S. Sumitra Vs. the State and Others

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Court : Karnataka

Decided On : Sep-18-1992

Reported in : AIR1993Kant108

Judge : M. Ramakrishna, J.

Acts : Transfer of Property Act, 1882 - Sections 122; Mysore Religious and Charitable Institutions Act, 1927 - Sections 2, 9, and 21 ; Constitution of India - Articles 226 and 227; Karnataka (Religious and Charitable) Inams Abolition Act, 1955 - Sections 6A and 27A; Karnataka Land Reforms Act, 1961 - Sections 45; Code of Civil Procedure (CPC), 1908 - Sections 11; Mysore Land Revenue Code, 1888 - Sections 79 and 84; Mysore Religious and Charitable Institutions (Karnataka Amendment) Act, 1979; Land Revenue Act, 1964 - Sections 21

Appeal No. : Writ Petn. No. 5744 of 1987

Appellant : S. Sumitra

Respondent : The State and Others

Advocate for Def. : M. Siddagangaiah, Govt. Pleader, ;N.S. Srinivasan and ;S.V. Srinivasan, Advs.

Advocate for Pet/Ap. : U.L. Narayana Rao, Adv.

Judgement :
ORDER

1. The petitioner in this writ petition under Arts. 226 and 227 of the Constitution has challenged the orders made by the Special Deputy Commissioner for Inams Abolition, Tumkur, as per-Annexure-G and the Land Tribunal, Tumkur, as per Annexure H and she has sought for quashing the same for the reasons set out in the writ petition.

2. The undisputed facts as disclosed in the pleadings are as follows :--

3 acres 13 guntas of land in Sy. No. 192 situated in Tumkur Amanikere, Tumkur Taluk and District, was originally owned by one Smt. Lakshmidevamma, the great grand mother of the petitioner herein. According to the geneology at Annexure-A, the petitioner Sumitra is the daughter of T. K. Siddanarasaiah, grand son of Lakshminaranappa whose elder brother's son Karigiraiah's wife is Lakshmidevamma, the donor. Thus, the petitioner is the descendant of the said Laxmidevamma. Laxmidevamma had intended to gift the land in favour of Sri Laxminarasimha Swamy Devaru, the temple of which is situated at Devarayanadurga, Tumkur Taluk. Accepting the offer of gift as valid, the Deputy Commissioner, Tumkur, made a recommendation to the Government for issuing appropriate orders. On the said recommendation of the Deputy Commissioner, then Government of Mysore, by its order No. 880/Muz. 196-08-2 dated 23-1-1909, accepted the offer of intended gift by Laxmidevamma and directed execution of the gift deed in the following terms :--

'.....

2. In these circumstances, the Government are pleased to sanction the Deputy Commissioner's recommendation. A deed of gift should be duly executed by Lakshmidevamma and her agnates and registered. The patta of the land may then be made out in the name of the deity and the land leased to Lakshmidevamma or her agnates on condition of paying the Government kandayam and conducting the stipulated service of abhisheka and Santa pane on the Davanotsava day during the jatra. If the necessity should arise for commuting theservice and fixing the service rent in cash, the order of Government should be obtained.

Sd/- xx

For Secretary to Govt.,

Revenue Dept.'

Thus, permission to have the gift deed registered in favour of the deity Sri Lakshminarasimhaswamy had been granted subject to the conditions contained in the Government Order referred to above.

3. In deed, it is necessary to mention here that before accepting the gift, the said Laxmidevamma died and passed away. Therefore, the gift deed was executed by Narasimhaiah s/o Lakshminarayanappa, younger brother of Lakshnudevamma's father-in-law. That deed of gift came to be registered in the office of the Sub-Registrar, Tumkur, on 20-11-1916 in No. 1140, Book-1, Volume-198 at pages 428 to 433, These facts are not in dispute.

4. Pursuant to the execution of the gift deed, necessary entries came to be made in the record of rights in the name of the deity Sri Lakshminarasimhaswamy as can be found from Annexure-D, extract of record of rights. Even the Index of Lands produced at Annexure-E goes to show that the land came to be owned by Devarayanadurgada Narasimhaswamy. It is therefore undisputed that by virtue of the gift of the land made in favour of the deity Sri Lakshminarasimhaswamy, Laxmidevamma, donor, ceased to be the owner of the gifted land, and consequently the land came to vest in the State, the deity Sri Lakshminarasimhaswamy being the owner thereof. However, the Government, as is even from the Government order, leased the land back to Lakshmidevamma or his agnates only on condition of paying Government the kandayam and conducting the stipulated service viz., Abhisheka and Santharpane, on the Davanotsava day during Jatra. So excepting to that extent, no other rights had been saved in her favour in respect of the land in question.

