases where the general scheme of legislation is definitely agrarian reform and under its provisions, something ancillary thereto in the interests of rural economy has to be undertaken to give full effect to those reforms. In our case the dominant purpose of the statute is to bring about a just and equitable redistribution of lands, which is achieved by making the tiller of the soil the owner of the land which he cultivates and by imposing a ceiling on the extent of the land which any person, whether land- lord or tenant, can hold. Considering the scheme and purpose of the Act, we cannot but hold that the Act is a measure of agrarian reform and is saved by Article 31A from the challenge under Articles 14, 19 or 31 of the Constitution. Article 31 has been repealed by the 44th Amendment with effect from June 20, 1979 and for future purposes it ceases to have relevance. Reduced to a constitutional premise, the argument of the petitioners is that the particular provisions of the Act are discriminatory and are therefore violative of Article 14; that those

[35] [1965] 1 SCR 82

> provisions impose unreasonable restrictions on their fundamental rights and are therefore violative of Article 19. This argument is not open to them by reason of Article 31A."

In view of the law declared by the Apex Court in **Prem Nath Raina and others v. State of Jammu & Kashmir and others** (referred supra), **S. Kishan Rao v. State of Andhra Pradesh** (referred supra), **Krishna Swamy Naidu v. State of Madras** (referred supra) and **Venkateswara Rao Muddanuri v. State of A.P** (referred supra), the present Act i.e Act No.16 of 2013 amending Sections 4 and 7 of A.P. Inams Abolition Act would not fall within Article 13(2) of the Constitution of India, since, the laws relating to agrarian reforms are saved by Article 31-A of the Constitution of India.

As the coordinate Division Bench of the High Court of Andhra Pradesh at Hyderabad in **S. Kishan Rao v. State of Andhra Pradesh** (referred supra) took a specific view that the laws including, A.P. (Andhra Area) Inams Abolition Act would fall within the subject of agrarian reforms and such enactment and amendment thereto made by Legislature is saved by Article 31-A of the constitution of India, therefore, the contention of the learned counsel for the petitioner that the amendment by Act No.16 of 2013 is violative of Article 14 of the Constitution of India cannot be declared as arbitrary or illegal, though it is violative of fundamental rights guaranteed under Part-III of the Constitution of India. Hence, we are of the confirmed view that the amendment to Act No.16 of 2013 is not hit by Article 13(2) of the Constitution of India.

Learned counsel for the petitioner vehemently contended that, when a statute or amendment to the statute is passed by the

Legislature, takes away the valuable right, such amendment infringes the fundamental right guaranteed under Part-III of the Constitution of India. While deciding the constitutional validity of any law, the court must keep in mind few principles laid down by the Apex Court in **Namit Sharma v. Union of India** (referred supra), wherein the Supreme Court, after adverting to earlier judgments of the Apex Court in **Ram Krishna Dalmia v. S.R. Tendolkar**[36] and **Budhan Chodry v. State of Bihar**[37], laying down guidelines as to how the Court has to exercise jurisdiction to decide validity of law or amendment to any existing law.

> (a) that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
>
> (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
>
> (c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
>
> (d) that the legislature is free to recognize decrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
>
> (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
>
> (f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

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[36] AIR 1958 SC 538
[37] AIR 1955 SC 191

In **Atam Prakash v. State of Haryana & Ors**[38], the Apex Court stated that whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble of the Constitution as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation. The Constitution being *sui generis*, these are the factors of distant vision that help in the determination of the constitutional issues. Referring to the object of such adjudicatory process, the Court said:

> "....we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. For example, when we consider the question whether a statute offends Article 14 of the Constitution we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution."

To examine constitutionality of a statute in its correct perspective, we have to bear in mind certain fundamental principles as afore-recorded. There is presumption of constitutionality in favour of legislation. The Legislature has the power to carve out a classification which is based upon intelligible differentia and has rational nexus to the object of the Act. The burden to prove that the enacted law offends any of the Articles under Part III of the Constitution is on the one who questions the constitutionality and show that despite such presumption in favour of the legislation, it is unfair, unjust and unreasonable. Another most significant canon of determination of constitutionality is that the courts would be reluctant to declare a law invalid or ultra vires on account of unconstitutionality. The courts would accept an interpretation which would be in favour of the constitutionality, than an approach which would render the

[38] [(1986) 2 SCC 249]

law unconstitutional. Declaring the law unconstitutional is one of the last resorts taken by the courts. The courts would preferably put into service the principle of reading down or reading into the provision to make it effective, workable and ensure the attainment of the object of the Act. These are the principles which clearly emerge from the consistent view taken by the courts in its various pronouncements.

