(2002) 02 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 25292 of 95 and 816 and 19486 of 96

Kurnool District Gazetted Officers, Co-operative House Building Society — APPELLANT

Vs

Commissioner of Endowments, Hyderabad — RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 80, 80(1)
Constitution of India, 1950 — Article 14, 366
Land Acquisition Act, 1894 — Section 4(1), 5(A)

Citation : (2002) 4 ALT 388

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K.G. Krishna Murthy, for the Appellant; C.B. Ram Mohan Reddy, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J. 1. These three writ petitions relate to same land admeasuring Ac. 24.59 Cents in Survey Nos. 145/2 B, 293/2, 293/4, 293/5, 293/6 and 293/8 of Kallur village and Mandal, hence, all these writ petitions are being disposed of by a common order. The facts in brief in the respective writ petitions are as narrated hereunder. W.P. No. 25292 OF 1995

2. The writ petition is filed for a writ order or direction in nature of certiorari calling for the records of impugned proceedings of first respondent in Lr No. M4/28582/90 dated 6-6-1995 and quash the same as illegal, improper, unjust and contrary to law and further direct the respondents to allot entire land of Ac. 24.59 cents in Survey nos. 145/2B, 293/2, 293/4, 293/5 , 293/6 and 293/8 of Kallur village and Mandal to the petitioner association as per the market value agreed earlier and pass such further suitable orders.

3. It is the case of the writ petitioner that the writ petitioner association was

registered in the year 1978 with the aim of providing house sites to the needy Gazetted Officers of Kurnool district and the association was in search of a vacant land in and around the town and ultimately came to know about the land which is subject matter of the dispute in this writ petition belonging to Sri Veerabhad raswamy Temple of Kallur village and Mandal (for short hereinafter referred to as Institution). The petitioner association made a representation on 30-5-1990 to first respondent requesting him to allot the land on a prevailing market value and in pursuance of the said representation, the first respondent directed the second respondent to submit his remarks and make a report on certain points and in pursuance of the same, the petitioner association submitted their willingness on 27-7-1996 to first respondent by accepting the proposals of the first respondent and the said willingness was forwarded to first respondent by second respondent.

4. It is further stated that second respondent requested the District Collector to fix the prevailing market value and in pursuance of the said request by the second respondent , the Joint Collector visited the land on 29-3-1992 and fixed the market value at Rs. 2,00,000/- per acre by considering the locality and market value prevailing in the vicinity and the same was informed to the President of the petitioner association through letter dated 27-5-1992.

5. It is further stated that the District Collector, Kurnool in his proceedings RC.B2-6356/93 dated 2-12-1993 requested the first respondent herein to communicate the orders passed in the proposals submitted by the second respondent for the allotment of land on market value of Rs. 2,00,000/- per acre.

6. It is also stated that the petitioner association collected an amount also from its members for the said purpose. While so, first respondent issued letter M4/28581/90 dt. 6-6-1995 addressing the District Collector, Kurnool, wherein the request of the petitioner association was negatived and a proposal of proceeding with public auction had been specified. Thus, the grievance of the writ petitioners is that right from 1990 till 6-6-1995, the petitioner association has been corresponding with the concerned authorities and in fact first respondent was convinced with the proposal to alienate the land in favour of writ petitioner association as it is beneficial to the institution and has further proceeded in the matter but surprisingly without any chance or reasonable cause had dropped the said proposal intending to proceed with public auction. It is contended that the said action is not only arbitrary but also unreasonable.