5. It is stated that on the death of Lakshmidevamma, her successors-in-title had been cultivating the land in terms of theGovernment Order and rendering service to the temple in doing Abhisheka and Annasantharpane during jatra and in upkeeping the temple.

6. As already stated, pursuant to the execution of the gift deed in favour of the deity Sri Lakshminarasimhaswamy, all the revenue records viz., record of rights, index of lands, patta of the land etc., stood in the name of the deity Sri Lakshminarasimhaswamy resulting in the land being governed by the Karnataka (Religious and Charitable) Inams Abolition Act, 1955 (the Act for short).

7. It is stated that Ramaiah, respondent-3 herein, moved the Special Deputy Commissioner for Inams Abolition, respondent-6 herein, with an application for occupancy rights in his favour on the allegation that he was the tenant of the land in question. In the said application, respondent-3 Ramiah made the deity Sri Lakshminarayanaswamy only respondent represented by the Tahsildar and Muzrai Officer, Tumkur Taluk. The Special Deputy Commissioner, by his order, An-nexure-G, dated 28-4-1977, granted occupancy rights in favour of respondent-3 in respect of the land in question under S. 6A of the Act subject to the provisions of S. 27A of the Act and subject to the payment of the premium to Government of a sum of Rs. 2,100/- payable in not more than ten annual instalments for the ownership of the land as required by law. As earlier stated, no person other than the deity Sri Lakshminarasimhaswamy was made respondent in the proceedings before the Special Deputy Commissioner for Inams Abolition. Therefore, the petitioner was not aware of the proceedings culminating in the order, Annexure-G, granting occupancy right in favour of respondent-3, which was confirmed by the Land Tribunal, Turnkur, by its order, Annexure-H. The Land Tribunal made an order of one sentence stating 'we confirm the order of Spl. D.C. for Inams Abolition. He need not pay any instalments. Closed the matter R.S. No. 192-3-13 A.G. only Tumkur Amanikere.'

8. Even in the proceedings before the Land Tribunal, the petitioner was not notified muchless the Tahsildar and Muzrai Officerwho represented the deity, respondent-5. However, this order of the Land Tribunal was called in question before this Court in W.P. No. 41351 of 1982 by 16 persons said to be the Dharmadarshis of the temple in question. This Court by an order dated 29-11-1985 produced at Annexure-J dismissed the said writ petition solely on the ground that they had not produced any material to show that they were the Dharmadarshis of the temple so as to cause notice of the proceedings to be served on them. Thus, the writ petition

came to be dismissed at the stage of admissions without notice to the respondents.

9. It is stated that as against the said order of this Court, a writ appeal No. 499 of 1987 was presented not by the petitioners in the writ petition but by Smt. Sumitra, the present petitioner. The petitioner herein was not a party to the said writ petition and as there was delay of 270 days in presenting the writ appeal stated above, permission was sought to withdraw the writ appeal. Accordingly, by an order dated 10-4-1987 the writ appeal was dismissed as withdrawn. The submission is that this present writ petition has been presented challenging the orders made by the Special Deputy Commissioner for Inams Abolition granting occupancy right in favour of respondent-3 in respect of the land in question, by his order, Annexure-J, and the Land Tribunal at Annexure-H affirming the order, Annexure-G, as W.A. No. 499 of 1987 filed by her came to be dismissed as withdrawn without considering her rights to challenge the impugned orders.

10. A detailed statement of objections has been presented on behalf of respondent-3 wherein a specific contention has been taken that the Tahsildar and Muzrai Officer, competent authority to lease the land in question, leased it to him on 'panchasal gutta' and that as he had been cultivating it on the strength of 'panchasal gutta', he was entitled to grant of occupancy over the land in question. However, it is stated that he filed an application in Form-7 on the safer side for grant of occupancy right under S. 45 of the Karnataka Land Reforms Act, 1961 and that the Special Deputy Commissioner consideredthe said application and rightly granted him occupancy right over the land in question under the Act. It is further stated in the statement of objections that this Court rightly dismissed the writ petition filed by the Dharmadarshis of the temple and confirmed the orders impugned herein. That order having not been challenged in the writ appeal by the said Dharmadarshis, the present writ petition by the petitioner was not maintainable.

