Thirumala Tirupati Devasthanams & Anr vs Thallappaka Ananthacharyulu & Ors on 10 September, 2003

Bench: S.N. Variava, H.K. Sema

CASE NO.:
Appeal (civil) 16727-16728 of 1996

PETITIONER:
Thirumala Tirupati Devasthanams & anr

RESPONDENT:
Thallappaka Ananthacharyulu & Ors.

DATE OF JUDGMENT: 10/09/2003

BENCH:
S.N. Variava & H.K. Sema.

JUDGMENT:

JUDGMENT S. N. Variava J These Appeals are against the Judgment dated 25th September, 1996 by which two Writ Petitions seeking writs of prohibition and a contempt petition have been disposed of.

The dispute in this proceedings relates to 28.58 acres in Survey Numbers 686, 645 and 679 of Tirumala Village. This land is situated on Tirumala Hills where the temple of Sri Venkateshwara Swamy is situated. The Appellants are the statutory Devasthanam in control and management of the temple. The facts leading to the present litigation are set out in the impugned Judgment. In the impugned Judgment the Appellants are referred to as "T.T.D." whereas the Respondents are referred to as "the Tallapaka people". The facts, as set out in the impugned Judgment, are as follows:

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

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

6. After the remand, the Deputy Tahsildar conducted an enquiry under Section 3 of the Inams Abolition Act after notices to both the Institution (T.T.D.) and the inamdars and recorded a finding that the land in question is an inam land in Ryotwari village and that it was not held by an institution. On appeal, preferred by the T.T.D., the Revenue Divisional Officer affirmed the order of the Deputy Tahsildar. The T.T.D. carried the matter in revision to the Commissioner who, while recording the concession made by the Counsel for the T.T.D., that the lands in question were in possession of the inamdars on the crucial dates (as envisaged by Section 4 of the Inams Abolition Act) and that the inamdars had been in possession of the lands since 7-6-1933, dismissed the revision petition.

xxx xxx xxx

7. The T.T.D. filed W.P. No. 11895 of 1986 challenging the order of the Commissioner affirming the orders of the subordinate statutory tribunals and the inamdar filed W. P. No. 11437 of 1986 contending that an extent of Ac. 3-05 cents of land in question was illegally occupied by the T.T.D. without paying compensation and, therefore, he was entitled to be compensated for the wrongful deprivation. A learned single judge heard both the matters together and by a common judgment, allowed the writ petition filed by the T.T.D. holding that the grant in question was to the institution

and that the possession of the land "on the relevant dates" by the inamdars was only on behalf of the institution but not in recognition of their rights as inamdars and that the view of the Commissioner that the inam was burdened with service was contrary to the recitals in the two title deeds. The learned Judge by his common judgment dated 17-4-1987 quashed the revisional order of the Commissioner and consequently dismissed W.P. No. 11437 of 1986 filed by the inamdar. Two Writ Appeals W.A. Nos. 1752 of 1987 and 4 of 1993 arising out of the above two writ petitions were allowed by a common judgment dated 23-12-1992.

..... 8.....The judgment of the Division Bench was carried in appeal to the Supreme Court in Civil Appeal Nos. 3468-69 of 1993..... the Supreme Court dismissed both the appeals on 11-1-1995... .....Review Petition Nos. 683-684 of 1995 seeking review of the aforesaid order of the Supreme Court 9th May, 1995 were dismissed.

