
(1998) 10 AP CK 0046
In the Andhra Pradesh High Court
Case No : W.A. No. 429 of 1998

Commissioner, Endowments Department and others	APPELLANT
Vs	
Vittal Rao and others	RESPONDENT

Date of Decision : 21-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 96(3)
Constitution of India, 1950 — Article 226

Citation : (1998) 6 ALD 574 : (1998) 6 ALT 355 : (1999) 1 APLJ 57

Hon'ble Judges : Umesh Chandra Banerjee, C.J;P. Ramakrishnam Raju, J

Bench : Division Bench

Advocate : A.G, for the Appellant; M/s. Shanti Bhushan and Bharat Kumar, for the Respondent

Judgement

Umesh Chandra Banerjee, CJ

1. Section 96(3) has been engrafted on to the CPC in order to avoid repetition of adjudicatory process between the parties in the event of there

being a decree passed by consent of the parties. It is on this perspective, the observations of the Supreme Court in the case of Katikara

Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, seem to be very apposite. In paragraph 59 of the report, the Supreme

Court observed:

Be that as it may, the bar to an appeal against a consent decree, in sub-section (3) of Section 96 of the Code is based on the broad principle of

estoppel. It presupposes that the parties to an action can, expressly or by implication, waive or forego their right of appeal by any lawful agreement

or compromise, or even by conduct. Therefore, as soon as the parties made the agreement to abide by the determination in the appeal (AS.668)

and induced the Court to pass a decree in terms of that agreement, the principle of estoppel underlying Section 96(3) became operative and the

decree to the extent it was in terms of that agreement, became final and binding between the parties. And, it was ineffective in creating an estoppel

between the parties as a judgment on contest. Thus, the determination in A.S 668 - that Kadakalla \was not an "estate" became as much binding on

the respondents, as on the parties in that appeal.

It is in this perspective, Mr. Shanthi Bhushan, appearing for the first respondent, raised two several preliminary objections at the commencement of

hearing of the appeal. On the first count, Mr. Shanthi Bhushan contended that the appeal is barred by reason of the factum of the consent as is

apparent on the lace of the judgment and an appeal in terms of Section 96(3) CPC is not maintainable and on the second count, in any event, the

appeal is barred by reason of the doctrine of "res judicata" or "constructive res judicata" in terms of Section 11 of the Code of Civil Procedure.

2. At this juncture, however, it would be convenient to advert to the contextual facts. The records depict that in W.P.No.8970 of 1990 the learned

single Judge of this Court passed an order recording the following:

During the pendency of the writ petition, the respondents filed WPMP No. 15438 of 1995 seeking permission to appoint an Executive Officer to

manage the affairs of the temple in question and also to permit the said Officer to conduct the yearly festival pending disposal of the WP. The writ

petitioner filed a counter-affidavit in the said WPMP stating that he is ready to accept the terms and conditions mentioned in the Government

Memo No.1295, dated 27-10-1989. Now, Counsel for both parties have represented that the WP may be disposed of recording the said

compromise as per Govt. Memo No. 1295, dated 27-10-1989. Accordingly this WP is disposed of in terms of the compromise embodied in

Govt. Memo No.1295 dated 27-10-1989 and directing both parties to implement the terms embodied in the said Govt. Memo within a period of

four weeks from today. WP is disposed of accordingly. No costs.

It would also be convenient to note the full text of Memorandum being No.1295 dated 27-10-1989. The Memorandum reads as follows:

GOVERNMENT OF ANDHRA

PRADESH

REVENUE (ENDTS-II) DEPARTMENT

Memorandum No. 1295/Endts-II-1 /84-21, Rev.

Dated 27-10-1989

Sub :-Endowments Department - Religious -Sri Junglee Vithobha Temple - Osmanshahi -- Hyderabad -Compromise Regarding.

Rcf :--From the Commissioner, Endowments Department, Hyderabad, Lr. No.D3/63786/84, dated 14-6-1989.