11. I heard the learned counsel on both sides. Sri U. L. Narayana Rao, learned counsel for the petitioner mainly argued the following points :--

(i) The land in question being an inam land is governed by the provisions of the Karnataka (Religious and Charitable) Inams Abolition Act, 1955 and hence no person cultivating such a land on the basis of panchasal gutta leased by the Tahsildar and Muzrai Officer was entitled for grant of occupancy right under the said Act. However, the Special Deputy Commissioner wrongly allowed the application of respon-dent-3 for occupancy right in respect of the land in question by his order, Annexure-G, which cannot be sustained in law.

(ii) The petitioner had no notice of the proceedings before either the Special Deputy Commissioner or the Land Tribunal. Therefore, she had no occasion to challenge the said orders before the competent authority and she was not a party in W.P. No. 41351 of 1982 also. That being so, any order made in the said writ petition would not bind the petitioner.

(iii) The dismissal of W.P. No.41351 of 1982 cannot come in the way of the petitioner challenging the impugned orders in an independent writ petition like this in order to restore the property in favour of the deity Sri Lakshminarasimhaswamy who became the owner thereof in terms of the gift and the petitioner in this petition is not seeking any reliefs for herself and this being so, question of invoking the doctrine of constructive res judicata arising under S. 11 of the C.P.C., does not arise.

(iv) The claim of respondent-3 was basedon 'panchasal gutta' and not as a lessee or inamdar of the land in question; therefore he cannot claim occupancy over such a land and the Deputy Commissioner, respondent-6, is not competent to consider the claim of respondent-3 and pass an order under the Act.

(v) The Land Tribunal also committed an error in affirming the order of the Deputy Commissioner by its order of one sentence made as per Annexure-H. On the above grounds, the learned counsel submitted that the writ petition was entitled to succeed.

12. As against the submissions made by Sri U. L. Narayana Rao, Sri Srinivasan, learned counsel for respondent-3, vehemently argued in support of the impugned orders. His submissions are :

(i) The writ petition as brought is not maintainable, inasmuch as after the gift deed was executed in favour of the deity Sri Lakshminarasimhaswamy, the donor ceased to have any right over the said land and hence the petitioner though being a descendant of the donor cannot maintain this writ petition challenging the impugned orders.

(ii) The points that arise for consideration in this Writ petition were directly and substantially in issue in W.P. No. 41351 of 1982 disposed of on 29-11-1985 and W.A. No. 499 of 1987 disposed of on 10-4-1987 between the same parties and were conclusively decided finally and therefore the petitioner cannot reopen the issue once again in this writ petition, which is hit by the principles of res judicata arising under S. 11 of the C.P.C.

(iii) Having considered the facts and circumstances of the case, the competent authority viz., the Special Deputy Commissioner for Inams, respondent No. 6 herein, passed an order as per Annexure-G granting occupancy over the land in question in favour of respondent-3. Hence this Court need not interfere with the said order in this writ petition under Art. 226 and 227 of the Constitution.

13. Sri M. Siddagangaiah, learned High Court Government Pleader appearing forfor respondents 1, 2 and 6, submitted that having regard to the provisions of the Act, the Government Order, Annexure-B, and the object of the gift of the land by Smt. Laxmidevamma in favour of the Daily Sri Laxminarasimhaswamy, the order, Annexure-G, made by the Special Deputy Commissioner for Inaras, granting occupancy of the said land in favour of respondent-3 was unsustainable, inasmuch as, according to him, all the rights and title to the land having vested with the deity following the gift and in view of the condition incorporated in the Government Order, Annexure-B, no rights other than the right of cultivation on lease by the successors of the donor by paying kandayam to the Government for the purpose of conducting the stipulated service of Abhisheka and Santa pane on the Davanotsava day during jatra, are saved. Therefore, respondent-3 was not entitled to seek occupancy solely on the ground that he was cultivating the land in question on panchasal gutta. He therefore sought to quash the impugned orders.

