(2006) 01 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8063 of 2004 and WA No. 1035 of 2004

G. Raghava Reddy APPELLANT

Vs

Government of A.P. and Others RESPONDENT

Date of Decision : 28-01-2006

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 74(1)
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 80, 80(1)

Citation : (2006) 2 ALD 376 : (2006) 2 ALT 440

Hon'ble Judges : G. Chandraiah, J;Bilal Nazki, J

Bench : Division Bench

Advocate : K.S. Murthy, in WP No. 8063 of 2004 and M. Radha Krishna, in WA No. 1035 of 2004, for the Appellant; Government Pleader for Revenue, for Respondent No. 1, Government Pleader for Endowments for Respondent No. 2, B. Somasekhar, in WP No. 8063 of 2004 and for Respondent No. 4 in WA No. 1035 of 2004, N. Gurugopal (SC), in WP No. 8063 of 2004 and for Respondent No. 3 in WA No. 1035 of 2004 and P. Rajasekbar, in WA No. 1035 of 2004, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—This writ petition and writ appeal raise same questions of law and fact and therefore, are being disposed of together.

2. G.O. Ms. No.911, dated 14.12.2000 issued by the Government of Andhra Pradesh, is the subject-matter of Writ Petition No.8063 of 2004 and is challenged in the writ petition. Same G.O. was challenged in Writ Petition No.2563 of 2002. That writ petition has been dismissed by the learned Single Judge of this Court. Writ Appeal No.1035 of 2004 has been filed against that judgment of the learned Single Judge.

3. By G.O. Ms. No.911, dated 14.12.2000, the Government allowed sale of land belonging to ''Sri Bhavanarayanaswamy Temple'', Ponnur, in favour of

A.P.N.G.O''s Association, Ponnur, by private negotiations u/s 80(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as ''the Act''). The price per acre was fixed at rupees four lakhs. The order stated that the transaction would be beneficial to the temple. Now, this order is challenged in both the writ petitions, on the ground that the temple was endowed with agricultural land to meet the expenditure of Nitya Dhoopa Deepa Naivedyam and the land has been permitted to be sold to the N.G.O''s Association by private negotiations. In the first instance, there was no need to sell the land and if there was a need, the land should have been sold by public auction. The land was sought to be sold to the respondent-association for the purpose of house sites and the land was not suitable for house sites, as it was agricultural land and if the land had been sold by public auction, it would have definitely fetched amount more than rupees four lakhs per acre, as consideration.

4. Writ Petition No.2563 of 2002, which has already been decided, was filed by 17 residents of Ponnur town in Guntur District. The Court, however, dismissed the writ petition on 26th of June, 2000 as withdrawn insofar as petitioner Nos.1 to 8 and 10 to 17 were concerned. Petitioner No.9 also filed an application to seek withdrawal of the writ petition. That application was pending and one Dr. D.S. Parthasarathi filed W.P.M.P.23928 of 2003, seeking impleadment as petitioner No. 18 in the writ petition. Dr. D.S. Parthasarathi was then added as petitioner No, 18. No orders were passed on application of petitioner No.9 seeking withdrawal of the petition, but since Dr. D.S. Parthasarathi had been added as a petitioner, the Court considered him to be sole petitioner in the said writ petition.

5. Writ Petition No.8063 of 2004 has '' been filed by one Sri G. Raghava Reddy, who claims to be a devotee and is interested in protection of the property of Deity and also in public interest to see that the properties of the temple were protected. He has stated in his petition that he had keen interest in development and protection of properties of the temple. He was Chairman of a Committee, which constructed a temple complex in SBI Colony, Mehdipatnam. He donated large amounts, collected donations and started construction of the temple and the temple is now attached to ''Sri Puspagiri Matt''. For two years, he had been taking keen interest in the protection of the temples across Andhra Pradesh.

6. The question before this Court now is, whether the Government is empowered to issue the impugned Order and if it is empowered, whether the safeguards provided under the Act, had been adhered to.

7. We have heard learned Counsel for the parties at length and they have placed reliance on various judgments, which have also been considered by the learned Single Judge.

