(2003) 11 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23412 of 2003

Gundala Krishna Reddy APPELLANT

Vs

Tirumala Tirupati Devasthanams and Another RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 80, 97

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Rules, 1987 — Rule 162, 163, 164, 165, 166

Citation : (2004) 1 ALD 45 : (2004) 1 ALT 631

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : K.S. Gopala Krishnan, for the Appellant; M. Adinarayana Raju, SC, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner filed a suit being O.S. No. 1451 of 2003 on the file of the Court of Principal Junior Civil Judge, Tirupati for specific performance of agreement of sale dated 24.3.2003 against one G. Subbamma. The petitioner alleges that the vendor subsequently brought into existence an unregistered gift deed in favour of Tirumala Tirupati Devasthanams (TTD), first respondent herein so as to defeat the rights of the petitioner under the said agreement. The first respondent affected the sale of the property by public auction in Eenadu daily dated 14.10.2003. The auction was conducted on 22.10.2003 and was knocked down in favour of second respondent. The petitioner filed the present writ petition challenging the action of the first respondent in conducting public auction to sell away immovable property without prior sanction of the Commissioner of Endowments u/s 80 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act (hereafter referred to as ''the Act''), as illegal and arbitrary.

2. At the admission stage, the first respondent has filed a counter-affidavit

denying the averments made in the petitioner''s affidavit. It is stated that as the petitioner already filed a suit before the Civil Court, the writ petition is not maintainable. TTD is a Special Religious Institution which is governed by the provisions contained in Chapter XIV of the Act as well as the rules promulgated vide G.O. Ms. No. 311 dated 9.4.1990. By reason of these provisions, Section 80 of the Act has no application to TTD. Further it is stated that by resolution 214 dated 6.7.2001, the Board of Trustees delegated powers to the Executive Officer to accept and to dispose of the immovable property valued not exceeding Rs. 20.00 lakhs. Before accepting the gift made by G. Subbamma, objections and suggestions were invited by publishing a notice in Telugu daily ''Andhra Jyothi'' dated 8.7.2003. The petitioner had not submitted any objections before the stipulated time. Therefore, the first respondent accepted the gift on 21.9.2003. Thereafter, the property was sold in public auction wherein the second respondent became the highest bidder at Rs. 2,71,000/-. The second respondent paid Rs. 1,28,000/- and time was extended for payment of balance amount of Rs. 1,43,000/-. After the amount is paid, the building will be handed over to the second respondent. It is also stated that as per rules framed by the Government vide G.O. Ms. No. 311, it is for the Board of Trustees to decide either to sell or exchange or mortgage of properties of TTD and the Commissioner of Endowments is not competent to sanction such sale.

3. The learned Counsel for petitioner Sri K.S. Gopala Krishnan vehemently contends that as per Section 80, any alienation of immovable property belonging to Charitable or Religious Institution or Endowments shall be null and void unless it is effected with prior sanction of the Commissioner. He would also submit that Section 80 prescribes elaborate procedure to be followed before the Commissioner accords sanction for such sale, gift, exchange or mortgage of immovable properties. Further even after conducting public auction, the same cannot be confirmed unless the Commissioner passes an order confirming such sale. Learned Counsel would submit that the first respondent has flouted this procedure, therefore auction conducted by the TTD in favour of the second respondent is unsustainable.

4. Per contra, Sri M. Adinarayana Raju, learned Counsel for TTD relies on the provisions of Sections 95, 97, 111, 108, 119 in Chapter XIV of the Act as well as the rules containing in Chapter XXII of the rules vide G.O. Ms. No. 311 to contend that Section 80 has no application to the TTD and therefore the auction conducted by TTD is valid.

5. TTD was brought under Charitable and Hindu Religious Institution and Endowments Act, 1951, which was passed by Madras Legislature. Thereafter when law was consolidated by Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, Sections 85 to 91 provided a special regulatory regime for the organisation, administration and management of TTD. Subsequently these provisions were repealed and A.P. Tirumala Tirupati Devasthanams Act, 1979 was enacted exclusively providing for administration,

management and organisation of TTD. Again by Act 30 of 87, 1966 Act was repealed and Chapter XIV contains special provisions which deals with TTD. As law stands today, TTD is governed by these provisions, i.e., Sections 95 to 131.