14. In view of the arguments advanced on both sides as above, the points that arise for my consideration in this writ petition are as follows :--

(1) Whether the order, Annexure-G, made by the Special Deputy Commissioner for Inams can be sustained in law.

(2) Whether the order made by the Land Tribunal as per Annexure-H is legal and proper?

(3) Whether the writ petition is hit by the principles of res judicata in view of the order made in W.P. No. 41351 of 1982 and W.A. No. 499 of 1987 resulting in non-maintainability of the writ petition.

(4) Whether the petitioner has made out a case for granting relief sought for in the writ petition.

15. Before proceeding to consider the points aforesaid, it is necessary for me to say a few salient facts in regard to the nature of the land and the rights arising from the endowment. As I have already noticed in theaforesaid paragraphs, this piece of land came to be endowed upon the deity Sri Lakshminarasimhaswamy by Smt. Laxmidevamma in the year 1909 by way of gift which came to be accepted by the Government, on the recommendations made by the Deputy Commissioner, by its order, Annexure-B, with a direction for execution thereof subject to certain conditions, one of which was that the land may be leased to the donor or his agnates for cultivation by paying kandayam to the Government for conducting Abhisheka and Santharpane on Davanotsava day during jatra of the temple. Therefore, we will have to see what are the consequences of the gift. Before going to this aspect, one other aspect is required to be considered.

16. Learned counsel for respondent-3 contended that although the Government Order, Annexure-B, came to be issued in the year 1909, the gift deed was actually executed and registered in the year 1916 and that therefore the Government Order was not validly made. I do not think that there is any force in this submission of the learned counsel.

17. It is not in dispute that Smt. Laxmidevamma, having offered gift of the land in the year 1908, died by the time the Government Order accepting the offer was issued. Therefore, Narasimhaiah s/o Lakshmi-narayanappa, younger brother of Lakshmi-devamma's father-in-law, executed the gift deed in terms of the offer made by her as can be seen from a copy of the instrument, Annexure-C, executed on the stamp paper dated 20-11-1916 and duly registered on 20-12-1916. It is further seen from the recitals of the instrument that the gift was unconditional and total surrender of all rights of the owner over the land gifted. Therefore, it is not possible to concede to the contention of learned counsel for respondent-3 that the Government Order having been issued earlier to the actual execution of the gift deed is invalid. The learned counsel has not been able to cite any authority to the contrary. Therefore, this contention will have to be rejected.

18. Coming to the consequences of the gift, after the gift deed was duly executed,Laxmidevamma ceased to be the owner of the land gifted and the Lakshminarasimhaswamy became the owner thereof which was under the control of the Tahsildar and Muzrai Officer. In other words, it became a temple land meant for the purpose of maintaining and upkeeping the temple. Leasing such lands in open competition in the best interests of the temple was permissible and the bid amount was being used for the upkeep and maintenance of the temple. Regarding the period of lease of temple lands, Section V at page232 of Muzrai Manual, 1934 Edn. stipulates :

'(a) Temple lands should not ordinarily be leased for more than five years at a time.

In connection with a number of cases that have recently come up to Government for decision, it is brought to notice that in certain localities an objectionable practice prevails of leasing lands belonging to Muzrai Institutions for indefinite periods, a course which is highly prejudicial to the interests of the institutions. This practices should be put a stop at once and no leases should ordinarily be granted for more than five years at a time,

This was the position of law regarding lease of temple lands under the Muzrai Manual which came to be superseded by the Mysore Religious and Charitable

Institutions Act, 1927 (the Act of 1927 for short). It deals with all matters relating to Muzrai and other Religious and Charitable Institutions in the State of Mysore except Bellary District.

19. According to sub-sec. (1) of S. 2, Religious and Charitable Institution includes an endowment for the carrying out of any religious or charitable object. Therefore, an endowment like the one in the instant case made for the carrying out of any religious or charitable object comes within the Religious or Charitable Institution governed by the Act of 1927. It becomes a part and parcel of the religious and charitable institution. In other words, the land in question having become the part of the temple by virtue of the gift, the right of which was endowed upon the deity, and the donor, as already stated, ceased tohave any right over it except to the extentmentioned in the Government Order.