8. The main argument of the learned Counsel for petitioners is that the impugned G.O. was contrary to the judgments of the Hon''ble Supreme Court. It is also

contended that for passing the impugned G.O., no reasons have been assigned by the Government. It is also argued on behalf of the writ appellant and the writ petitioner that the lands belonging to the Charitable and Endowment institutions have to be sold necessarily by way of public auction. It is also submitted that if the G.O. was permitted to be executed, the temple would be deprived of valuable property and the temple will suffer irreparable loss and injury. It is also submitted that while issuing the G.O., the Government did not apply its mind and the G.O. on the face of it, was illegal.

9. On the other hand, the respondents have contended that the Government has power to issue the impugned G.O. and it was in the interest of the temple that the sale had been ordered by private negotiations. The temple was getting rent on the lands in a sum of rupees one lakh per annum and if the land is sold at the rate of rupees four lakhs per acre, for 18 acres, it would fetch rupees seventy two lakhs, which would yield an income of rupees six lakhs per annum by way of interest. A.P.N.G.O''s. Association, Ponnur had made a representation in the year 1995, to the Government, to sell the land by way of negotiations and had offered rupees four lakhs per acre. Considering their request, the Commissioner of Endowments invited objections by publishing a notification in terms of Section 80(1) of the Act. Writ petitioners did not file any objections, therefore, orders were issued, permitting respondent No.2 to take necessary action in the matter, for sale of 18 acres of land by private negotiations at the rate of rupees four lakhs per acre. The transaction is beneficial to the temple.

10. The Executive Officer of the temple also filed a counter in the writ petition. It was also on the same lines on which the counter has been filed by the State. But he has stated that in 1995, when the proposal was made by the N.G.O''s Association, it has quoted a price of Rs.3.5 lakhs per acre. The proposal was referred to a three-man-committee constituted for the purpose of acquisition of temple land. After getting the report of the Committee, which negotiated with respondent No.4, price was fixed at rupees four lakhs per acre.

11. While analyzing the record, which has been produced by the respondents along with their counter-affidavit, it makes an interesting reading. While in the counter-affidavits the respondents submitted that a three-member-committee was appointed which gave a report, but we have not been able to find any such report on file. On the other hand, the Commissioner, Endowments Department made a recommendation to the Principal Secretary to Government on 5th March, 1999, suggesting sale of land at the rate of rupees four lakhs per acre. It referred to a report given by a Committee consisting of Regional Joint Commissioner, Mandal Zone-n, Endowments Department, Tirupathi, Deputy Commissioner, Ednowments Department, Guntur and Assistant Commissioner, Endowments Department, Guntur. According to the reference in the letter, this reference was given to D.O.Lr.No. 198/97, dated 3.8.1998. After referring to this report, the Commissioner stated in his letter to the Principal Secretary to the Government that since the rates were fixed much earlier, the Deputy

Commissioner was asked to have negotiations with the N.G.O''s Association and obtain a consent for consideration of rupees four lakhs per acre. This letter written by the Commissioner to the Deputy Commissioner, is referred as a letter dated 12.10.1998. If the report had been given by the Committee on 3.8.1998, the rates could not be considered to be ''old'' on 12.10.1998. The letter written by the Commissioner vide reference No.4 in the letter dated 5.3.1999, is also not placed on record, but it appears that rupees four lakhs was suggested by the Deputy Commissioner himself. The Commissioner goes on to say, "Accordingly, the Deputy Commissioner, Endowments Department, Guntur, has submitted his report in the reference 5th cited along with the consent letter of N.G.O''s Association to issue early orders in the matter." Vide this letter, the Commissioner gave a reference to another report dated 26.3.1998, but it was also not produced before the Court, and the Commissioner requested the Government to accord permission to sell away the land . of 18 acres at the rate of rupees four lakhs per acre to the N.G.O''s Association. There is another letter on record, which was written by the District Collector, Guntur on 14.6.2000 to the Secretary to Government. It is also interesting to know the contents of this letter. It reads:

...Out of this the A.P.N.G.O''s Association, Ponnur Unit have been requesting for sale of Ac. 18.00 cents on payment of market value of Rs.4,00,000/- per Acre for providing house sites to the N.G.Os.

The Mandal Revenue Officer, Ponnur reported that the basic value of the proposed land in S.No.221/1 of Ponnur is at Rs.80,000/-per Acre. It is reported that the market value of the Agricultural land in the vicinity varies from Rs.1,00,000/- to Rs. 1,50,000/- per acre depending upon the fertility, texture and location. The subject land is an agricultural land. The local enquiries of the Assistant Collector also reveal that the market value of the subject agricultural land varies from Rs.1,00,000/- to 1,50,000/-....