In **Mahendra Lal Jaini v. The State Of Uttar Pradesh And others**[39], relied on by the learned counsel for the petitioner, the Apex Court discussed the scope of Article 13(2) of the Constitution of India and drawn difference in the language and scope of Article13(1) and 13(2). Article13(1) clearly recognises the existence of pre-existing laws in force in the territory of India immediately before the commencement of the Constitution and then lays down that in so far as they are inconsistent with the provisions of Part III, they shall be void to the extent of such inconsistency. The pre-Constitution laws which were perfectly valid when they were passed and the existence of which is recognised in the opening words of Article 13(1) revived by the removal of the inconsistency in question. Article 13(2) on the other hand begins with an injunction to the State not to make a law which takes away or abridges the rights conferred by Part III. There is thus a constitutional prohibition to the State against making laws taking away or abridging fundamental rights. The legislative power of Parliament and 'the Legislatures of States under Article 245 is subject to the other provisions of the Constitution and therefore subject to Article 13(2), which specifically prohibits the State from making any law

[39] 1963 AIR 1019

taking away or abridging the fundamental rights. Therefore, it seems to us that the prohibition contained in Article 13(2) makes the State as much incompetent to make a law taking away or abridging the fundamental rights, as it would be where law is made against the distribution of powers contained in the Seventh Schedule to the Constitution between Parliament and the Legislature of a State. Further, Article 13(2) provides that the law shall be void to the extent of the contravention. Now contravention in the context takes place only once when the law is "made, for the contravention is of the prohibition to make any law which takes away or abridges the fundamental rights. There is no question of contravention of Article 13 (2) being a continuing matter. Therefore, where there is a question of a post- Constitution law, there is a prohibition against the State from taking away or abridging fundamental rights and there is a further provision that if the prohibition is contravened the law shall be void to the extent of the contravention. In view of this clear provision it must be held that unlike a law covered by Article 13(1) which was valid when made, the law made in contravention of the prohibition contained in Article 13 (2) is a still, born law either wholly or partially depending upon the extent of the contravention. 'Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse. plain reading therefore of the words in Article 13(1) and Article 13(2) brings out a clear distinction between the two. Article 13(1) declares such pre-Constitution laws as are inconsistent with fundamental rights void. Article 13 (2) consists of two parts; the first part imposes an inhibition on the power of the State to make a law contravening fundamental rights,

and the second part, which is merely a consequential one, mentions the effect of the breach. Now what the doctrine of eclipse can revive is the operation of a law which was operative until the Constitution came into force and had since then become inoperative either wholly or partially; it cannot confer power on the State to enact a law in breach of Article 13(2) which would be the effect of the application of the doctrine of eclipse to post-Constitution laws.

There is no dispute with regard to the law laid down by the Apex Court regarding the bar contained under Article 13(2) of the Constitution of India. But, the exception carved out by Article 31-A of the Constitution of India is sufficient to reject the contention of the learned counsel for the petitioner that Act No.16 of 2013 is violative of fundamental rights guaranteed under Part-III of the Constitution of India.

Learned counsel for the petitioner also placed reliance on the judgment of the Apex Court in **Sanjit Roy v. State of Rajasthan**[40], which dealt with fundamental rights guaranteed under Articles 14 and 23 of the Constitution of India.

In **Satyawati Sharma (Dead) by LRs v. Union of India**[41]**,** the Court while deciding the violation of fundamental rights guaranteed under Article 14(1) of the Constitution of India, certain provisions of Delhi Rent Control Act, 1958, were considered. The Apex Court considered the scope of law passed in contravention of fundamental rights by placing reliance on the judgments in **Ram Krishna Dalmia v. S.R. Tendolkar** (referred supra), **Mohd. Shujat**

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[40] 1983 SCR (2) 271
[41] AIR 2008 SC 3148