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

10. The T.T.D. filed a suit O.S. No. 69 of 1995 in the Court of the Principal Subordinate Judge, Tirupati seeking a declaration that it is the absolute owner of the Ac. 25-08 cents of land covered by Survey Nos. 686 and 679/92 and for a consequential direction to the Tallapaka people to surrender possession of the same. The T.T.D. also filed an appeal under Section 7(2) of the Inams Abolition Act before the Revenue Divisional Officer challenging the grant of patta by the Deputy Tahsildar in favour of the Tallapaka people. In the plaint filed in O.S. No. 69 of 1995, it was averred by the T.T.D. inter alia, that the entire property lying within the limits of Tirumala belongs to the deity. Lord Venkateswara. The question of title to the suit land was not the subject matter of the earlier litigation between the T.T.D. and the Tallapaka people and in spite of the failure of the T.T.D. in the revenue proceedings and the judgment in the writ appeals (the first Tallapaka case), the question of title can still be agitated in a Civil Court. After adverting to certain G.O's. and the earlier proceedings before the revenue authorities it was averred by the T.T.D. in the plaint that the inam was to the temple and not a personal grant to the Tallapaka people. As already stated at the very outset, the inamdars (the Tallapaka people) filed the present two writ petitions, each for a writ of Prohibition: one in regard to the suit and the other in regard to the appeal before the Revenue Divisional Officer, Tirupati restraining them from proceeding further in the matters. In the contempt case it was alleged by the inamdars that the T.T.D. in deliberate disobedience of the judgment of this Court in the first Tallapaka case had instituted the suit and, therefore, it is liable to be punished for contempt. "

By the impugned Judgment the contempt petition has been dismissed. However writs of prohibition have been issued in the following terms:

> "34. In the result, both the W.Ps. are allowed. A writ of prohibition will issue in W.P. No. 5997 of 1996 prohibiting the principal Subordinate Judge Tirupati from proceeding with the suit O.S. No. 69 of 1995. Likewise, a writ of prohibition will issue in W.P. No. 8347 of 1996 prohibiting the Revenue Divisional Officer, Tirupati from proceeding with the appeal preferred by the T.T.D. against the order of the Inams Deputy Tahsildar, Chittoor in S.R. No. 1/95 dated 9.8.1995."

The reasoning adopted in the impugned judgment, in granting the writ of prohibition, is that having urged all contentions in the earlier round of litigation Appellants were now estopped from claiming any rights. The High Court held that the principles of res judicata applied. The High Court justified issuance of writs of prohibition on the following reasoning:

> "If the Civil Court and the Court of the Revenue Divisional Officer were permitted to proceed with the trial and the appeal, they would be acting outside their powers. A writ of prohibition can be issued to prevent a person from acting or continuing to act in such a way as to abuse jurisdiction of a judicial or quasi-judicial body. It is not necessary for the petitioners to wait until the decisions are rendered by the Civil Court and the Revenue Divisional Officer and then move this Court for a writ of certiorari."

At this stage it is necessary to set out Section 14 of the Andhra Pradesh (Andhara Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (hereinafter called the said Act) which reads as follows:

> "Bar of jurisdiction of Civil Courts:-No suit or other proceedings shall be instituted in any Civil Court to set aside or modify any decision of the Tehsildar, the revenue Court, or the Collector under this Act, except where such decision is obtained by misrepresentation, fraud or collusion of parties."

Mr. Venugopal submitted that proceedings under the said Act are summary in nature. He submitted that such summary proceedings can never bar a suit on title. He submitted that on the question, whether a civil Court's jurisdiction is barred, because a patta has been granted under the said Act, there are a number of authorities of this Court. He fairly pointed out the Judgments in the cases of Vatticherukuru Village Panchayat vs. Nori V. Deekshithulu reported in 1991 Supp (3) SCC 228, Peddinti Venkata Murali Ranganatha Desika Iyengar vs. Government of A. P. reported in 1996 (3) SCC 75, Pushpagiri Math vs. Kopparaju Veerabhadra Rao reported in 1996 (9) SCC 202, S. Vanathan Muthuraja vs. Ramalingam reported in 1997 (6) SCC 143. In all these cases it has been held that the suit on title was barred. He submitted that there are identical provisions in the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. He submitted that there are a number of decisions of this Court where it has been held that merely because a patta has been granted the