7. Respondent No. 1 and respondent No. 3 filed counter affidavits. As far as the correspondence is concerned, it is not in dispute, however, specific stand is taken that the commissioner of Endowments is competent to take any decision in the interest of the temple u/s 80 of A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987 for the purpose of alienation of the land belonging to the temple. It is also stated that the Kurnool District Gazetted Officers Association , Kurnool applied first on 30-5-1990 for alienation of the temple lands for house sites. That in July, 1992 and November, 1992 different associations came forward requesting for alienation of the temple lands for house sites. Hence, the Regional

Joint Commissioner, Endowments Department, Multi Zone -I

8. I convened a meeting on 29-10-1993 with various office bearers of the Associations and District Collector, Kurnool also convened a meeting on 8-11-1993 his chamber with Revenue Officials, Endowments Department officials and with various office bearers of different associations and it was decided in the said meeting to obtain the list of bona-fide members of the associations to be scrutinised by the District Collector and then it would be submitted to the Commissioner, Endowments Department, Hyderabad for allotment of lands for house sites. It is also stated that the decision taken by the District Collector, Kurnool in the said meeting the Deputy Commissioner, Endowments Department, Kurnool addressed the District Collector in RC No. B1/3353/91 dated 11-2-1994 to submit the list of bona-fide members of the Gazetted Officers Association and also to furnish the latest market value of the temple lands as the market value is increased and it is about Rs. 2,75,000/- per acre as per the local enquiries. The Deputy Commissioner , Endowments Department, Kurnool reminded the District Collector, Kurnool in RC No. B1/3353/90 dt. 21-7-94, 15-12-94 and 12-3-1995to furnish the scrutinised list of bona-fide members of the petitioner association and to fix up the market value of the institution lands and the Commissioner, Endowments Department, Hyderabad also addressed the District Collector , Kurnool in RC No. M4/28587/90 dated 20-11-1994. But so far no list has been received from the district Collector, Kurnool. However, the Secretary of the petitioner society furnished the list of 153 members of the society to the District Collector, Kurnool in his letter dated 16-1-1995 . Likewise, this issue was prolonged and Commissioner of Endowment, Hyderabad , at last taken a decision to sell away the lands in question by tender cum public auction u/s 80(1) of the Act and requested the District Collector, Kurnool vide letter dated 6-6-1995 to drop further action for alienation of the land.

9. In pursuance of the instructions issued by the Commissioner , Endowments, the Executive Officer also submitted proposals u/s 80(1) of the Act for alienation of the land in tender cum public auction to the Commissioner of Endowments. Thereto, the Commissioner of Endowment issued notice M6/55717/95 dated 23-11-1995 for inviting objections.

10. The petitioner association failed to raise any objections before the first respondent.

11. The Commissioner vide letter dated 23-11-1995 addressed the Commissioner of Printing and Stationery, Gazette section, Hyderabad requesting to publish the notice in the Extra-ordinary Gazette. The notice was also published in Andhra Jyothi daily telugu newspaper, Kurnool edition on 15-12-1995.

12. It is also stated that if the said temple land is given to the said society @ Rs. 2,00,000/- per acre, the temple will get a total amount of Rs. 49,18,000/- on entire extent of Ac. 24.59 cents and if the lands are sold in tender-cum-public auction by dividing into convenient plots, the temple will be getting an amount of

Rs. 88,86,500/- and above, hence, the decision taken by the Commissioner, Endowments Department, Hyderabad is more beneficial to the temple and the decision taken was in the interest of the institution.

13. Counter affidavit filed by the third respondent also, virtually to the same effect. The specific stand taken by respondent No. 3 is that the present market value of the land is Rs. 3,50,000/- to Rs. 4,00,000/- per acre and total amount which will be even more than Rs. 90,00,000/- and about Rupees one crore and hence, the interest of the institution has to be protected and this action is reasonable and justifiable.

14. It is also stated that the interest of the institution is paramount and the sale by public auction is a general Rule and the writ petition is a pre-mature one.

15. WRIT PETITION No. 816 OF 1996

16. This Writ Petition is filed by one Maddileti Reddy who was the then Chairman of the Board of Trustees.

17. However, the present Chairman of the Board of Trustee of the subject temple one K. Venkatesh Babu S/o. K. Lakshmaiah had filed an additional affidavit for the purpose of continuing the litigation. Though in the cause title, only the name of the person is mentioned in the body of the affidavit in support of the writ petition, it is specifically stated that on behalf of institution as Chairman of the Board of Trustees, the writ petition is being filed.