Ali v. Union of India[42], L.I.C. of India and another v. Consumer Education & Research Centre and others[43] and **Gian Devi Anand v. Jeevan Kumar and others[44].** In all the above judgments, the Apex Court dealt with the reasonable classification permissible under Article 14 of the Constitution of India. All these judgments are not relevant for deciding the constitutional validity of the amended provisions of Act, 1956 by Act No.16 of 2013, for the simple reason that, Delhi Rent Control Act and other enactments discussed in all the above judgments are not relevant for deciding validity of agrarian reforms undertaken by the State. But, in view of the exception to Article 31(A) of the Constitution of India, violation of fundamental rights guaranteed under Part-III of the Constitution of India became insignificant in view of the law declared by the Supreme Court in **Prem Nath Raina and others v. State of Jammu & Kashmir and others** (referred supra) and **S. Kishan Rao v. State of Andhra Pradesh** (referred supra). Therefore, it is difficult to uphold the contention of the learned counsel for the petitioner to declare the law as illegal and arbitrary and violative of fundamental rights guaranteed under the Constitution of India.

The main endeavour of the learned counsel for the petitioner is that, when an Act is passed by the State, in view of the decisions referred above, such Legislation must never be in contravention of the fundamental rights or provisions of any other statute and if it is violative of any of the fundamental rights, or any statutory rights it is illegal and arbitrary. Though, we have stated a shortlist of

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[42] 1975 (3) SCC 76
[43] 1995 (5) SCC 482
[44] 1985 (2) SCC 683

circumstances, under which the Court can declare any law as unconstitutional, despite the presumption of constitutionality of such enactment i.e. Act No.16 of 2013, the present case does not fall within any of the circumstances noted above.

The contention of the learned counsel for the petitioner is that, Act No.16 of 2013 is violative of fundamental right guaranteed under Article 14 of the Constitution of India i.e right of equality and equal protection of laws. No doubt, every citizen of India is entitled to protection under Article 14 of the Constitution of India i.e. right to equality and equal protection of laws. But, in the present case, grant was made in favour of the petitioner and issued ryotwari patta under Section 7 of the Act, as service inam i.e. inam burdened with service. The inamdar is entitled to enjoy the property as long as he is rendering service to the institution. If, for any reason, the land covered by grant in favour of the service inamdar is alienated, it will directly affect the rights of the institution. The deity is a juristic person and it must be represented by either trustee or any other official depending upon the circumstances of the case and it is the duty of the State to protect the rights of the deity jealously.

In **Shyamal Ranjan Mukerjee v. Nirmal Ranjan Mukerjee and others[45],** referring to the judgment in **Shriomani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass and others[46]**, the Apex Court considered the duty to protect the rights of deity in the property and held that, the Deity is perpetual a minor and if the property is dedicated for the religious purposes, welfare of the Deity could be looked into by the Shebait/Sarvakar/

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[45] Civil Misc. Writ Petition No. 56447 of 2003 Dated 30.08.2007
[46] (2000) 2 SCR 705

Manager appointed in accordance with the Deed of Dedication or by the Management as Guardian, as Deity never attains majority and always remains as minor. Any transfer made against the interest of the Deity will be void, as other minors may attain majority, but Deity cannot.

In **The Secretary to the Government v. Sri Swamy Ayyappa Cooperative Housing Societies Limited** (referred supra), the Division Bench of High Court of Andhra Pradesh at Hyderabad had an occasion to consider the effect of Sections 75 & 77 of Act No.30 of 1987 with reference to Inams Abolition Act, 1956 and after noting the law laid down by the Apex Court in various judgments, expressed its view that, when the Act in its clear and categorical terms declares that the Act applies to all public Charitable Institutions and Endowments, whether registered or not in accordance with the provisions of the Act other than Wakfs governed by the provisions of the Wakf Act, 1954. In the facts of the above judgment also, the amendment by Act No.30 of 1987 to the earlier Act No.17 of 1986 came up for consideration, wherein the Apex Court upheld the amendment by Act No.17 of 1986 and observed as follows:

> "46. The provisions do not admit more than one interpretation. The requirement of prior sanction is mandatory in its nature and non-compliance thereof is fatal to the alienation so made. That grant of sanction by the Competent Authority is not a matter of any empty formality or ritual. Sanction may be accorded only in cases where the Competent Authority considers that the proposed transaction is (i) prudent and necessary or beneficial to the institution, or endowment; (ii) in respect of immovable property which is un-economical for the institution or endowment to own and maintain; and (iii) the consideration therefor is adequate and proper. It is not the satisfaction of those who are entrusted with the management of the institution concerned, but it is the satisfaction of the Competent Authority as provided for under the provisions referred to hereinabove. In such view of the matter, the so-called resolution purported to have been passed by the trust authorising its President to alienate the immovable properties of the trust on the ground that "retention of possession on the lands has also become highly impossible and it would be more beneficial to dispose of the lands, etc.," is of no consequence. Such resolutions cannot override the

statutory provisions. The genuineness of resolutions itself is seriously disputed by the State as well as Fit Person about which we do not propose to make any further enquiry.

