
(2012) 10 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 16270 and 28100 of 2012

Karam Venkateswara Rao

APPELLANT

Vs

Sri Seetharamachandraswamy Vari Devastanam

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 115, 116, 116(1)

Citation : (2013) 1 ALT 193

Hon'ble Judges : Grandhi Bhavani Prasad, J

Bench : Single Bench

Advocate : K. Sarath, for the Appellant; Ch. Satish Kumar for Respondent No. 1, Mr. P.C. Reddy, A.G.P. for Endowments for Respondent No. 2, Mr. K. Ramakrishna for Mr. P. Raghavender Reddy for Respondent No 3, Mr. Zakir Ali Danish, AGP for G.P. for Panchayat Raj for Respondent Nos. 4 and 5, Mr. K. Jagadeeshwar Reddy, Counsel for Respondent Nos. 6 to 8 and Mr. M. Vidyasagar, Counsel, for the Respondent

Final Decision : Allowed

Judgement

Grandhi Bhavani Prasad, J.—Heard Sri K. Sarath, learned counsel for the petitioner in both the cases, Sri Ch. Satish Kumar, learned standing counsel for the 1st respondent, Sri P.C. Reddy, learned Assistant Government Pleader for Endowments for the 2nd respondent, Sri K. Ramakrishna, learned counsel representing Sri P. Raghavender Reddy, learned standing counsel for the 3rd respondent, Sri Zakir Ali Danish, learned Assistant Government Pleader for respondents 4 and 5, Sri K. Jagadeeswar Reddy, learned counsel for respondents 6 to 8 and Sri M. Vidyasagar, learned counsel for the 9th respondent. W.P. No. 16270 of 2012 has been filed by the petitioner, who entered into an Agreement with the 3rd respondent in respect of licence to collect fee for vehicle parking and Aaselu collection in Parnasala village, Dummugudem Mandal, Khammam District from 01-04-2012 to 31-03-2013 on payment of Rs. 5,00,250/-. The petitioner is aggrieved by the tender notification-cum-open auction in respect of vehicle parking licence rights in surrounding places of Parnasala temple issued by the 1st

respondent on 14-05-2012, which is against Section 115 of the Andhra Pradesh Panchayat Raj Act, 1994 and G.O.Ms. No. 67, PR & RD Department, dated 07-02-1996. The petitioner also claimed the 3rd respondent to have conducted a Grama Sabha on 31-05-2012 in which it was resolved that the 1st respondent has no right to conduct open auction for Gram Panchayat lands, which resolution was forwarded to the 4th respondent. As no further action is taken, the petitioner belonging to a Scheduled Tribe desired the action of the 1st respondent in conducting such open auction to be declared illegal and to stay further proceedings on the same.

2. The 1st respondent in the counter affidavit of the Executive Officer stated that previously also the 1st respondent conducted public auctions for vehicle parking since number of years with which the 3rd respondent has no right to interfere. It was for the first time that the 3rd respondent conducted such auction and granted the licence rights for 2011-2012 and the 1st respondent had in fact paid amounts to the villagers through the Sub-Collector, Bhadrachalam for acquiring lands surrounding the temple with which the Gram Panchayat had nothing to do. The 1st respondent denied violating any statutory provisions or rules and stated that the auction was conducted on 05-06-2012 in which the 9th respondent became the highest bidder. Hence, he desired the writ petition to fail.

3. The 3rd respondent through the counter affidavit of the Panchayat Secretary contended that since 15 years the Gram Panchayat alone was conducting public auction for collection of parking fee of vehicles and the temple has no right to conduct open auction in respect of the lands of the Gram Panchayat. The counter affidavit also referred to Section 115 of the Andhra Pradesh Panchayat Raj Act as empowering the Gram Panchayat to have control over parking places. It was further contended that the Grama Panchayat is providing all amenities in the temple at the time of festivals at its expense and the Panchayat had requested the temple authorities and the District Collector for providing additional funds for the purpose.

4. The 9th respondent, who is the highest bidder in the auction conducted by the 1st respondent on 05-06-2012, stated in his counter affidavit that the entire land for which the auction was conducted belonged to the temple and the petitioner belonging to a Schedule Tribe does not confer any special status under A.P. Act 30 of 1987 and the Panchayat has no right in the land. The auction conducted by the temple cannot be stalled and no document is filed to show that the land belonged to the Panchayat. The temple acquired the lands under proceedings dated 26-04-2004 after paying compensation to the private owners and since then auctions were being successfully conducted by the temple:

5. The petitioner filed a reply to the counter affidavit of the 9th respondent stating that declaring the 9th respondent as highest bidder in the auction dated 05-06-2012 is contrary to Section 3 of the Samatha Vs. State of A.P. and Others, and Adarsha Adivasi Mahila Samithi and Others Vs. Agent to the Government and Others, . The petitioner claimed that he is filing a separate writ petition on that

ground and claimed ignorance of any land acquisition proceedings, leading to any acquisition of lands by the temple. The petitioner, therefore, desired the writ petitions to be ordered.