18. Thus, the present Chairman of the Board of Trustees of Sri Eswara Veerabhadra Swamy Devastanam , Kallur, Kurnool is permitted to further proceed with the present proceedings, since he is the person interested in defending and protecting the cause of the institution.

19. The writ petition is filed for a writ of certiorari to call for notification published in Eenadu Telugu Daily Newspaper dated 4-12-1995 in RC K/89/95 dated 23-11-1995 of first respondent relating to the acquisition of the lands in survey Nos. 145/2B, 293/2, 293/4, 293/5, 293/6 and 293/8to an extent of Ac. 24.59 situate at Kallur village and quash the same and pass such further appropriate orders. The facts in brief are as follows:

As already stated supra, the then Chairman of the Board of Trustees has filed the present writ petition. It is stated that Sri Eswara Veerabhadra Swamy Devastanam, kallur, having an extent of Ac. 32.24 cents of land and except the said lands, there is no other source of income to the said temple and that the said lands were leased out and the temple was getting an amount of Rs. 16,000/- per annum which was enhanced to Rs. 24,000/-. However, it is stated that because the temple is facing problems relating to funds , the maintenance of the temple was not in a good shape.

20. It is further stated that in view of the development of the Kallur town , kallur village which is a major Gram Panchayat has become part of Kurnool town and

big industrial area was developed in and around the village and the lands become very valuable having high potential value. The lands belonging to Sri Chowdeswara Swamy temple which are abetting to the lands belonging to the Devastanam were put to public auction on 20-1-1996 and the said lands fetched the price of Rs. 4,65,000/- per acre, that the lands belonging to the Devastanam in question are more proximate and are abetting to Kurnool-Bellary road. It is also stated that the Kurnool Gazetted Officers Association House Building Cooperative Society approached the Devastanam for the purpose of alienation of lands in their favour and other details and correspondence also had been narrated , which need not be repeated again. It is further stated that the first respondent issued Section 4(1) notification under the Land Acquisition Act notifying the lands on 4-12-1995 belonging to Temple in Survey No. Nos. 145/2B, 293/2, 293/4, 293/5, 293/6 and 293/8to an extent of Ac. 24.59 and lands were sought to be acquired for the purpose of house sites to weaker sections. The first respondent invoked urgency clause and dispensed with Sec. 5(A) enquiry and made a paper publication u/s 4(1) notification on 4-1-1995. Immediately, the Executive Officer submitted a representation to the respondents on 16-12-1995 requesting them to reconsider the issue as the lands in question are very valuable and they are the only source of income to the temple.

21. It is further stated that the said notification was issued even without considering the earlier notification issued by the Commissioner of Endowment u/s 80 of the Act. It is also stated that even G.O.Ms.No. 456 dated 29-9-1995 issued by the said Government Order fixing acquisition of the Endowment lands had contemplate that endowment lands are to be identified, only when no Government or other alternative lands are available in the particular area.

22. It is also stated that the lands in question are neither arable nor vested lands but they are cultivable lands.

23. It is also stated that lands in survey Nos. 231/8, 231/3, 523/1-B, 523/3 of Kallur village in total extent of Acs. 5.75 cents are abetting to near Muzaffer Nagar, Bhaskar Reddy Nagar which are more convenient and more suitable had been left out and the lands in question are sought to be acquired as they are more valuable and at the instance of some politically motivated persons to defeat the interest of the institution, the alternative lands are not considered and straight-away notification was issued invoking the urgency clause and dispensed section 5(a) enquiry, which in the facts and circumstances also cannot be justified.

24. Counter affidavit is filed on behalf of the respondents wherein it is stated that these lands were proposed to be acquired to provide house sites to weaker sections of Kallur village.