jurisdiction of the civil courts to decide title is not barred. He pointed out the judgments in the cases of State of Tamil Nadu vs. Ramalinga Samigal Madam reported in 1985 (4) SCC 10, R. Manicka Naicker vs. E. Elumalai Naicker reported in 1995 (4) SCC 156, Sayyed Ali vs. A.P. Wakf Board, Hyderabad reported in 1998 (2) SCC 642 and Sri-La-Sri Sivaprakasa Pandara Sannadhi Avargal vs. T. Parvathi Ammal reported in 1998 (9) SCC 603. He submitted that there is a conflict of opinion between the above-mentioned two sets of decisions. He submitted that in view of the conflict of decisions the question whether a civil court has jurisdiction to try a suit on title should be referred to a larger bench. We are unable to except this submission. One set of Judgments are under the said Act whereas the other set of judgments are under legislations in Tamil Nadu. In Sri-La-Sivaprakasa Pandara Sannadhi Avargal's case (supra) reliance had been placed on Vatticherukuru's case (supra) in support of the proposition that a suit on title was barred. The three Judge bench distinguished that case on the ground that the provisions of the Andhra Pradesh Act and the Tamil Nadu Acts are different. Once a three Judge bench has taken a view that the provisions of the Andhra Pradesh Act are different from those of the Tamil Nadu Acts it cannot be said that there is any conflict of decisions. The decision of the three Judge bench is binding on this Court. It will thus have to be held that in respect of the said Act the first set of Judgments would apply whereas in respect of the legislations in Tamil Nadu the second set of Judgments would apply. It must be mentioned that in support of the submission that the title suit is not barred Mr. Venugopal had also relied upon a full bench judgment of the Madras High Court reported in (1998) The Madras Law Journal Reports 722.

Thus as per the law laid down by this Court in Andhra Pradesh the civil Court would have jurisdiction only in cases of misrepresentation, fraud or collusion of parties. The question still remains whether the High Court could or should have, in exercise of its writ jurisdiction, issued writs of prohibition against the civil Court from proceeding with the suit before it and against the Revenue Divisional Officer, Tirupati from proceeding with the appeal preferred by the Appellants against the order of the Inams Deputy Tahsildar, Chittoor. It must be remembered that in the Civil Procedure Code there are sufficient provisions, particularly Order 7 Rule 11 and Order 14 Rule 2, which give to the civil Court powers to decide its own jurisdiction and questions regarding maintainability of the suit. The civil Court is also competent to decide whether a suit before it is barred on principles of estoppal or res judicata.

Mr. Venugopal submitted that apart from Certiorari, this is the first time where a High Court has issued a writ, against a Civil Court, prohibiting it from proceeding with a civil suit instituted before it. He submitted that there are elaborate provisions in the Civil Procedure Code for rejecting a plaint and/or deciding questions of maintainability and for trying issues of its own jurisdiction as preliminary issues. Mr. Venugopal submitted that the precedent set has enormous potential of being mis-utilised and for multiplying litigation. He submitted that if this is permitted, a defendant who does not want an interim order to be passed against him would seek writs of prohibition against the Court from proceeding with the hearing and disposal of the suit. Mr. Venugopal submitted that the consequences would be far reaching. He submitted that if this is permitted, a writ of prohibition can be issued by a High Court in one State against the trial of a suit in another State provided summons are served or interim orders are received in that State, so that part of the cause of action arises in the former State. In support of this submission he relied upon the case of Navinchandra N. Majithia vs State of Maharashtra and others reported in 2000 (7) SCC 640.

Mr. Venugopal showed to this Court the case of Mirajkar vs State of Maharashtra reported in 1966 (3) SCR 779. In this case the High Court had stopped publication of the proceedings of a trial before it. A writ under Article 32 of the Constitution of India was filed challenging the validity of that order on the ground that it infringed fundamental rights under Article 19 (1) (a) of the Constitution of India. It was held, by the majority, that if a judicial Tribunal makes an order, which it has jurisdiction to make, the order cannot offend a fundamental right. It was held that an order is within the jurisdiction of the Tribunal if the Tribunal had jurisdiction to decide the matters that were litigated before it. It was held that the Tribunal having jurisdiction does not act without jurisdiction if it makes an error in the application of law. It was held that if a judicial order is erroneous any person aggrieved by the order, even a stranger, can file an appeal. It was held that the question about existence of jurisdiction as well as validity and propriety of the order cannot be raised in writ proceedings. Mr. Venugopal also relied upon a well reasoned judgment of the Madras High Court in the case of I. S. Lulla vs Smt. Hari and others reported in AIR (1962) Madras 458 wherein it has been held that Article 226 does not clothe the High Court with jurisdiction to quash the orders of a subordinate Court. It has been held that orders susceptible to appeal or revision cannot be quashed by a Writ of certiorari or a writ of prohibition restraining or prohibiting the subordinate Court from proceeding to exercise jurisdiction in any matter before it. It has been held that the jurisdiction to issue writ is not a cloak of an appeal in disguise. It has been held that jurisdiction under Article 226 is an original jurisdiction which is quite distinct and separate from the appellate jurisdiction.