47. In Mannalal Khetan v. Kedar Nath Khetan, (1997) 2 SCC 424, the Apex Court stated the principle succinctly:
"It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim A pactis privatorum publico juri non derogatur means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no Court can lend its assistance to give it effect. (See Mellis v. Shirley L.B., (1885) 16 QBD 446). What is done in contravention of the provisions of an Act of the Legislature cannot be made the subject of an action."

49. We shall, however, bear in mind the principle stated by Lord Campbell in an oft-quoted passage:

"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered". (See: Liverpool Borough Bank v. Turner, (1861) 30 LJ Ch. 379 and B.K. Srinivasan v. State of Karnataka,).

Finally, the Apex Court concluded as follows:

65. We have already noticed that the proceedings against some of the writ petitioners have already been initiated under the provisions of the Act 30 of 1987 before the Competent Authority seeking appropriate declaration as against them to be the encroachers of the land on the ground that the sale of the land by the President of the Trust did not confer any right, title or interest in the purchasers. The proceedings are stated to be pending consideration before the Competent Authority."

(Emphasis supplied)

Though the principle laid down in the above judgment is applied to the facts referred supra, it is the obligation of the State to protect the property of the deity, as such the Act of 1956 is enacted appropriately amending Act of 1956 with an avowed object to product the deities interest, such amendment Act No.13 of 2016 cannot be declared as arbitrary.

Turning to the facts of the present case, there is a clear prohibition of alienation of the property i.e. grant for rendering service in the institution by Section 76 of Act No.30 of 1987 i.e Endowments Act. But, on account of declaring the provision as

arbitrary vide judgment in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra), the Government did not take any steps immediately to pass appropriate legislation, in view of the observations of the Apex Court in the above judgment. The Apex Court specifically pointed out that Section 76 of Act No.30 of 1987 is a valid piece of legislation, indirectly repealing the Inams Abolition Act or the judgments of that High Court referred to in the judgment. It is settled law that repeal of an Act divesting vested rights is always disfavored. Presumption is against repeal by implication and the reason is based on the theory that the legislation, while enacting a law, has complete knowledge of the pre-existing law on the same subject matter. The Apex Court referred to commentary in the "Principles of Statutory Interpretation" by Justice G.P. Singh, (5th Edition) 1992 at pages 186-87 under the caption "Reference to other statutes" in Chapter IV (External Aids to Construction) and concluded that, unless the original Act i.e Inams Abolition Act is amended, Section 76 of Act No.30 of 1987 is arbitrary. But, realising the mistake of the State, passed Act No.16 of 2013 to cure the defect in the legislation and to jealously protect the interest of the deity. Therefore, the law is clear as on date that, when the statute itself gave retrospective effect to the amended provisions, no other interpretation is required to be given. But, whether such retrospective effect is arbitrary or violates any constitution mandate is only the consideration.

In judgment of the Supreme Court in judgment in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v.**

Government of Andhra Pradesh (referred supra) dated 12.01.1996, there was a clear prohibition from alienation of the property granted in favour of an inamdar for rendering service i.e. service imams, and from the date of enacting Act No.16 of 2013, the prohibition is deemed to be continued on account of automatic restoration of Section 76 by fiction. Thus, the petitioner in the present case acquired title to the property from their vendor, who purchased prior to the judgment in judgment in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra) and by the date of their purchase, there is a clear prohibition against alienation of land covered by inam patta issued under Section 7 for rendering service. When vesting of title on the petitioner is illegal, the same illegality cannot be continued even after the amendment by Act No.16 of 2013 came into operation. More curiously, Explanation II of Section 2(2) of Act No.30 of 1987 was not yet declared as arbitrary by the Apex Court in **Peddinti Venkata Murali Ranganatha Desika Iyengar and others v. Government of Andhra Pradesh** (referred supra), which is in pari materia to sub-section (22) of Section 2. But, still, it is deemed to be valid as on the date and those two provisions declared by the Apex Court as illegal is deemed to have been revived by fiction, from the date of the Act came into force by operation of law. Therefore, the petitioner is not entitled to claim any right in property which vested on an institution governed by the provisions of Act No.30 of 1987 and Inams Act by Act No.16 of 2013. If, any different interpretation is given, it amounts to disowning the duty to protect the interest of a charitable, religious or endowment institution and