25. It is also stated that the then Chairman of the Board of Trustees himself admitted that the lease amount was not being properly paid by the tenants and

maintenance of the temple was not in good shape. The Land Acquisition Officer will pay compensation derived by way of interest on the land compensation and the same can be well utilised for the development of the temple.

26. It is also stated that the Kallur village is a major Gram Panchayat and Kurnool and Kallur were in rapid developments in population and industrially and the lands proposed to be acquired are abetting main road and no doubt they are very valuable.

27. But, however, it is stated that the Land Acquisition Officer will pay the compensation on the basis of prevailing market value in the vicinity. In para 4 of the counter affidavit, correspondence in relation to Kurnool Gazetted Officers H & S Limited, Kurnool also had been referred to. Further, it is stated that the Mandal Revenue Officer, Kallur had submitted proposals for acquisition of these lands in RC.A.938/95 dated 5-11-1995 and on submission of the draft notification and draft declaration by Land Acquisition Officer and Revenue Divisional Officer, Kurnool in Rc.C.3427/95 dated 16-11-1995, the Collector (Social Welfare), Kurnool in proceedings Rc.K.89 of 1995 dated 21-11-1995 approved the publications in Kurnool District Gazette dated 25-11-2995 and the same was published in Eenadu Telugu Newspaper on 4-12-95 and Praja Shakti on 5-12-1995. The Land Acquisition Officer has to fix the market value for the proposed lands and pass Award for payment of compensation to the Endowment Department. It is also stated that the Executive Officer of the Temple while enclosing resolution passed by the Trustees had requested the Land Acquisition Officer not to acquire the proposed lands as they are under proposal for sale under public auction and also under proposal to sale to the Kurnool District Gazetted Officers Association, Kurnool and it was received by the said office on 19-12-1995 and in the meanwhile, the petitioner filed writ petition before the Hon''ble High Court and obtained interim stay vide order dated 24-1-1996 in W.P.M.P. No. 970 OF 1996.

28. G.O.Ms.No. 456 dated 29-9-1995 also had been referred to and other details had been narrated in para 7 and 8 and ultimately it was stated that these lands proposed for acquisition for providing house sites to weaker section is as per the scheme formulated by the Central and State Governments and hence, the Land Acquisition Officer and Revenue Divisional Officer correctly followed the Land Acquisition Act and Rules and consequently requested for the dismissal of the Writ Petition.

29. WRIT PETITION No. 19486 OF 1996.

30. The Writ Petition is filed by the writ petitioners for a writ of Mandamus directing the respondents not to auction the lands in survey Nos. 145, 293 of Kalluru village, Kurnool district pending land acquisition proceedings in pursuance of the notification issued u/s 4(1) of Land Acquisition Act on 4-12-1995 after calling for the records and for such suitable reliefs. The facts in short, as narrated in the respective pleadings are as follows:

31. It is stated that the land of an extent of Ac. 26.53 cents in Survey Nos. 145, 293 of Kalluru village & Mandal, Kurnool belonging to 5th respondent and it is an agricultural land and that the Kalluru village is nearby Kurnool town.

32. It is further stated that the Motor Workers belonging to Schedule Caste, Schedule Tribes, Backward classes who are not having houses have submitted a representation to the Government to provide house sites and they are members of the said association. It is further stated that the authorities enquired into the beneficiaries numbering about five thousand and the State Government proposed to acquire the land at Kallur village including Acs. 26.53 cents in Survey Nos. 145 and 293 of Kallur villageand issued section 4(1) notification under Land Acquisition Act on 4-12-1995 proposing to acquire an extent of Acs. 24.55 cents in Survey Nos. 145/2B, 293/2, 293/4, 293/5, 293/6 and 293/8 of kalluru village, Kurnool mandal.

33. It is also stated that the 5th respondent filed writ petition no. 816 of 1996 and obtained an interim direction in W.P.M.P. No. 970 of 1996 on 24-1-1996.