Mr Venugopal also relied upon the case of U. P. Sales Tax Service Association vs Taxation Bar Association reported in 1995 (5) SCC 716. In this case it has been held that the writ of Prohibition can only be issued when the inferior Court or Tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violation of rules of natural justice, (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of fundamental rights.

Mr Venugopal very fairly brought to the notice of this Court the case of The Failika Dabvali Transport Co. Pvt. Ltd. Vs Madan Lal reported in 1977 (2) SCC 435 where a Writ of certiorari was issued against a judgment on the footing that the Court had acted illegally and there was an error apparent on the face of the record. It is however to be noted that there is no discussion, in this case, as to the circumstances under which a Writ of certiorari or prohibition can be issued. He also fairly pointed out the case of Chhedi Lal Gupta & Ors. vs Mohammad Sattar reported in AIR (1963) Allahabad 448 wherein it had been mentioned that the Writ of Prohibition had been issued earlier by the High Court from proceeding with the trial on the ground that the suit was one for infringement of trademark and could thus, by virtue of Section 73 of the Trademark Act, be filed only in the Court of the District Judge at Allahabad. However it must be noted that in this case it had been held that the Writ of Prohibition did not prevent the trial Court from returning the plaint for presentation to the proper Court under Order 7 Rule 10 of the Civil Procedure Code. On the other hand Mr. Mishra submitted that Article 226 of the Constitution of India makes no distinction with respect to the power which a Writ Court can exercise for any of the prerogative writs which can be issued for enforcement of any of the rights conferred by Part III of the Constitution of India or for any other purpose. He submitted that mandamus, prohibition and certiorari are exercised in the same manner depending upon the nature of the controversy and the stage at which they can be

effective. He submitted that a certiorari was a writ addressed to a proceeding in the Court and order passed therein whereas a prohibition was directed to the subordinate Court or to any other judicial or quasi-judicial authorities.

Mr. Mishra submitted that the instant case was one where a suit was being entertained in the teeth of a specific bar under the said Act and even though the suit was hit by res-judicata. He submitted that all the issues were adjudicated by the competent quasi-judicial authorities and affirmed by the Division Bench of the High Court and this Hon'ble Court in the earlier round of litigation. He submitted that the Civil Court has acted without jurisdiction in entertaining and proceedings with the suit. He submitted that the inferior court cannot traverse the findings in the judgment of the High Court and this Hon'ble Court. Mr. Mishra submitted that the primary rule is that a writ of prohibition is issued to a Court which also is an authority and since it is issued to a Court it is also issued to such persons or authorities who exercise judicial or quasi-judicial powers. In support of the submission that the High Court has power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Mr Mishra relied upon the case of Hari Vishnu Kamath vs Syed Ahmed Ishaque reported in (1955) SCR 1104. In this case the question was whether a writ of certiorari could be issued against an Election Tribunal after it had become functous officio. It was held that the intention of the Constitution was to vest in the High Court a power to supervise decisions of Tribunals by issue of appropriate writs and directions and that the exercise of that power cannot be defeated by technical consideration of form and procedure. It was held that the High Courts must however observe the principles which regulate the exercise of such jurisdiction. It was held that before a writ of certiorari can be issued there must be an error apparent on the face of the record. Observations in following cases were cited with approval:

> "The decision in Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw ([1951] 1 K.B. 711) was taken in appeal, and was affirmed by the Court of Appeal in Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw ([1952] 1 K.B. 338). In laying down that an error of law was a ground for granting certiorari, the learned Judges emphasised that it must be apparent on the face of the record. Denning, L.J. who stated the power in broad and general terms observed :
>
> "It will have been seen that throughout all the cases there is one governing rule : certiorari is only available to quash a decision for error of law if the error appears on the face of the record".

The position was thus summed up by Morris, L.J. :

> "It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown".