In view of the circumstances explained above it is submitted that even though the market value of the land in S.No.221/1 of Ponnur varies from Rs.1,00,000/- to Rs.1,50,000/- per acre, the A.P.N.G.O''s Unit, Ponnur have made an interesting offer of Rs.4,00,000/- per acre for provision of house sites to the N.G.Os. A copy of the report of the Assistant Collector, Tenali along with the report of the Mandal Revenue Officer, Ponnur, statement of sales statistics in the vicinity, combined sketch and representation of President, N.G.O''s Co-operative House Building Society, Ponnur are submitted herewith as desired in the reference first cited.

12. One fails to understand, if private lands were being sold publicly at the rates ranging from rupees one lakh to one and half lakhs, why was the N.G.O''s Association interested in paying rupees four lakhs per acre, and they were not purchasing one acre of land, but were purchasing 18 acres of land and they were paying a price, which was more than the market value by rupees 45 to 54 lakhs. Obviously, it appears that the case was being made out for sale of the land by

way of private negotiations. That is about the record and about the facts.

13. Before coming to the arguments made and the judgments referred to by the petitioner/appellant, it will be profitable in the first instance, to refer to Section 80 of the Act, which deals with alienation of immovable property belonging to the temples and endowments and various modes of sale. Section 80(l)(a) starts with a statement that all sales, gifts, exchanges or mortgages of any immovable property belonging to or given to a charitable institutions, religious institutions would be null and void unless such a transaction is affected with the prior sanction of the Government, which means that the Legislature was conscious that the immovable properties belonging to the temples and endowments should be protected and there should not be any scope for dwindling of the properties of the endowments by the managements of endowments or temples, as the case may be. u/s 80(1)(b) of the Act, a further safeguard is provided that the Government could also not sanction sale or exchange or alienation by any mode without publishing in the Gazette, the particulars relating to the proposed transaction and inviting objections and suggestions and after inviting such objections and suggestions, the Government is further required to record its satisfaction to the effect that the transaction was - (i) prudent and necessary or beneficial to the institution or endowment; (ii) in respect of immovable property which is uneconomical for the institution or endowment to own and maintain; and (iii) the consideration therefore is adequate and proper. Then the last safeguard comes by way of Section 80(1)(c) that every sale of such immovable property, which is sanctioned in terms of Section 80(1)(b) shall be effected by tender-cum-public auction in the prescribed manner and a further safeguard that it has to be confirmed by the Commissioner within the time prescribed. So, general rule for alienation of immovable property belonging to the temples and endowments is that it has to be done by tender-cum-public auction and that too, after satisfaction of the Government that the alienation was necessary or beneficial or prudent to the institution or endowment, or the immovable property which was sought to be sold was un-economical for the institution. A proviso is added to Section 80, which is by way of an explanation. It lays down, "Provided that the Government may, in the interest of the institution or endowment and for reasons to be recorded therefore in writing, permit the sale of such immovable property, otherwise than by public auction."

14. If we analyze this Section and see the facts of the case, the Government has not produced any evidence that the matter was considered by it and it came to the conclusion on the basis of the material available that this sale was either prudent, necessary or beneficial to the institution. There is nothing on record to show that the immovable property was uneconomical for the institution. Therefore, in our view, the impugned order could not be sustained on these grounds alone.

15. The Government, in the counter-affidavit, has stated that the lands were fetching a rent of rupees one lakh, but the consideration to be received after

sale, would fetch an interest of rupees six lakhs per annum, but it did not take into consideration the fact that the value of land in any part of the State is appreciating day by day, whereas the value of money is depreciating. Therefore, in our view, even if it was true that the institution was receiving only rupees one lakh by way of rent and it could receive rupees six lakhs by way of interest after selling the property, even then, the institution is not in benefit, because the appreciation of the value of land and depreciation of value of money was not taken into consideration. In any case, the Government has not placed any material before us to show that it applied its mind and came to the conclusion that the alienation should be permitted by way of private negotiations. Although the word ''public negotiations'' has not been used in Section 80 of the Act, the proviso empowers the Government to permit sale of the immovable property otherwise than by public auction, but in both cases, the suggestions and the safeguards provided u/s 80(1)(b) of the Act have to be followed.