The attention of the Commissioner, Endowments Department, Hyderabad, is invited to his letter cited. The proposal of the Commissioner,

Endowments Department, Hyderabad to compromise the case relating to Sri Junglee Vithobha Temple, Osmanshahi, Hyderabad with the

following terms:

(1) That the department shall accept the petitioner as the Hereditary Mutawalli and he shall be allowed injunction in the Management.

(2) That the land surrounding the temple and the land covered by the temple to the extent of 2,504.6 square yards shall be vested in the temple.

That the remaining land of the total of 12,641.4 sq.yds, should be handed over to the petitioner; and

That the petitioner shall accept the appointment of Executive Officer, since the Executive Officer has been appointed to this temple for the last ten

years has been examined and agreed to in the interests of the temple.

2.The Commissioner, Endowments Department, Hyderabad is requested to see that the above mentioned terms are reduced into a deed of

compromise by the parties concerned before accepting the compromise in the interests of temple.

Sd/-

B. Bhimaraju Joint

Secretary to Government

3. Apart from the two factual elements mentioned above, the records depict that after the disposal of the writ petition by the learned single Judge

as above, some third parties moved this Court in appeal against the order of the learned single Judge and the same, however, was dismissed on

contest. Incidentally be it noted that there was no appeal preferred by the State Government. But after the dismissal of the appeal, the State

Government thought it prudent to file a review petition and the same, as records depict, was also dismissed by a Bench judgment of this Court.

Thereafter, a contempt case was filed and thereafter proceeding was initiated under the Contempt of Courts Act and the same was concluded by

direction to implement the judgment of the Division Bench in W.A.No.1536 of 1995 within two months. A SLP thereafter, as appears, was filed

by the Endowments Department of the Government against the orders of the Division Bench in review application but the same was also dismissed

on 5th January, 1998. It is this order which has featured or brought into prominence by both Mr. Shanthi Bhushan appearing for the respondent as

also by Mr. Advocate-General, appearing in support of the appeal and as such the same needs to be considered with some detail. For

convenience sake, the order of the Supreme Court is set out hereinbelow:

The learned senior Counsel for the petitioner after some arguments seeks leave to withdraw this SLP with a view to filing appropriate proceedings

for challenging the consent order in a writ petition which according to him, was nullity as being fraudulent and contrary to law. The SLP stands

dismissed as withdrawn.""

It is after the dismissal of the SLP that this application was preferred with an inordinate delay of 739 days. Be that as it may, the records depict

that this delay was condoned and the matter was taken up for hearing. And, at the commencement of hearing of the matter, Mr. Shanthi Bhushan,

appearing for the respondent raised the above noted two preliminary objections. By reason of the submissions of Mr. Advocate-General in

support of the appeal, reference to a brief factual backdrop cannot be avoided and the same is thus recorded.

4, Sree Jungli Vittobha Temple, Osmanshahi, Hyderabad, situated before the RTC Depot was registered in the Book of Endowments along with

an area of 15,146 square yards. The records depict that in 1219 Hijri, an area of 5 Bigas of agricultural land was donated to one Gunnaji by one

Foitzdar Khan, Gitnnaji was the ancestor of Shri Vittal Rao, son of Sri Manik Rao. The land was donated for construction of temple then known

as ""Pandarinath Temple"". The temple is now known as"" Sri Jungli Vhhobha Temple"". Shri Gunnaji died and his sister Suguna Bai completed the

construction of the temple referred to in the gift deed and she appointed one Sri