34. It is also stated that the 5th respondent issued public notice on 4-1-1996 in Eenadu telugu daily newspaper notifying that the lands in survey No. 145 having an extent of Ac. 17.48 cents and Ac. 9.05 cents in S. No. 293 Ac belonging to 5th respondent devastanam were divided into plots and tenders were invited for the sale of the above lands.

35. It is stated that the writ petitioners being beneficiaries under the proposed land acquisition proceedings, if the self same land is sold to private persons, there will be clash and the litigation will be complicated. Respondents 3 and 5 had filed counter affidavits. It is stated by respondent No. 3 in para 5 of the counter affidavit that the temple owns Ac. 26.53 cents in Survey No.145 and 293 of Kallur village out of which an extent of 30-00 feets was left for rasthas etc., and the said land is quite opposite to A.I.R station and is in a developed area. It is also referred that earlier, the Kurnool District Gazetted Officers Co-op House Building Society Limited , Kurnool had filed WP. No. 25292 of 1995. After denying certain other allegations, the pendency of Writ Petition No. 816 of 1996 and the direction issued therein also had been mentioned after referring to different proceedings.

36. A specific stand was taken that the proposal made to proceed with the alienation of the land by tender cum public auction by the Commissioner, Endowments Department is in the interest of the institution and the petitioner also can participate in the public auction which will be convened by the Executive Officers of the subject temple.

37. The 5th respondent also filed counter affidavit, more or less on the same lines narrating several facts and justifying the action of the Commissioner of Endowments Department to proceed with the public auction.

38. Heard Mr. K. G. krishna Murthy, learned counsel appearing for petitioner in

W.P. No. 25292 of 1995, Mr. K. V. N.Bhupal , learned counsel appearing for the Institution and also Mr. Peddanna, learned Assistant Government Pleader for Land Acquisition and also Sri N. Krishna Murthy learned counsel appearing for petitioner in W.P.19486 of 1996 and perused the respective pleadings of the parties and material on record.

39. Sri K. G. K.Murthy, learned counsel for petitioner (Kurnool District Gazetted Officers Association) in W.P.25292 of 1995 made the following submissions: The main grievance of the writ petitioner is that the correspondence clearly goes to show that at a particular point of time, taking into consideration all the relevant circumstances, the Commissioner of Endowments in the interest of the institution, was inclined to alienate the lands by way of private negotiations in favour of the Gazetted officers Association, however subsequent thereto, the said proposal was dropped or rejected expressing the view to proceed with public auction, which is without any just reason and hence, the said action is arbitrary, being violative of Article 14 of the Constitution of India. Learned counsel had also drawn my attention to the impugned order and also correspondence. Having worked out the modalities and having required to ascertain the market value of the lands, there is no reason on the part of the Commissioner, Endowments to go back and take a decision to drop the alienation by private negotiations and to proceed with public auction relating to the lands in subject institutions. Sri N. Krishna Murthy, representing petitioner in W.P. No. 19486 of 1996 had submitted that the section 4(1) notification which is subject matter of the Writ Petition No. 816 of 1996 was in fact issued on justifiable grounds and workers members of the petitioner workers union are the beneficiaries and if the proposal to proceed with the public auction proposed by the Commissioner of Endowments is carried out, there may be likelihood of clash or creation of law and order problem on the spot.

40. Learned counsel also had justified the land acquisition proceedings stating that it is pursuance of the policy of the Government only the section 4(1) notification was issued, which is in accordance with law and hence prayed that the writ petition filed by the workers Union may have to be allowed.