it would take away the valuable right of the institution. To strike the balance between the rights of an institution and an individual, more particularly, religious institution, where the property belongs to the institution and deity who is a perpetual minor, not protected by anyone, we find that giving retrospective effect to the provision is not unconstitutional and taking away the rights of the citizens in immovable property, if acquired legally, such citizen is entitled for such protection. But, when title is acquired in contravention of the provision of law, such protection cannot be extended to such illegal acquisition of right in the property. Therefore, we find no substance in the contention of the learned counsel for the petitioner and the same is hereby rejected holding that, giving retrospective effect to the amended provisions is in accordance with law.

One of the contentions urged by the learned counsel for the petitioner is that, inclusion of properties in the prohibited list under Section 22-A of Registration Act is a serious illegality.

Whereas, learned counsel for the respondent contended that to implement the directions issued by the Division Bench of High Court of Judicature at Hyderabad in W.A.No.232 of 2012 & batch, the respondents included the properties in the prohibited list of properties, as it belongs to the temple and relied on judgment of Division Bench of High Court of Judicature at Hyderabad in **Vinjamuri Rajagopala Chary v. State of A.P**[47] and as seen from the directions issued by the Division Bench of High Court of Judicature at Hyderabad, it is the duty of the departments concerned to safeguard the property of the temple and other

[47] W.A.No.343 of 2015 & batch dated 29.01.2016

prohibited list of properties. Therefore, inclusion of the properties in dispute in the prohibited list under Section 22-A of Registration Act is not an illegality, since the alienations are deemed to be null and void, in view of the amended provision i.e Section 4(4) and proviso to Section 7 by Act No.16 of 2013. Therefore, we are unable to accept the contention of the learned counsel for the petitioner to issue any positive direction to delete the properties from the list under Section 22-A of the Registration Act. Moreover, the petitioners did not raise any other ground questioning inclusion of properties under the prohibited list under Section 22-A of the Registration Act and it is only consequential to the main relief. Therefore, we find no ground to issue any direction as claimed by this petitioner.

The last contention raised by the learned counsel for the petitioner is that, the amendment infringes the right to property guaranteed under Article 300-A of the Constitution of India. The petitioner raised a contention during hearing that Act No.16 of 2013 is violative of Article 300-A of the Constitution of India. Right to property is not a fundamental right. However, the right vested on the citizen is illegal, then the State is not bound to protect such legal right in an immovable property of a citizen when such right was acquired by illegal means and contrary to the provisions of enactment, the citizen is not entitled to claim protection and if such protection is extended, it is nothing but disowning the constitutional obligation by the state. Even this Court cannot give such wide interpretation to question Act No.16 of 2013.

One of the contentions raised before this Court is that, when an Act leads to absurdity, the Court can declare such statute as illegal and drawn attention of this Court to the judgment of the Apex Court in **State of Uttar Pradesh v. Malik Zarid Khalid[48],** wherein, the Supreme Court held as follows:

> "It is true that there are situations in which Courts are compelled to subordinate the plain meaning of statutory language. Not unoften, Courts do read down the plain language of a provision or give it a restricted meaning, where, to do otherwise may be clearly opposed the object and scheme of the Act or may lead to an absurd, illogical or unconstitutional result."

In view of the law declared by the Apex Court in the judgment referred supra, if the statute in its restricted meaning, if opposed to the object and scheme of the Act or may lead to absurdity illegal or unconstitutional results, such statute has to be struck down. But, in the present case, Act No.16 of 2013 would not result in any absurdity and unconstitutionality. Hence, in view of our foregoing discussion, we find no ground to declare Act No.16 of 2013 as arbitrary and consequently, W.P.No.27655 of 2016 is liable to be dismissed.

In view of our foregoing discussion in W.P.No.27655 of 2016, W.P No. 27572 of 2016 are liable to be dismissed.