Govindagiri as Pujari of the temple. In the year 1939, one Galakishan Gir illegally claimed himself to be the Mutawalli of the temple and mismanaged the affairs of the temple by alienating some of its properties. The Government having come to know of the same, constituted a Committee u/s 156 of A.P. (Telengana Area) Wakf Rules for the administration of the temple. In the year 1962, Shri Manik Rao, the decendent of the founder of the temple filed a petition before the Registration Officer for transfer of Towliatship in his name. The Registration Officer, being the Assistant Secretary, Board of Revenue after conducting enquiry declared Sri Manik Rao as the only rightful claimant to the Towliatship of the temple and by proceedings dated 15-1-1964 ordered that column No. 11 of the Munthakab accordingly be amended u/s 36(c) of the Hyderabad Endowments Rules. Aggrieved, however, by this order, the then temple committee preferred appeal before the Director of Endowments, Hyderabad, and the latter, however, by his order dated 29th October, 1966 has confirmed the orders of the Assistant Secretary. A Revision Petition was filed before the Government by the temple committee and a counter petition was also filed by Sri Manik Rao. The Government in G.O.Rt.No.650, dated 17-6-1971 did set aside the order dated 15-1-1964 of the Assistant Secretary as also the order dated 29th October, 1966 of the Director of Endowments. It is against this order again that Shri Manik Rao filed a suit being OS No.509 of 1971 for declaration that he is the Mutawalli of the suit temple and for setting aside of the orders of the Government dated 17-6-1971. This suit, however, was dismissed. Against the order of dismissal, an appeal was filed in which the appellate Court found that Shri Manik Rao, being the plaintiff, is entitled to be declared as hereditary Mutawalli of the suit temple. Against the decree and judgment of the first appeal, a second appeal was filed before the High Court being SA 122 of 1979. In the second appeal, it was contended that even by the time when the gift deed was executed, there was a temple and that the land was gifted not in favour of Gunnaji but in favour of temple. The High Court basing on the finding of the lower Court observed that the gift deed shows that the land was gifted absolutely to Shri Gunnaji and the Government cannot claim any interest in the land and the fact that Gunnaji's sister constructed a private temple subsequently on a portion of the

land, does not make the gift of the land an endowment in favour of Almighty. The High Court further observed that the land devolves according to

law on the successors of the donees and the plaintiff is admittedly a successor. The High Court went on to observe:

The fact that, due to mal-administration or the incapacity of a successor, the Government took over the management and appointed a committee

is no ground to deny the rights of UK subsequent successor which flow by ordinary operation of law.'"

5. The factual score further depicts that against the judgment both the Government and the temple committee preferred civil appeals before the

Supreme court being Civil Appeal Nos.702 and 703 of 1980 which were, however, subsequently dismissed. The Supreme Court recorded in the

order of dismissal the following:

The High Court concurred with the findings of the lower appellate Court on a construction of the Deed Ex AI. It is now contended before us that

the translation of Ex AI is not correct. We find from the judgments of the lower appellate Court and the High Court and the memorandum of

grounds of appeal before the High Court that it was not suggested anywhere that the translation is not correct. If the translation as set out in the

judgment of the lower appellate Court is correct, the findings of the lower appellate Court and the High Court must be sustained. The appeals are

therefore dismissed. No costs.

The above factual analysis, therefore, depicts that Shri Manik Rao is the hereditary Mutawalli of the temple, as has been declared by the Supreme

Court. It is the above noted factual backdrop which has, however, prompted the Commissioner of Endowments Department, Government of

Andhra Pradesh, Hyderabad to send a report to the Principal Secretary to the Government, Revenue Department, Andhra Pradesh, Hyderabad,

by a memorandum dated 4th June, 1989, inter alia recording the following:

.....With regard to the second request about the property it is submitted that though the litigation was merely with regard to the Mutawalliship and

there was no finding or decree directing the Department to handover the property to the plaintiff, if his request is ruled out it gives rise to the

second stage of litigation i.e., he must approach the Deputy Commissioner, u/s 87 of the Act 30 of 1987 to declare that the land in question is not

an endowment. To decide this, the Deputy Commissioner has to rely on the Gift Deed. He cannot go beyond the findings made by the High Court

and Supreme Court. In this matter the Deputy Commissioner, Endowments Department Hyderabad, the Asst. Commissioner Endowments

Department, Twin Cities, Hyderabad have negotiated with the applicant and arrived at on the following terms :

(1) That the Department shall accept that the petitioner is the hereditary Mutawalli and he shall be allowed to function in the management;

(2) That the land surrounding the temple and the land covered by the temple to the extent of 2504.6 square yards shall be vested in the temple.