In Veerappa Pillai v. Raman & Raman Ltd. and Others ([1952] S.C.R. 583), it was observed by this court that under article 226 the writ should be issued "in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record". In T. C. Basappa v. T. Nagappa ([1955] S.C.R. 250) the law was thus stated :

> "An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision".

Mr Mishra also relied upon the case of Union of India and others vs Upendra Singh reported in 1994 (3) SCC 357. In this case the Central Administrative Tribunal had examined the correctness of charges framed in a disciplinary proceedings. It was held that the jurisdiction of the Tribunal was akin to the jurisdiction of the High Court under Article 226. It has then been held that:

> "4. ..... A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view, as observed by this Court in T. C. Basappa v. T. Nagappa ((1955) 1 SCR 250 :
>
> AIR 1954 SC 440). It was observed by Mukherjea, J. speaking for the Constitution Bench : "The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs and directions including writs in the nature of 'habeas corpus, mandamus, quo warranto, prohibition and certiorari' as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of 'certiorari' in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law."

5. The said statement of law was expressly affirmed by a seven-Judge Bench in Ujjam Bai v. State of U.P. (AIR 1962 SC 1621, 1625) The reason for this dictum is self-evident. If we do not keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law, the exercise of jurisdiction becomes rudderless and unguided; it tends to

become arbitrary and capricious. There will be no uniformity of approach and there will be the danger of the jurisdiction becoming personalised. The parameters of jurisdiction would vary from Judge to Judge and from Court to Court. (emphasis supplied) Mr Mishra also relied upon the case of Smt. Ujjam Bai vs State of Uttar Pradesh reported in 1963 (1) SCR 778. In this case the question was whether a writ petition under Article 32 of the Constitution of India was maintainable against an assessment made by a sales tax officer under a valid act. The majority held that the writ petition was not maintainable. In this case it has been held by Aiyar J as follows:

> "Now, I come to the controversial area. What is the position with regard to an order made by a quasi-judicial authority in the undoubted exercise of its jurisdiction in pursuance of a provision of law which is admittedly intra vires ? It is necessary first to clarify the concept of jurisdiction. Jurisdiction means authority to decide. Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact. The question, whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinable "at the commencement, not at the conclusion, of the inquiry'. (Rex v. Bolten ([1841] I Q.B. 66, 74.)). Thus, a tribunal empowered to determine claims for compensation for loss of office has jurisdiction to determine all questions of law and fact relating to the measure of compensation and the tenure of the office, and it does not exceed its jurisdiction by determine any of those questions incorrectly but it has no jurisdiction to entertain a claim for reinstatement or damages for wrongful dismissal, and it will exceed its jurisdiction if it makes an order in such terms, for it has no legal power to give any decision whatsoever on those matters. A tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the inquiry. But it does not exceed its jurisdiction by basing its decision upon an incorrect determination of any question that it is empowered or required (i.e.,) had jurisdiction to determine. ..... The characteristic attribute of judicial act or decision is that it binds, whether it be right or wrong. An error of law or fact committed by a judicial or quasi-judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. These principles govern not only the findings of inferior courts stricto sensu but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal. Even the doctrine of res judicata has been applied to such decisions."

On the basis of the authorities it is clear that the Supreme Court and the High Courts have power to issue writs, including a writ of prohibition. A writ of prohibition is normally issued only when the

inferior Court or Tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violation of rules of natural justice,