WRIT PETITION Nos.39704 & 42318 of 2017

W.P.No.39704 of 2017 is filed to declare the action of the 4th respondent in including the land of the petitioners, an extent of Ac.1-30 cents and an Ac.2-38 cents respectively, situated in Sy.No.615/1, situated in Dhulipalla village, Sattenapalli Mandal, Guntur district, in the list furnished under section 22a(1)(C) of the

[48] AIR 1988 SC 132

Registration act, 1908, vide entries, dated 04.08.2016, as illegal, arbitrary, without jurisdiction, violative of the provisions of the Andhra Pradesh Devadasis (Prohibition of Dedication) Act, 1988, as also violative of Articles 14, 21 and 300-A of the Constitution of India and consequently direct the 4th respondent to delete the petitioners lands from the said list.

W.P.No.42318 of 2017 is filed to declare the action of the 4th respondent in including the land of the petitioners, an extent of Ac.1-60 cents (Ac.0-80 cents each) situated in Sy.No.145 and 146 of Nallapadu Village, Guntur Mandal and District, in the list furnished under section 22A(1)(C) of the Registration act, 1908, vide entries, dated 04.08.2016, as illegal, arbitrary, without jurisdiction, violative of the provisions of the Andhra Pradesh Devadasis (Prohibition of Dedication) Act, 1988, as also violative of Articles 14, 21 and 300-A of the Constitution of India and consequently direct the 4th respondent to delete the petitioners lands from the said list.

The petitioners in both the writ petitions are claiming title to the property from the original grantee in whose favour the grant was made for performing Devadasi Services in the temple. Respondents in both the writ petitions are one and the same, but the only difference that can be noticed in both the writ petitions is, Sri Venugopala Swamy and Sri Lakshmi Narasimha Swamy Temple, Nallapadu Village, Guntur Mandal is additionally arrayed as Respondent No.8 in W.P.No.42318 of 2017.

As allegations in both the writ petitions are identical, W.P.No.39704 of 2017 is taken as a leading case.

The main contention of the learned counsel for the petitioners before this Court is that, the first petitioner owned and possessed an extent of land of Ac.1-30 cents situated in Sy.No.615/1 of Dhulipalla Village, Sattenapalli Mandal, Guntur District, purchased under a registered sale deed dated 25.03.1997 (Document No.513 of 1997) from C. Lakshminarayana, who had purchased the same under registered sale deed dated 30.03.1990 (Document No.469 of 1990) from Chadalavada Nagamani. The said individual got the property under a Registered Settlement Deed dated 27.07.1961 (Document No.2693 of 1961). The second petitioner is the co-owner and possessor of an extent of Ac.2-38 cents in the same survey number and the land was purchased under a registered deed dated 01.09.2014 (Document No.5105 of 2014) from Ande Venkata Prasad and others, who had purchased the property vide Registered Sale Deed dated 18.06.2014 (Document No.2487 of 2014) from Nagarjuna Educational Society. The said society had purchased the same under a registered sale deed dated 08.03.2001 (Document No.392 of 2001) from Chadalavada Naamani, who had got part of the property by virtue of a document dated 10.05.1960 and part of it, under a Registered Settlement Deed dated 27.07.1961 (Document No.2693 of 1961).

Though the petitioners claimed that they purchased the property from different persons, they admitted that the grant was made in favour of the original grantee to perform Devadasi Services and it is classified as “Devadasi Inam”. The resettlement register prepared by the Fort St.George Administration, as per the provisions of the Madras Survey Act, 1897 and BSO-1, the land was classified as “Temple Dancing Service”, in column No.15

(remarks column) and further, the names of "Bogam Gunturu Peda Kondama and Mahalakshmi and others" are shown as inamdars in column No.14. In column No.5, the land is shown as "I" i.e inam and the grant was a personal grant in lieu of "Devadasi Service" rendered by the inamdars.