20. Now coming to the case of respondent-3 who was granted occupancy of the land in question by the Special Deputy Commissioner for Inams which was subsequently confirmed by the Land Tribunal, he contends that he was cultivating the land in question on panchasal gutta lease granted by the Tahsildar. In other words, he was enjoying the leasehold rights of the land in question on lease granted by the Tahsildar. It is nobody's case that the Tahsildar granted the lease of the land in favour of respondent-3 treating him either kadim tenant or permanent tenant as defined under the Mysore Land Revenue Code, 1888. S, 84 of the Code defines 'Kadim tenant' as follows :--

'84. A tenant holding alienated land, whether situated in an alienated village or not, and paying to the superior holder of such land, by way of land revenue, rent in money or in kind assessed at rates of land revenue assessment obtaining at the time when such land was alienated by Government, or at rates subsequently fixed in accordance with the established rates of land revenue assessment for the village, or at rates fixed by competent revenue authority or by a survey settlement, shall have a right to continue to hold such land at the rent hitherto paid for it, or, when such rent is altered in accordance with this Act, at the rent so altered.

Such a tenant shall be called a 'kadim tenant'.

Therefore, by virtue of the definition of 'kadim tenant', it is clear that a person cultivating alienated land, whether situated in an alienated village or not, and paying to the superior holder of such land, land revenue in money or in kind is called 'kadim tenant'.

21. Section 79 of the Code deals with amount of rent to be paid by tenants and the duration of tenancy of superior and inferior holders. According to it, a person placed, as tenant, in possession of land by another, or, in that capacity, holding, taking or retaining possession of land permissively from or by sufferance of another shall be regarded asholding the same at the rent or for the services, agreed upon between them; or, in absence of satisfactory evidence of such agreement of the rent payable or services render able by the usage of the locality, or, if there be no such agreement or usage, shall be presumed to hold at such rent as, having regard to all the circumstances of the case shall be just and reasonable.

Under this Section, the duration of tenancy is not fixed. However, a presumption of tenancy could be gathered by sub-sec. (4) which says :

'where, in the absence of a contract regarding the nature and duration of the tenancy, the tenant has established that he has been in continuous possession on payment of fixed rent for a period of twelve years or more.'

In view of the above, the question is whether a person in permissive possession of the land given by the Tahsildar on panchasal gutta or oksal gutta as defined in the Land Revenue Code could be said to be a kadim tenant or permanent tenant. There is no difficulty in understanding this aspect by referring to the provisions of S. 9 of the Act of 1927. It reads :

'9. (1) No alienation or transfer by way of sale, gift, mortgage or otherwise of any Inam land granted by the Government to any Muzrai Institution for its upkeep or for the maintenance of any person rendering service in connection therewith and no act purporting to create any interest adverse to such institution in respect of such land, shall be valid unless it is authorised by the general or special orders of the Government.

(2) No lease of a property belonging to aMuzrai Institution for a term exceeding fiveyears shall be valid unless previously approved by the Government or by such officer asmay be empowered by the Government in thisbehalf'

Therefore, having regard to the above provisions which are clear and consistent, even the Tahsildar was not competent to lease the land to any person beyond the period of five years.It is not the case of respondent-3 that he continued to enjoy the rightful or lawful possession of the land in question with the permission of the Government or the competent authority even after the expiry of the lease, as nothing is produced to show that any such order was passed by the competent authority permitting him to enjoy the land beyond the period of lease granted in the instant case. Therefore, the irresistible conclusion is that possession of respondent-3 cannot be continued beyond the lease period of five years as enjoined by S. 9, though he was enjoying the leasehold rights by virtue of the order made by the Tahsildar. In that view of the matter, it is not impermissible for respondent-3 to have continued in possession of the land in question beyond five years. Therefore, we will have to see whether such a person is entitled to seek occupancy over the said land under the Karnataka (Religious and Charitable) Inams Abolition Act, 1955 and whether the Deputy Commissioner for Inams who granted occupancy as sought for by respondent-3 was competent to do so.