(c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of fundamental rights. The principles, which govern exercise of such power, must be strictly observed. A writ of prohibition must be issued only in rarest of rare cases. Judicial disciplines of the highest order has to be exercised whilst issuing such writs. It must be remembered that the writ jurisdiction is original jurisdiction distinct from appellate jurisdiction. An appeal cannot be allowed to be disguised in the form of a writ. In other words, this power cannot be allowed to be used "as a cloak of an appeal in disguise". Lax use of such a power would impair the dignity and integrity of the subordinate Court and could also lead to chaotic consequences. It would undermine the confidence of the subordinate Court. It was not even argued that there was total lack of jurisdiction in the civil Court. It could not be denied that the civil Court, before which the suit was pending, had powers to decide on the maintainability of the suit and to decide on questions of its jurisdiction. The civil Court had jurisdiction to decide whether the suit was barred by Section 14 of the said Act or on principles of res judicata/estoppel. Thus unless there was some very cogent or strong reason the High Court should not have prevented the Court of competent jurisdiction from deciding these questions. In other words the High Court should not usurp the jurisdiction of the civil Court to decide these questions. In the impugned Judgment no reason, much less a cogent or strong reason, has been given as to why the civil Court could not be allowed to decide these questions. The impugned Judgment does not state that the civil Court had either proceeded to act without or in excess of jurisdiction or that it had acted in violation of rules of natural justice or that it had proceeded to act under law which was ultra vires or unconstitutional or proceeded to act in contravention of fundamental rights. The impugned Judgment does not indicate as to why the High Court did not consider it expedient to allow the civil Court to decide on questions of maintainability of the suit or its own jurisdiction. The impugned judgment does not indicate why the civil Court be not allowed to decide whether the suit was barred by virtue of Section 14 of the said Act or on principles of res judicata/estoppel. To be remembered that no fundamental right is being violated when a Court of competent jurisdiction is deciding, rightly or wrongly, matters before it.

Faced with this situation Mr. Mishra submitted that in the written statement filed by the Respondents it had been contended that the suit was not maintainable and was barred on principles of res judicata/estoppel. He submitted that in spite of these points having been urged before the civil Court an interim injunction restraining the Respondents from alienating the suit lands had been issued. He submitted that the civil Court had thus exercised jurisdiction when it clearly had no jurisdiction. He submitted that it was under these circumstances that the Respondents filed writ petitions before the High Court. On this submission Mr. Venugopal pointed out to us that whilst granting an interim injunction the civil Court had considered, prima facie, the question of maintainability of the suit. Mr. Venugopal also pointed out that the Respondents had filed an appeal against the order granting interim injunction. It was pointed out that the appeal is also dismissed holding prima facie that the suit was maintainable. Mr. Mishra could not deny these facts. These facts indicate how chaotic a result has prevailed by grant of the writ of prohibition. The impugned Judgment prohibits the civil Court from proceeding with the suit. Thus the suit will lie on the dormant file of the civil Court indefinitely. However the interim injunction granted by the civil

Court, as affirmed by the appellate Court, will continue to operate. To be remembered that in the impugned Judgment there is no reference to these orders and no writ of certiorari has been issued quashing those orders. The end result would be that the suit cannot proceed yet the Respondent will continue, indefinitely, to be restrained by the interim order. Faced with this situation Mr. Mishra submitted that this Court in exercise of its powers should quash the interim order. Mr. Mishra submitted that this was the equitable and correct course to be followed by this Court. He submitted that this Court should not interfere with the impugned order as it would be futile to force the Respondents to undergo a full round of litigation for a second time when all questions, between the parties, including questions of title were already decided in the earlier round of litigation.

We have considered the rival submissions. It is not possible to accept Mr. Mishra submission that this Court should quash the interim orders. Those orders are not before this Court and this Court cannot blindly quash orders passed by Courts of competent jurisdiction without even looking into the orders. Even presuming, without so holding, that the suit is not maintainable by virtue of Section 14 of the said Act or on principles of res judicata/estoppel in our view the High Court should have permitted the civil Court, which was competent to decide these questions to do so. At the most the High Court could have directed the civil Court to decide these issues as preliminary issues. In our view the correct course is to set aside the impugned Judgment and direct the civil Court to decide the question of maintainability of the suit in view of Section 14 of the said Act and/or its jurisdiction to entertain the suit as also the question whether the suit is barred by principles of res judicata as preliminary issues. We see no substance in the apprehension that in deciding the preliminary issues the civil Court will not keep in mind Judgments of this Court (set out therein above) pertaining to maintainability of the suit once patta is granted under the said Act. Undoubtedly the civil Court would see whether in effect the suit is for purposes of setting aside or modifying the decisions taken in the earlier round of litigation. It must also be mentioned that during arguments Mr. Venugopal had submitted that the Appellants were considering applying for amendment of the plaint in order to plead fraud. We are sure that if any such application is made the same will be considered on its merits after hearing the other side. It must be mentioned that Mr. Mishra had submitted that by the proposed amendments admissions are sought to be retracted. We see no reason to conclude that the civil Court would permit retraction of admissions.