These petitioners admitted that the original grant was made in favour of the original grantee to perform Devadasi Services, as shown in column No.15 (remarks column) in the resettlement register prepared by the Fort St.George Administration, under the provisions of the Madras Survey Act, 1897 and BSO-1, where the land is described as "Temple Dancing Service", who in-turn sold the property to various persons and these petitioners purchased the property finally. But, the original grantees or these petitioners cannot be compelled to render such services, as Devadasi Service is prohibited in the State of Madras and also in the State of Andhra Pradesh by enacting the statute known as "Madras Devadasis (Prevention of Dedication) Act, 1947, (which is adopted by the State of Andhra Pradesh, known as Andhra Pradesh Devadasis (Prevention of Dedication) Act, 1988. Thus, rendering service of Devadasi in the temple i.e. dance in the temple is totally prohibited and it is an offence. When such services are prohibited in the State of Andhra Pradesh, compelling the original grantee to render such service is immoral and attracts penal consequences. No doubt, when the inam is burdened with service as long as inamdars are rendering service, they are entitled to enjoy the property, but, when such service is prohibited by the State itself, compelling them to render such prohibited service is an illegality. Rendering such traditional service of "Devadasi" is a nasty or ugly practice

being rendered by the Devadasis, since a girl or woman was dedicated to the Deity and such girl or woman was exploited by the villagers sexually, hence it is difficult to issue such direction to render service in the temple by this Court when it is prohibited.

It is the specific contention of the learned counsel for the petitioners that, when Devadasi Services are prohibited and when the grant is personal grant, the inamdars are entitled to sell the property, though it is not un-enfranchised. But, this contention cannot be accepted, for the simple reason that, as long as inam is un-enfranchised, the inamdar is not entitled to claim right in the property as freehold. But, only when the inam is enfranchised by following the procedure under Chapter II, Part I, B.S.O 52 of The Andhra Pradesh Board of Revenue Standing Orders. B.S.O Nos. 52 & 53 is the relevant rule and it deals with Rules of the inam settlement and their application to fresh cases. The effect of enfranchisement of imams is dealt in B.S.O.53 and Clause (1) deals with position of enfranchised imams. According to it, in the case of imams enfranchised by the Inam Commissioner, whatever be their previous tenure there should be no interference of the Collector. These imams stand in the same position as ryotwari lands for the purpose of succession, transfer subdivision and sale for areas of quit-rent. They may also be accepted as security for any purpose in the same manner as ryotwari lands.

Part II of Unfranchised Service Inams consists of B.S.O.54, which deals with Religions and charitable imams. According to Clause (1), it is the duty of the Collector, Divisional Officer and Tahsildar to see that imams confirmed by the Inam Commissioner for the benefit of or for service to be rendered to any religious or

charitable institution or for the maintenance of irrigation works, or other works of public utility, are not enjoyed without the terms of the grant being fulfilled. Religious and charitable imams fall under two distinct classes, viz.;

(A) (i) Inams granted for the support or maintenance of charitable and religious institutions.

(ii) Inams granted for the performance of a charity or service connected with Hindu religious institutions.

(iii) Inams granted for any other Hindu religious charities.

(B) Other imams.

Resumption and re-grant of Ryotwari Patta in respect of Inams falling under class (A) are governed by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act XVII of 1966) and the procedure prescribed in the Act and the rules framed under it contained in Appendix-II should be strictly followed in respect of them.

Clause (2) of B.S.O.54 deals with resumption of religious and charitable imams, a religious or charitable imams may be resumed on the ground that the terms of the grant are not observed. A particular case of non-observance of the terms of the grant occurs where institution or service is deprived by alienation or otherwise, of the whole or a portion of the land in respect of which the title-deed was issued, provided that the alienation of the land, whether by sale, lease, mortgage, or otherwise shall not be treated as an alienation of the inam, if such alienation is subject to the payment to the institution or in support of the service of a sum not less than the net assessment on the land, and provided further that if the service is performed by the alienee, the alienee shall be recognised

as the inamdar and the inam shall not be resumed. The power of recognizing the alienee as the inamdar shall rest n the authority competent to resume the inam.

Thus, Clause (2) of B.S.O.54 is relevant for deciding the real controversy with regard to resumption of the land granted in favour of the original inamdars. But, when the service imams or the successors alienated the property and fail to render services to the temple, by following necessary procedure prescribed under B.S.O.54, the Revenue Department can take possession of the property and after resumption, the property shall be regranted for the same institution by following procedure under B.S.O.54.

But, in the present facts of the case, though, the original grantee or the successors are not rendering service, the court cannot direct either the original grantee or successors to render Devadasi service which is prohibited by the Act.