6. The respondents 6 to 8 were impleaded as per orders in WPMP. No. 27027 of 2012 to claim that no compensation was paid in respect of four members, while it was paid to eight members in respect of lands in Survey Nos. 61/1, 2/2A and 2/3A and 4/1 and other survey numbers and the impleaded, respondents 6 to 8 were not paid any compensation for their properties. The 8th respondent is stated to be in possession of his land even now and the respondents 6 and 7 were claimed to have entered into a lease agreement with the 3rd respondent on 31-12-2010, which is being renewed to enable the conduct of auction of vehicle-parking space by the Gram Panchayat.

7. The petitioner in W.P. No. 16270 of 2012 filed W.P. No. 28100 of 2012 challenging the auction in favour of the 9th respondent in W.P. No. 16270 of 2012 by the 1st respondent therein mainly on the ground of the 9th respondent therein not belonging to a Scheduled Tribe as stated in the reply affidavit in W.P. No. 16270 of 2012.

8. The District Collector, who is the 5th respondent in W.P. No. 16270 of 2012, stated that the Executive Officer of the 1st respondent has to take prior permission from the Gram Panchayat for granting a licence before conducting public auction for vehicle parking in the Gram panchayat area u/s 116(1) of the Andhra Pradesh Panchayat Raj Act, 1994 and in fact an order was passed by the District Panchayat Officer, Khammam on an appeal filed by the Executive Officer of the 1st respondent on 08-02-2002 directing the Executive:.. Officer to apply to Gram Panchayat for such licence under Sections 115 and 116 of the Andhra Pradesh Panchayat Raj Act. The 1st respondent did not take any such permission at any point of time even later and the issuance of the tender notification-cum-open auction dated 14-05-2012 is, therefore, illegal. The land for which the 3rd respondent conducted an open auction belonged to the 6th respondent to an extent of Ac. 0.05 cents in Survey No. 6/1 and 7th respondent to an extent of 34 cents in Survey Nos. 2/2 and 2/3. The said persons are owners of the said lands even according to the latest Pattadar pass books and Pahanies with which the temple had nothing to do. The Gram Panchayat obtained lands on lease from the owners for the purpose of providing public halting place in respect of which the open auction notification on 20-03-2012 was issued. The District Collector, therefore, stated that once the Gram Panchayat provided the place for parking, it can prohibit any other place being used for the same purpose and hence, the action of the 1st respondent is contrary to the statute and the statutory rules.

9. The auction notification issued by the temple, insofar as it relates to the right to collect licence fee for parking the vehicles in the premises of the temple and around, did not specify the extent of the land or the survey number in which such land is located. The additional material papers filed by the respondents 6 to 8 and the pleadings of respondents 5 to 8 seek to identify the land proposed to

be provided as parking place by the Gram Panchayat to be the land belonging to respondents 6 and 7 taken on lease by the 3rd respondent Panchayat. While the material papers filed by the 1st respondent referred to respondents 6 to 8 also as covered by the list of land-losers due to development of the temple, there is no concrete material to conclude those lands to have been acquired by the temple in accordance with law. The material papers of the 1st respondent also may suggest the temple to have undertaken a similar exercise in the earlier years. But, if the temple has no legal right to do so, the earlier proceedings do not confer any respectability on the auction which is under challenge herein as there can be no estoppel against the statute.

10. Apart from the non-identification of the land proposed to be provided for being used as picking place in pursuance of the auction conducted by the temple, the petitioner in W.P. No. 16270 of 2012 in the writ affidavit and the reply to the counter of the 9th respondent had specifically referred to Sections 115 and 116 of the Andhra Pradesh Panchayat Raj Act, G.O.Ms. No. 67, PR & RD Department, dated 07-02-1996 and the Scheduled Areas Land Transfer Regulation to have been violated and the principles laid down by the Apex Court and this Court to have been infringed in respect of confining the right to have any such rights only to persons belonging to Scheduled Tribes within the territory of the Scheduled Areas and also in respect of the requisite permission or licence from the Gram Panchayat. The District Collector/the 5th respondent in his counter also referred to the said statutory provisions and the statutory rules, which are not shown to have been complied with by the temple. If no person can open a new private cart stand or keep it open until a licence is obtained from the Gram Panchayat and renewed every year u/s 116 (1) of the statute and if the temple had not complied with the directions of the District Panchayat Officer as long back as 2002 to comply with the said statutory provisions, the tender notification-cum-open auction in respect of the vehicle parking dated 14-05-2012 cannot be sustained. Irrespective of the controversy as to whether the proposed parking place belonged to the Panchayat or the temple, the prohibition under G.O.Ms. No. 67, dated 07-02-1996 against use of any place as a public halting place or a cart-stand, when the Gram Panchayat provided such place may also operate, the place offered by the temple not being shown to be beyond 1/2 Km from the place shown by the Panchayat. In that view of the matter, irrespective of other considerations, the temple could not have issued the notification at all without complying with the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 and (sic) Ms. No. 67, PR &(sic) Department, dated 07-02-1996 and that alone should lead to the success of the petitioner in these writ petitions. However, the same will not preclude the 1st respondent temple from approaching the 3rd respondent-Gram Panchayat under Sections 115 and 116 of the Andhra Pradesh Panchayat Raj Act, 1994 read with relevant Government Orders and Rules for the required permission in this regard in future years. The writ petitions have to be disposed of subject to the said observation. Therefore, the writ petitions are allowed. No costs.