Finally it must be mentioned that both sides had argued on the merits of the case. Mr. Venugopal relied upon, what he called, Title Deeds bearing Numbers 2920 in respect of 1.53 acres and 2921 in respect of 27.4 acres. The two grants are identically worded. Thus it is sufficient to reproduce Grant number 2920 which reads as follows:

> "NO.2920 Title deed granted to the Manager for the time being of Nandanavanam at Tirupati and Tirumala.
>
> 1. By order of the Governor in council of Madras acting on behalf of the Secretary of State for India in Council, I acknowledge your title to a Devadayam of Nandanavanam Inam consisting of the right to the Government Revenue on land claimed to be (one) 1.53 acres of dry and situated in the village of Tirumala, Taluk of Chandragiri, District of North Arcot and held for the support of Venkateswara Swamy

Pagoda in the village.

2. This Inam is confirmed to you and your successors tax-free to the held without interference as long as the conditions of the grant duly fulfilled.

Sd/- Inam Commissioner"

He submitted that these grants are in favour of the manager and are a gift to the temple. He submitted that these were granted as far back as 9th August, 1882. He submitted that on 21st April 1960 a patta was granted to the Devasthanam under the said Act. He submitted that the grant of patta was confirmed in appeal by the RDO, Tirupati. He submitted that on 4th November 1965 the Government of Andhra Pradesh confirmed the grant of patta. He submitted that the 9th April 1990 rules were framed under Section 97 read with Section 153 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 and Rule 196 declared these properties as the exclusive properties of the Devasthanam. He submitted that clearly the title to the property was with the Devasthanam. He submitted that in the earlier proceedings the only question was to whom a Ryotwari patta had to be granted. He submitted that in those proceedings the question of title was not looked into. He submitted that this Court in its order dated 11th January 1995, affirmed the findings of the Commissioner to the effect that the title to the Inam lands was not a condition precedent for grant of patta. He submitted that thus this Court had made it clear that it was not going into the question of title in those proceedings. He submitted that the Appellants were thus not estopped from filing a suit and the principles of res judicata had no application.

Mr. Venugopal submitted that a Ryotwari patta is only a bill for direct payment of revenue to the State and if at all only prima facie evidence of title. In support of this proposition he relied upon the book on Land Tenures in the Madras Presidency by S. Sunderraja Iyengar and the case of Ramamoorthy vs State of Madras reported in (1970) The Indian Law Reports 788. Mr. Venugopal submitted that a mere decision on grant of patta cannot exclude a subsequent suit based on title. Mr. Venugopal submitted that no provision of the said Act provides expressly for a determination of title. He submitted that Rule 15(1) of the Rules made under the Act, provides for summary proceedings. Mr. Venugopal submitted that if a decree is passed in their suit on title then the grant of a Ryotwari patta will get nullified incidentally. He submitted that the purpose of the said Act cannot be that notwithstanding title (unlike agrarian reforms) the inamdar institution will stand deprived of its property by a sidewind. On the other hand Mr. Mishra submitted that the Suit is barred in view of the specific findings by the revenue authorities and as affirmed by the Division Bench of the High Court in W.A. No. 4/1993 and 1752 of 1987 in the first Thallappaka case reported in 1993 (1) Andhra Law Times 293. He relied on this Judgment and pointed out that on consideration of Section 3, 4(1), 7 & 14(A) of the said Act, it is held that as per the Inam's Fair Register the legal title was that of Respondents and not Appellants. He submitted that the said decision has finally settled the question of title and rights as a rayat. Mr. Mishra pointed out the plaint in the suit now filed by the Appellants that there was no plea of misrepresentation, fraud or collusion in this suit. He pointed out that even in answer to the writ petitions filed by the Respondents, the Appellants had not taken up a contention that the earlier findings were obtained by misrepresentation, fraud or collusion. He pointed out that even in this Civil Appeal there is no