22. At the out-set, it is not made clear whether the land in question was available for the Deputy Commissioner to grant occupancy right under the Act in favour of respondent-3. The Deputy Commissioner has failed to apply his mind to see whether the land was amenable to grant and whether respondent-3 was entitled, in law, to seek occupancy thereof. In the statement of objections presented by the Tahsildar before the Deputy Commissioner, he opposed the application of respondent-3 for grant of occupancy. It is unfortunate that the Deputy Commissioner granted occupancy as prayed for by respondent-3 even without considering the said objections. When such objections were filed, it was the bounden duty of the Deputy Commissioner to apply his mind and see whether the land was available for being granted under the Act. Having regard to the provisions of that Act of 1927, a notice should have been given to the Muzrai Officer including Dharmadarshis of the temple. The Deputy Commissioner failed to

issue such notice to either the Muzrai Officer or the Endowment Commissioner.

23. In deed, the Act of 1927 came to be amended by the Mysore Religious and Charitable Institutions (Karnataka Amendment) Act, 1979 (Karnataka Act No. 18 of 1980) with effect from 27-5-1980 by which S. 21 came to be amended. By virtue of the said amendment, the Commissioner for Endowments and Muzrai Officer shall be made defendants in a suit in place of Muzrai Officer. The object of the amendment was that a proper notice is given to the Head of the Department viz., Commissioner for Endowments and not the Tahsildar of the Taluk where the property is situated. This is the abundant caution now taken by the Government by virtue of the amendment.

24. Be that as it may, as on the date when the impugned order, Annexure-G, came to be passed by the Deputy Commissioner, he should have seen that there was a prohibition incorporated in S. 9 of the Act of 1927 to grant a land like the one involved here under the Act. He should have also seen that respondent-3, having no right to claim occupancy over the land in question, would not be entitled for the reliefs sought for under the Act, which cannot be pressed into service in a case like this. Therefore, the order made by the Deputy Commissioner as per Annexure-G being one without the authority of law is vitiated.

25. Further, keeping the object of the lands being endowed upon the temple, the Government of Karnataka issued Circular instructions in No. RD127 MLD 78 dated 7-11-1978, inter alia, as follows : --

'The lands belonging to the temple, and other religious institutions are being auctioned for cultivation on 'Eksal' or 'Panchasal' basis and the income accrued therefrom is being utilised for the purpose of the temples, or, the institutions. If the Eksal or Panchsal gutta were granted by the Government, the lands cannot be treated as tenanted lands.'

In the said Circular, the Government has seriously viewed that certain institutions have brought to their notice that disregarding mandatory provisions of the Act, tenancy rights of such lands are being granted infavour of private persons, on the basis of their cultivation. Therefore, the Government in the said Circular has

issued a mandate to the authorities concerned not to grant occupancy of such lands. Of course, the order made by the Deputy Commissioner is earlier to the said Circular Instructions. However, as on the date when the Land Tribunal confirmed the order of the Deputy Commissioner, the Circular was in force and therefore at least the Land Tribunal should have taken note of the said Circular Instructions before proceeding to confirm the order of the Deputy Commissioner. II failed to do so. For the reasons stated above, both the impugned orders, Annexure-G and H cannot stand the test of law and hence they are vitiated. Accordingly, I answer the first two points in the negative.

26. Now I proceed to consider the third point which relates to the doctrine of res judicata. Learned counsel for respondent-3 vehemently argued this point and submitted that this writ petition was hit by the doctrine of res judicata and was hence not maintainable on the ground that the matter in issue arising in this writ petition was the matter directly and substantially in issue in W.P. No. 41351 of 1982 and W.A. No. 499 of 1987 between the same parties and the said issue was heard and finally decided in favour of respondent-3 and against the petitioner ultimately in the writ appeal and that therefore this writ petition on the same cause of action between the same parties was not maintainable.

27. As already observed, W.P. No. 41351 of 1982 was filed by Dharmadarshis of the temple and this Court, by an order dated 29-11-1985, dismissed the writ petition holding that there was no evidence to show that the petitioners were the Dharmadarshis of the temple in question so as to have notice of the proceedings before the concerned authorities. As against the said order, Writ Appeal No. 499 of 1987 was filed not by the Dharmadarsis but by the present petitioner, which came to be dismissed as withdrawn.