6. Sub-section (1) of Section 95 of the Act declares that the provisions of Chapter XIV shall only apply to TTD. This clinchingly would show that other provisions have no application to TTD. Further Section 118 of the Act deals with the power of TTD to remove encroachments. It is to the effect that the provisions of Sections 83, 84, 85 and 86 shall apply to TTD subject to condition that the powers of Deputy Commissioner (under Section 83) shall be exercised by the Commissioner. Therefore, by reason of the exclusion clause in Section 95(1) as well as inclusion clause in Section 118, it must be held that Section 80 of the Act has no application in so far as TTD is concerned.

7. Though, Tirumala Tirupathi Devasthanam is a religious institution as defined in Clause (23) of Section 2 of the Act, all the provisions of the Act are not applicable. Clause (28) of Section 2 defines TTD as to mean the temples specified in the first schedule to the Act and shall be deemed to be constituted as a single religious institution for the purpose of this Act. Therefore even in the scheme of the Act, TTD has been dealt with separately. The intention of the Legislature is clear that the action of the TTD in so far as alienating, the property was kept out of the purview of Section 80 of the Act. A reference to Section 96 of the Act would show that the Board of Trustees constituted by the Government for TTD shall besides others consists of Commissioner of Endowments. This may be one of the reason why Section 95(1) clearly states that TTD will be governed and regulated only by the provisions contained in Chapter XIV. Nonetheless so as to enable the TTD to remove encroachments, the Legislature thought it fit to enact Section 118 applying the provisions of Sections 83 to 86 conferring the power under Commissioner instead of Deputy Commissioner as in the case of Section 83.

8. In exercise of powers conferred u/s 97 read with Section 153 of Act No. 30 of 1987, the Governor of Andhra Pradesh made rules in G.O. Ms. No. 311, Revenue (Endowments-I) Department dated 9.4.1990. Section 97 of Act No. 30 of 1987 lays down in the Rules (hereafter called ''the Rules'') in addition to the functions entrusted under the Act. Chapter XVI (Rules 116 to 124) deal with sale of movable properties by TTD by public auction. Chapter XIX (Rules 138 to 151) lays down the mandatory procedure to be followed for leasing out the lands, buildings, sites and other immovable properties and rights belonging to TTD by way of public auction. Lease shall not ordinarily exceed one year (Rule 147) and leasing out the immovable property otherwise than by public auction is to be resorted only in special cases for reasons to be recorded by the Executive Officer. Chapter XXII (Rules 162 to 171) deal with alienation of immovable property by the Trust Board either by way of sale, exchange or mortgage. After issuing public notice, the property shall be sold only by any of public auction and as per Rule 165, the Trust Board shall sanction sale, exchange or mortgage only if such

alienation is necessary and beneficial to TTD consistent with the object of TTD and if the consideration is reasonable and proper. All the orders passed by the Trust Board sanctioning sale, exchange or mortgage by way of auction shall be subject to appeal and revision under Sections 120 and 121 respectively of Act No. 30 of 1987. A reading of Section 97 and the rules especially Rules 162 to 171 would show that under the scheme of the act and rules, it is a trust board which has to sanction sale, exchange or mortgage. The Act also provides for an appeal and revision against a decision of the trust board. Such being the case, it is not possible to read Section 80 into Chapter XIV of the Act and invalidate the auction conducted by TTD. The submission is therefore rejected.

9. Admittedly, petitioner already filed a suit for specific performance of agreement of sale dated 24.3.2003, it is always open to the petitioner to raise all contentions in the suit. Ordinarily no person can be allowed to pursue two remedies simultaneously. In that view of the matter, the writ petition is misconceived and is liable to be dismissed.

10. Accordingly for the above reasons, the writ petition is dismissed in limini.