(3) That the remaining land of extent 12641.4 square yards should be handed over to the petitioner.

Besides the above terms one more condition may be added:

that the petitioner shall accept the appointment of executive officer, since the executive officer has been appointed to this temple for the last 10

years." With regard to the constitution of trust Board it is not possible at this stage because of the injunction of the Courts, until Section 160 is

amended giving the provisions of the Act overriding effect even against the decree of the Courts etc. Therefore the Government may be requested

to permit the compromise in the best interests of the Institution.

It is by reason of this report and the recommendation that the impugned memorandum before the learned single Judge dated 27th October, 1989,

was issued wherein the proposal of the Commissioner to compromise the case relating to Sree Junglee Vithobha Temple, Osmanshahi,

Hyderabad, on certain terms was agreed to by the Joint Secretary, Revenue (Endts-II) Department, Government of Andhra Pradesh.

6. Certain significant development, however, did take place in the mean time which ought also to be noted in order to complete the factual

backdrop of the matter. After the dismissal of the civil appeals by the Supreme Court, Sri Vittal Rao, son of Manik Rao made a representation to

the Government, Endowments Department, to handover the temple and the land to him in terms of the order of the Supreme Court. And, it is on

the basis of this representation, it has been contended that a deep fraud has been perpetrated on the Government. Mr. Advocate-General

contended that the Commissioner, on the basis of misrepresentation made by

Shri Vittal Rao and the then Assistant Commissioner, submitted a report seeking permission to compromise and the State Government relying on the report issued the memorandum dated 27th October, 1989, permitting the Commissioner to enter into compromise with the first respondent. Incidentally, be it noted that in the memo itself, as noticed above, the Government requested the Commissioner to see that the terms and conditions are reduced into a deed of compromise by the parties before accepting the compromise. It is this recording which has prompted Mr. Advocate-General to contend that even before the deed of compromise was entered into between the parties, the Assistant Commissioner, Endowments Department, Twin Cities, Hyderabad, has issued instructions to the tenants of the temple property to pay the rents due to the temple to the first respondent as the entire property was declared as a private property. Mr. Advocate-General severely criticised the conduct of the Assistant Commissioner and contended that the fraud played and the misrepresentation effected by the first respondent in collusion with the Assistant Commissioner came to light only in June, 1990. Subsequently, however, the Deputy Commissioner, Endowments Department, Hyderabad by proceedings dated 15th June, 1990 set aside the instructions issued by the Assistant Commissioner to the tenants pending further examination of the matter and subsequently on 16-6-1990 the Assistant Commissioner withdraw the instructions issued to the tenants in compliance with the proceedings of the Deputy Commissioner, Endowments, dated 15th June, 1990. On 25th June, 1990, the Commissioner, Endowments Department, issued proceedings appointing the Executive Officer for the temple in the interests of public and for the better management of the institution. Subsequently, the first respondent herein filed a writ petition being WP No.8970 of 1990 in this Court seeking to set aside the proceedings of the Deputy Commissioner dated 15th June, 1990, and of the Commissioner dated 25th June, 1990. And the writ petitioner also sought and obtained orders of interim stay in his favour on 29-6-1990. However, the Government moved the High Court for vacating the interim stay in view of the Rathotsavam. The matter came up before a learned single Judge and after hearing both sides, the learned single Judge of the High Court was pleased to modify the interim order dated 29-6- i 990

and directed the Collector, Hyderabad District to conduct the Rathotsavam in respect of the temple. The learned single Judge was pleased to pass

a further direction that the first respondent herein shall not in any way interfere with any of the arrangements that will be made for the purpose of

conducting the Rathotsavam. Subsequently, on 4th May, 1991, the Government vide Memo No.18913/Endts. 11-1 of 1991, directed the

Commissioner, Endowments, Hyderabad to enquire into the irregularities committed by the then Assistant Commissioner, Sri K, Sivanarayana

Rao, in handing over the properties relating to the temple to the Hereditary Trustee, And the Commissioner. Endowments, upon enquiry came to

the conclusion that nine out of the ten charges stand proved against the delinquent officer and accordingly he submitted a report to the Government.