The Devadasi system is a Hindu religious practice which offers prepubescent girls in marriage to deities. As 'servants' ordained by deities, Devadasis are ritually forced to offer sexual services upon attaining puberty. Their virginity is sold and they are paid a pittance for their services, if at all. Devadasis are marginalised as 'fallen women' and kept in poverty. With age, Devadasis are deemed undesirable. They turn to begging, trafficking or engaging manual labour to earn their livelihood. Devadasis are overwhelmingly 'identified' from the Dalit community, which lies excluded from the caste system and is subject to systemic socio-economic oppression. Poverty-stricken Dalit families may also dedicate daughters to earn livelihoods, avoid paying dowry and receive divine help or cure from disease.

Devadasis' children are stigmatised by society and unacknowledged by their fathers. Devadasis are perpetually trapped in cycles of poverty, vulnerability and sexual and psychological abuse. Central Government is obliged to end institutions similar to slavery, the exploitation of children, human trafficking and forced marriages under Articles 10(1) and 10(3) of the International Covenant on Economic, Social and Cultural Rights; Articles 8(1), 23(3) and 24(1) of the International Covenant on Civil and Political Rights; Articles 6 and 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women; Articles 19, 24(3), 32(1), 34 and 36 of the Convention on the Rights of the Child; and Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Domestic laws in the state of Andhra Pradesh and other states like Tamil Nadu, Karnataka, Maharashtra have prohibited the practice of dedicating Devadasis and deemed previous dedications as unlawful. The Acts penalise all persons performing, participating in or abetting the performance of Devadasi dedications. Though one man commission submitted a report on Devadasi System - The rehabilitation programme has been running but its effectiveness is questionable. There is little awareness of the programme and it fails to provide adequate economic, medical and legal support for reintegration of women and girls fleeing the system. It is unknown how many Devadasis have been successfully rehabilitated. The Central Government considers the Devadasi system to be an issue of policing and public order. This classification entrenches the system in two ways. First, by regarding the Devadasi system as a

matter of 'policing' and 'public order', the Indian government fails to account for the social, economic and religious factors that perpetuate the Devadasi system. The system continues because it is religiously sanctioned, allows economic exploitation, preys on landless Dalits and gives upper-caste men control over the bodies and sexualities of Dalit females. Second, under the scheme of distribution of powers in the Seventh Schedule of the Indian Constitution, all matters relating to policing and public order become the responsibility of state governments. Consequently, there are no uniform laws, policies or welfare programs in the country.

The Andhra Pradesh Devadasis (Prohibition of Dedication Act, 1988, Act No.10 of 1988, which is extended to the whole of Andhra Pradesh prescribe certain reliefs to such Devadasis. Section 7 deals with "Relief & Rehabilitation". According to Section 7, the Government shall from time to time fix appropriate and suitable relief, rehabilitation to the victims under A.P. Devadasis (Prohibition of Dedication) Act, 1988 and lay down the procedure for providing such relief and rehabilitation. The relief and rehabilitation shall include but not limited to,

(i) providing a house of not less than 250 sq.ft. plinth area (as per the norms of the Housing Department).
(ii) Economic assistance for gainful employment.
(iii) Free education of children in Government Social Welfare & Tribal Welfare Residential Schools upto XII Standard.
(iv) Declare the debt (bonded) if any or part of any debt (bonded) shall be deemed to have been extinguished as per the Bonded Labour System (Abolition) Act, 1976.
(v) Incentives as applicable for inter-caste marriage.

Even according to Section 7 of the Act, Devadasis who alienated the property are not entitled to claim right over the property and they cannot render services, as Devadasi system itself

is abolished by Act No.10 of 1988. In those circumstances, the District Collector/third respondent is directed to resume the inam land, in accordance with the procedure prescribed under Chapter-II, Part-II of B.S.Nos. 54 & 55. The District Collector is also directed to take immediate steps to provide relief and rehabilitation to the victims prescribed under Section 7 of A.P.No.10 of 1988 by providing relief and rehabilitation to the original grantee if alive and successors, to eradicate such heinous practices.

With the above direction, W.P. Nos.39704 & 42318 of 2017 are disposed of.

In the result, W.P. Nos.27655 & 27572 of 2016 are dismissed and W.P. Nos.39704 & 42318 of 2017 are disposed of with certain directions issued supra.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE M.SATYANARAYANA MURTHY

Date:29.11.2019

Note: LR copy to be marked
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