ground that there had been any misrepresentation, fraud or collusion in obtaining the earlier decision. He submitted that thus the express bar to the suit, as provided under Section 14 of the said Act, willfully apply. He submitted that the High Court, in the impugned Judgment, has rightly held so. Mr. Mishra submitted that the Suit is also barred on the principle of constructive res-judicata. In support of the submission that principles of res-judicata to apply even to decisions in Writ proceedings Mr. Mishra relied upon the case of Gulabchand Parekh vs State of Bombay reported in 1965 (2) SCR 547. In support of the submission that the Inam Fair Register is evidence of utmost importance Mr Mishra relied upon the cases of N. Y. Lakshminarasimachari vs Sri Agasthewaraswami Varu of Kolakalur reported in 1960 (2) SCR 768; Shri Vallabharaya Swami Varu (Deity) of Swarna vs Deevi Hanumancharyulu & Ors. reported in 1979 (3) SCC 778 and Subramania Gurukkal vs Shri Patteswaraswami Devasthanam reported in 1993 Supp. (4) SCC 519.

Mr. Mishra submitted that in the earlier round of proceedings Appellants had admitted that the possession, on the relevant date, was with the Respondents. Mr. Mishra pointed out that in the first Thallappaka's case the Commissioner while dismissing Appellants revision application noted in the order dated 7.2.1986 that the then counsel for the Appellants conceded as follows:

> "The counsel for the T.T.D. concedes that the lands were in possession of the respondents on the crucial dates and that in the notice issued by the executive officer, T.T.D. in his ROC No. G1/10291/59 dated 8.8.1959 it has been clearly stated that Tallapakam Venkata Seshacharyulu and others were in possession of the lands since 7.6.1933."

Mr. Mishra submitted that it was an admitted position, even in the plaint of the suit now filed by the Appellants, that the Respondents were in possession of the land. He submitted that as the Respondents alone enjoyed the land, their possession was sufficient for acceptance of their entitlement for Ryotwari patta. He submitted that the Appellants had produced no documentary evidence to show that land in question belonged to the temple. He submitted that on the contrary there was evidence to show that Appellants had filed a suit against one Mahant Prayag Das for recovery of possession of vast extents of lands. He submitted that significantly in that suit theses lands were not shown as lands of the Appellants. He submitted that in that suit the Appellants claimed 16 plots of land describing them as Nandanavanam i.e. garden of the temple, however, no relief was claimed in respect of these lands and these lands were not described in the said suit as Nandanavanam or the garden belonging to the temple. Mr. Mishra submitted that in view of the above noted facts the High Court's Judgment is correct in law. Mr. Mishra submitted that Section 2 A of the said Act has to be read with Section 4(1) and 7 of the Act. While communal lands would vest in the Government other village lands in possession of the inamdar shall remain with him and he would be entitled to Ryotwari Patta.

We see no reason to express any opinion on the rival submissions. Were we to express any opinion we would be committing the same mistake that the High Court has committed viz usurping the jurisdiction of the civil Court to decide these questions. We therefore express no opinion on merits.

In view of what is set out herein above we set aside the impugned Judgment to the extent that it prohibits the civil Court from proceeding with Suit 69 of 1995. We direct the civil Court to frame and decide, as expeditiously as possible and in any case within six months from today, preliminary issues as to maintainability of the suit in view of Section 14 of the said Act and whether the suit is barred on principles of res judicata/estoppel.

We are in agreement with the observations of the High Court that grant of Patta to the Respondents was a formality in pursuance of the decisions in the earlier round of litigation. It is only if it is held that the Appellants suit is maintainable and not barred on principles of res judicata/estoppal that the Appellants can be allowed to pursue the appeal. Thus the writ of prohibition preventing the Revenue Divisional Officer, Tirupati from proceeding with the appeal preferred by the Appellants against the order of the Inams Deputy Tahsildar, Chittoor in S.R. No. 1/95 dated 9.8.1995 must continue for the present. Those proceedings shall therefore continue to remain stayed till after the final decision on the preliminary issues. If the preliminary issues are finally answered in favour of the Appellants then the writ of prohibition in respect of the appeal shall automatically stand vacated. If however the preliminary issues are finally answered against the Appellants the writ of prohibition shall stand confirmed.

These Appeals stand disposed of accordingly. There will be no order as to costs.