In 1994 the Government, however, issued a show-cause notice to the then Assistant Commissioner to show-cause as to why he shall not be

reverted from the post of Assistant Commissioner to the post of Superintendent for a period of two years and upon considering the reply to the

show-cause notice, the Government by an order dated 20th June, 1994 reverted the Assistant Commissioner to the lower post of Superintendent

for a period of two years. This order of the Government, however, was challenged by the Assistant Commissioner before the Administrative

Tribunal and the order of the Government was set aside. Since this Court is not concerned with the result of the proceedings before the Tribunal,

we need not dilate much on this score. Suffice it to record as above that the order of the Government stands set aside.

7. The records depict that the respondents 1 to 5, though all the third parties, have filed WPMP 19457 of 1994 to implead them as party

respondents in WP No.8970 of 1990 on the ground that they are interested parties and their rights are affected. On 17th October, 1995 both the

WPMP and the writ petition came up for hearing before the learned single Judge and an order was passed recording therein that:

.....There was a long litigation between the petitioner and the respondents which went up to the Supreme Court. The decision of the Courts has

gone in favour of the petitioner. At that stage the Government issued Memo No.295/Endowments-II-I/84-21, Rev dated 27-10-1989 proposing a

compromise with certain terms and conditions. On the ground that the petitioner did not accept the compromise proposed by the Government the

impugned proceedings were issued, questioning which, the present writ petition is filed by the petitioner.

The relevant portion of order has already been set out hereinbefore, wherein the learned single Judge duly recorded the compromise between the

parties as has been suggested and represented by the learned Advocates appearing for the parties. Incidentally, the records also depict that the

State Government was represented by Mr. Advocate-General, though, however, there is certain amount of disapproval since Mr. Advocate-

General submitted that, in fact, his Junior appeared, the factum of which, however, stands disputed by Mr. Shanthi Bhushan. We, however, do not

feel it expedient to go into the issue. But the fact remains that the State Government was duly represented by a lawyer.

8. The factual backdrop, as noticed above, to wit, discovery of a fraud and collusion with the Assistant Commissioner was noticed as early as

1990-- proceedings were initiated - enquiry was conducted - show-cause notice was issued - a punishment was inflicted, namely, reduction to the

lower post of Superintendent for a period of two years (as noticed above): The matter, therefore, did attract the notice of the Government and due

investigation did take place. It is at this stage can it be said that, in fact, the Government had not applied its mind. The answer, however cannot be

in the affirmative. The Commissioner himself filed a Report and subsequent thereto an enquiry was floated and an officer was punished. That also

does not put the Government in a state of caution rather than agree to the form of a compromise as recorded in the order of the learned single

Judge. It is not that, the Government was not party there. It is only at the instance of the parties that such a compromise has been recorded. The

issue, therefore, arises whether the present appeal can be maintained against an order which was said to be resultant effect of a concerted effort

and the active concession on the part of the Government Advocate. It is true that the delay was condoned but reference to the delay is also a

factor to be taken into account. The Government was obviously not inclined to take any further steps in the matter and is only after the expiry of

739 days that the Government thought it prudent to file an appeal on the ground of a pretended fraud which was discovered in the year 1990.

There was, in fact, an active participation by the Government in the formation of opinion of the learned Judge and the learned Judge relying upon

such an active and definite suggestion did pass such an order.

9. The other aspect of the matter ought also to be noted at this juncture, namely, the order of the appellate Court against the order under challenge

in the appeal by the third parties. The appellate Court in WA 1536 of 1995 did record in its judgment the following:

At any stage of the matter, the appellants have not raised any dispute. The matter became final by the decision of the Supreme Court. According

to the appellants, they have purchased some of the properties, as stated by them in the affidavit filed in support of the petition filed to implead them

as respondents 5 to 8. If they have got any right, they have to approach the civil Court and establish the same. The order of the learned single

Judge basing on the agreement of the writ petitioner to implement the terms of the compromise, cannot therefore, be interfered with.