16. These provisions would show that the conditions laid down u/s 80(1)(b) of the Act must be satisfied before the Government decides to sell the land belonging to the endowments. This satisfaction must be recorded and request must be discernible. If, after taking the decision of selling of the lands, the lands are sold through private negotiations, then it is incumbent upon the authorities to record the reasons as to why the land is not being sold by public auction and why by private negotiations. We have not found any reason whatsoever either in the impugned order or in the counter-affidavit as to why the Government has decided to sell the land by private negotiations and not by public auction.

17. Now, coming to the judgments relied upon by the learned Counsel for the writ petitioner and the writ appellant, the first judgment would be the case of Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, , which judgment has been distinguished by the learned Single Judge. Before going to the facts of this case, we are tempted to refer to first few lines of the judgment:

More often than not detriment to what belongs to ''many'', collectively, does not cause pangs to ''any'', for no one is personally hurt directly. That is why public officials and public minded citizens entrusted with the care of ''public property'' have to show exemplary vigilance. What is true of ''public property'' is equally true of property belonging to religious or charitable institutions or endowments,

18. The facts of the case, which was before the Supreme Court, as mentioned in the Supreme Court judgment itself- Sale of land was sanctioned by the Government, to be sold for about rupees twenty lakhs by private negotiations, instead of public auction. The appellants before the Supreme Court offered to purchase the same for rupees eighty lakhs. While analyzing Section 74 (1)(c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966), the Court stated that the pre-conditions u/s 74(l)(c) were-

(1) That the Government must be satisfied that it is in the interest of the institution or endowment to permit the sale of these lands otherwise than by public auction.

(2) That reasons for reaching this satisfaction must be recorded in the order.

Then the Court went on identifying the problem which was before the Court and said-

The Problem: The question has arisen whether the High Court was justified in upholding the impugned order in the face of the fact that ex-fade there is no compliance with the pre-conditions engrafted in the relevant provision inasmuch as the order in question, far from recording the satisfaction that it is in the interest of the institution to sell the lands otherwise than by public auction, (which is the normal mode prescribed by the legislature) does not even reveal awareness (1) as regards the necessity for being so satisfied and (2) as regards the mandatory obligation imposed by the statute to record the reasons for forming such an opinion in the order itself.

Whether there is compliance: Now what is there to show that the authority which passed the impugned order was even aware of the essential pre-conditions envisioned by the statute ? Nothing. On the other hand, it is clear that if the concerned authority had even stolen a casual glance at the relevant statutory provision it could not have failed to say, what it was bound to say, if it was so satisfied, that the departure from the prescribed mode of selling by public auction was in the interest of the ''Math''. Nor could it have failed to record its reasons in support of this conclusion, for, the statute in so many words, casts an obligation on the concerned authority to record such reasons in the order itself.

Then, in Para 2 of the judgment, the Court found that there was irresistible inference that the competent authority had failed to direct its mind to the requirements of law before passing the impugned order and therefore, for the reasons given, the Court struck down the judgment of the High Court.

19. In Para 5, the Court gave the method by which the auction should be conducted, as under-

5. We, therefore, direct that the lands in question may be sold by public auction in the following manner :

(1) Sale must be on the basis of "as-is-where-is-whatever-is" subject to the rights, if any, of any of the respondents and of the other occupants, if any, in regard to the claim for alleged tenancy, sub-tenancy, possession or of any other nature.

(2) Wide publicity should be given to the date, time and place of public auction to ensure that maximum number of intending purchasers attend the auction in order to offer their bids.

(3) The terms and conditions must inter alia provide for deposit of at least 15%

of the sale price in cash within a week (or two weeks) which will be liable to be forfeited if the transaction is not completed.

(4) Special notice shall be given to the appellants and the concerned respondents herein,

(5) The appellants'' offer made in this Court for purchase at the rate of Rs.2,50,000/- per acre on the condition specified in Clause (1) herein will be treated as the minimum bid of the appellants and the sum of Rs.20,00,000/- deposited in this Court (which will be transmitted to the Commissioner, Endowments in due course), shall be treated as the deposit made by them in pursuance to Clause (3) herein.

This judgment is, on all fours, applicable to the facts of the case on hand. The authorities were not even conscious of the fact that they have to record reasons as to why the land should be sold by way of private negotiations rather than by public auction.