28. It is true that the earlier writ petition was filed challenging the very orders impugned herein viz., Annexure-G and H and itcame to be dismissed as stated above and the writ appeal filed against the said order of dismissal was also dismissed as withdrawn. There is no doubt about it. But what is required to be seen or ascertained is whether the action on the part of the present writ petitioner whose writ appeal was dismissed as withdrawn could be construed as the

constructive res judicata operating against her in this present writ petition filed by her. The distinguishing features are : (1) in the proceedings before the Special Deputy Commissioner for Inams who granted the land in question in favour of respondent-3, the present petitioner was not notified and she was not a party and (2) in the earlier writ petition also, she was not a party, but, on the other hand, the petitioners therein were Dharmadarshis of the temple. Of course, the writ appeal was filed by her against the order in the earlier writ petition. Referring to these distinguishing features, the Court will have to see whether there is, in fact, the constructive res judicata attracting the provisions of S. 11, C.P.C., to the present petition.

29. General principles of res judicata apply if an earlier writ petition for the same relief has been dismissed but when in the present suit the parties in the suit were not parties in the writ petition and the writ appeal arising therefrom was withdrawn without prejudice to the adjudication of the rights in the suits, there is no bar (Please see The Commissioner, B.C.C. v. Kapoor Chand Bros., : AIR1982 Kant23 , inasmuch as Sumitra, petitioner herein, was neither a party in the earlier writ petition nor was she heard therein. Secondly, filing the writ appeal by her which came to be dismissed as withdrawn without prejudice to her rights to file a fresh petition on the same cause of action cannot constitute the constructive res judicata arising under S. 11 of the C.P.C., as held by this Court in the above decision. Therefore, the contention of the learned counsel for respondent-3, in this behalf, will have to be rejected.

30. That apart, there is one more aspect which is required to be considered in this case. In this writ petition, the petitioner Sumitrahas not sought any relief for herself. On the other hand, her case is that a public mischief has been done by virtue of the orders, Annexure-G and H this mischief is sought to be utilised by respondent-3 against the interests of the temple which is a public institution. Her further case is that the object of the gift of the land by Smt. Laxmidevamma, her great grand mother, is for the upkeep and maintenance of the temple and also for doing certain sevas of the deity at the time of jatra. Even this has been taken away by virtue of the impugned orders, Annexure-G and H, more so, by causing damage to the property endowed upon the temple by giving it to third person

against the law. Therefore, she has sought for quashing the impugned orders in the public interest. I am of the opinion that this writ petition can be treated as public interest litigation as held by the Supreme Court in S. P. Gupta v. President of India, : [1982]2SCR365 and again in a later decision in Chaitanya Kumar v. The State of Karnataka, : [1986]2SCR409 . In Chaitanya Kumar's case, the Supreme Court has held as follows (at p. 831 of AIR) :--

'..... When arbitrariness and perversionare writ large and brought out clearly the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount consideration. As always, the Court is concerned with the balancing of interest.'

Therefore, in view of the nature of the relief sought for in this writ petition, it can be treated as a public interest litigation petition seeking to undo the public mischief done by the Special Deputy Commissioner in his order, Annexure-G, and the Land Tribunal, in its order, Annexure-H. For these reasons, I answer point No. 3 in the negative.

31. I have already held in the preceding paragraphs that the Special Deputy Commissioner passed the order, Annexure-G, without applying his mind to the statutory mandates contained in Muzrai Manual, Land Revenue Code comprising the Act of 1927 and the Land Revenue Act, 1964 and without considering the various questions (which)arose before him, and recording findings thereon, including the objections of the Tahsildar opposing the claim of respondent-3. Even the Tahsildar under the unamended S. 21 of the Act of 1927 could have taken the matter before the competent authority challenging the order made by the Special Deputy Commissioner or he could have brought it to the notice of the Government so as to enable it to file a writ petition against such an order before this Court. He has failed to do so. More often, it is brought to the notice of this Court in a large number of cases that properties endowed upon the temples --though sought to be preserved under several enactments and circular instructions issued from time to time are being disposed of in favour of third parties by the authorities concerned ignoring the statutory duty enjoined upon them to preserve such properties in the best interests of the temples. They are failing in their duties resulting in enormous

loss to the State Government and public mischief is the resultant factor. These days attempts are being made by several individual citizens to enrich themselves at the cost of valuable properties belonging to the temples and religious institutions. Therefore, it is high time that strict instructions are issued by the Government to those who are charged with the duties of safeguarding the interests of the properties endowed upon the temples and religious institutions in terms of the laws governing the same so as to avoid enormous loss being occasioned to the institutions and their properties.

32. In the result, I make the following.