The contention of the learned Counsel for the appellants that there is no declaration of title of the petitioner in respect of the property in question

cannot be gone into in the Writ Proceedings. The appellants have to agitate for their rights in the civil Court by taking up appropriate proceedings.

With regard to the contention of the learned Counsel for the appellants that the petitioner is misusing the properties, they have to bring the same to

the notice of the concerned authorities for taking action.

For the foregoing reasons, we see no grounds to interfere with the order of the learned single Judge. The writ appeal is, therefore, dismissed.

The appellate Court further went on to record that the Government has to implement the order passed in the writ petition subsequently in a

contempt proceeding of this Court recording the following:

“We have disposed of the Review WAMP (SR) No.84816 of 1997 today and in view of the definite stand taken in the counter-affidavit by the

respondents that they will abide by the orders of this Court, we are of the opinion that it is not a fit case to proceed with the contempt cases. We,

therefore, direct the implementation of the orders of this Court in Writ Appeal No.1536 of 1995 by taking into consideration the observations

made in the review WAMP(SR) No.84816 of 1997 which is disposed of by us today. The respondents will however implement the order in the

W.A.No. 1536 of 1995 within two months from today. The contempt cases are accordingly closed.

It is this order in the contempt petition which has also been very strongly relied upon by Mr. Shanthi Bhushan in support of his contention that any further appeal ought not to be allowed to be proceeded within the contextual facts under consideration. On a plain reading of the order, it appears, that there was, in fact, definite assurance that the orders as passed by the Court shall be complied with and it is only on the basis of the assurance that the contempt cases were closed and the Court directed that such compliance has to be effected within a period of two months from the date of the order. Is it fair on the part of the Governmental authority to depart from its stand as has been recorded in the counter-affidavits by the respondent ? And is it fair on the part of the governmental authority to proceed with the matter further when a solemn affirmative stand has been taken that the order would be complied with. In our view, the answer cannot but be in the negative. The governmental authority ought to be bound by its stand taken in the counter-affidavit. This shifting of stand ought not to be permitted since the most accepted methodology of the governmental working is fairness. By no stretch of imagination it can be said to be a fair reading of the situation to permit a second appeal after recording the factum of its acceptance of an order of the Court and question of there being any fraud being perpetrated and as contended by Mr. Advocate-General in the contextual facts does not and cannot arise, neither the decree and order passed therein can be termed to be void or voidable even at the option of the parties. The matter was considered in detail by the governmental authority as also by their advocates appearing as and when the matters were taken in Court and there was, in fact, active participation and not a mere passive or a tacit consent: There was, infact, a positive act in inviting the Court to pass an order.

10. In any event, the matter has been dealt with by mis Court on more occasions than one in the presence of the advocates of the parties including the Government advocates and it is too late in the date to contend that the consent was obtained by fraudulent means and methods. Significantly, the matter was, as noticed above, as a matter of fact, was enquired into, charges were framed and detail proceedings were had before the Enquiry Officer and the punishment was inflicted on to the concerned officer and the fact remains that the matter was considered at great length and at

every stage. On the wake of this factual back-drop, question of there being any fraud or the order of decree has become void does not and cannot arise, as otherwise it would lead to a travesty of justice and this Court would be a definite party to a total miscarriage of justice. Justice of situation demand no further hearing. The concept of fraud introduced in the matter does not have any factual support, as such the same ought not to detain us further in the matter.

11. The preliminary objections as raised by Mr. Shanti Bhusan have considerable force and the factual back-drop of the matter and we do feel it inclined to lend our concurrence to the same.

12. In that view of the matter, the Preliminary objections raised by Mr. Shanti Bhusan succeed. The appeal is dismissed on the preliminary objections. No order as to costs.