20. Another judgment relied upon by the petitioner/appellant is, S. Yadaiah and Others Vs. Commissioner of Endowments, Government of Andhra Pradesh and Others, . This judgment was delivered by a Division Bench of this Court. In this case, a notification issued for public auction of land belonging to the Endowment, was challenged. The petitioner did not succeed in the writ petition. So, he filed the appeal, but did not succeed before the Division Bench as well. Though there were reasons in that case to permit private negotiations, the Court did not interfere. The petitioners in that case were tenants of the land and they had contended that in terms of proviso to Section 80 of the Act, the land should have been sold to them by private negotiations and earlier to the impugned notice of auction, such notification had been issued, which had not been even superceded. But the Court, in paras 9 and 10, held:

9. It is not in dispute that the property belongs to the Temple. By the impugned Notification dated 25-8-2001 published in the A.P. Gazette, the land in question was sought to be sold by public auction and objections were invited from the interested persons. The Appellants who are the occupants of the property also submitted their objections. According to them, the property cannot be sold in public auction and that it should be sold to them only by way of private negotiation at a reasonable price as they are already in occupation of the property. It is submitted by the learned Counsel for the Appellants that the earlier Notification dated 8-10-1996 issued by the Endowments Department to sell the property by private negotiation has not been cancelled and, therefore, the present Notification issued by the Department is non est in law and has no legal sanction.

10. We are unable to agree with this contention. By the present Notification, by which objections were invited from the interested persons for the sale of the land in question by public auction, the earlier Notification issued by the Government has been impliedly superseded. It is not the case of the Appellants that pursuant

to the earlier Notification, certain offers have been made and accepted by the Government. Under such circumstances we are of the opinion that the Notification dated 25-8-2001, now issued by the Department of Endowments is valid in law.

In Para 12 of the judgment, the Court relied on an earlier judgment of this Court in Vangala Narasimhacharyulu Vs. The State of A.P. and others, , and it mentioned-

12. This Court in Vangala Narasimhacharyulu v. State of A.P. (supra) has held that disposal of property owned by religious and charitable institutions should be by way of public auction and that the permission granted to sell the property by private negotiation cannot be sustained. It is also held that disposal by private negotiations may be allowed only under compelling circumstances. The case on hand is not one such. The Notification for public auction has already been issued. Clause (c) of Sub-section (1) of Section 80 says that every sale of any such immovable property sanctioned by the Commissioner under Clause (b) shall be effected by tender-cum-public auction in the prescribed manner subject to the confirmation by the Commissioner within a period prescribed: Provided that the Government may, in the interest of the institution or endowment and for reasons to be recorded therefore in writing, permit the sale of such immovable property, otherwise than by public auction. In the instant case since the Notification has already been issued, the intention of the Government to sell the property by public auction is explicit. Therefore, the Government has to only follow the procedure laid down u/s 80 of the Act.

21. Counsel for petitioner/appellant has also relied on another judgment in R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, . In this judgment also, the Court relied on C. Kami Reddy''s case (supra) and quoted following lines from that judgment-

Sale by private negotiations which is not visible to the public eye and may even give rise to public suspicion should not, therefore, be permitted unless there are special reasons to justify the same.

22. A feeble attempt was made during arguments by the respondents that the petitioners do not have any locus standi. But in view of the facts narrated above, we do not want to dismiss the writ petition or writ appeal on this ground, as the property involved belongs to a religious institution and as such, is public property and this Court cannot be a mute spectator and dismiss the writ petition and writ appeal by making an exercise whether the writ petitioner and the writ appellant has locus standi or not.

23. For the reasons given above, we allow the writ appeal, set aside the order passed by the learned Single Judge and also allow the writ petition and quash G.O. Ms. No.911, dated 14.12.2000 with the following directions-

(1) The Government shall first consider whether it is necessary to sell the land of

the temple.

(2) In case the Government comes to the conclusion that sale of land is necessary, then it shall follow all the safeguards provided u/s 80 of the Act, and the sale shall be made by public auction alone, and the basic price shall be fixed at rupees four lakhs per acre and land shall not be sold if offers are not made during public auction or if they are less than rupees four lakhs per acre.

(3) Respondent No.4 shall also be entitled to participate in public auction as and when conducted.