41. On the same lines, the learned Assistant Government Pleader Sri Peddanna, had justified the issuance of Section 4(1) notification while making elaborate submissions in W.P. No. 816 of 1996 and the urgency clause was invoked and the purpose of acquisition specified in Sec. 4(1) notification is for public purpose and no illegality or infirmity had been pointed out in this regard and hence, the land acquisition proceedings are to be upheld. Sri K. V. N. Bhupal, learned counsel representing the Institution had submitted that in the facts and circumstances of the case, the issuance of Section 4(1) notification can be definitely said to be only a colourable exercise of power for obvious political reasons and was not a bona-fide exercise. Learned counsel had also drawn my attention to different provisions of the Act, in particular to Section 80 of the Act and had contended that prime consideration in relation to the alienation of the temple lands is the

benefit of the institution and institution is taking a specific stand that if the proposed alienation by way of private negotiation is carried out, the institution will get financial loss and on the other hand if the proposed public auction by Commissioner of Endowment is proceeded with, the institution will derive lot of benefit. No doubt, the learned counsel had drawn my attention to several of the contentions raised in the respective counter affidavits and also the affidavit filed in support of Writ petition No. 816 of 1996 in this regard.

42. Learned counsel also contended that there is absolutely no reason to dispense with Section 5(a) enquiry and the Executive Officer of the subject temple had immediately raised an objection to the proposed land acquisition proceedings and on that ground also the section 4(1) notification is liable to be quashed.

43. It was also further contended that even if guidelines in G.O.456 are to be followed, none of the guidelines specified therein had been observed and hence the proposed acquisition under land Acquisition Act is bad and liable to be quashed.

44. Learned counsel also vehemently contended that as far as the claim of the writ petitioner society in W.P.25292 of 1995 is concerned, an offer was made even by the society expressing the willingness to participate in the public auction. No doubt, relating to this aspect, there appears to be some serious controversy between the parties, when the said offer was made.

45. The factual matrix had been dealt with in detail, which need not be repeated again.

46. The dispute is relating to land belonging to Institution, it is not in dispute that there was correspondence between the writ petitioner in W.P.25292 of 95 and the Commissioner of Endowment and also the Revenue authorities and during the correspondence, no doubt a tentative decision was also arrived at but the same was not finalised. The main contention raised by learned counsel for writ petitioner is that having gone to such an extent in the case of private negotiations, whether the commissioner is justified in withdrawing the said proposal and proposing to proceed with the alienation by way of public auction. This is the arena where, it is seriously attacked that the action is arbitrary and violative of Article 14 of the Constitution of India. It is no doubt true that in the process of making a decision, the competent authority may have to take into consideration several facts and circumstances involved in the matter. The relevant portion of the impugned order dated 6-6-1995 in Writ Petition No. 25292 of 1995 reads as follows:

"I invite your attention to the references cited. I would like to inform you that this Department has decided to sell away the land measuring Ac. 24.59 cents, belonging to Sri Eswara Veerabhadra and Sri Bhimeswara Swamy Temple, Kurnool (village), Kurnool district in tender-cum-public auction instead of alienating the above said land in favour of Gazetted Officers Association otherwise than by public auction, as it is advantageous to the institution.

I therefore request you to drop further action for alienation of the above said land of Ac. 24.59 cents in favour of Gazetted Officers Association otherwise than by public auction."

47. In the reference, proceedings dt. 19-5-1994 20.11.94 and 12.3.1995 had been referred to. It is pertinent to note that, in the counter affidavit, it has been specifically mentioned that several other associations had also approached and there appears to be some problem in this regard. Apart from this aspect of the matter, it is needless to mention that while exercising powers u/s 80 of the Act to proceed with the public auction is the normal rule and to resort to private negotiations is only an exceptional case. It may be that the Commissioner of Endowments at a particular point of time had thought it fit to ascertain the market value for the purpose of alienation by private negotiations in favour of the writ petitioner association in W.P.25292 of 1995. The correspondence also fully supports several contentions advanced in this regard by the learned counsel representing the writ petitioner in W.P.25292 of 95. However, the same was at the stage of a proposal in the decision making process and the proposal had been withdrawn by the self same authority and a decision had been taken in this regard to proceed with public auction.

48. Whether this action can be styled as arbitrary has to be considered. Section 80(1) of the A.P. Charitable and Hindu Religious Institutions and Endowment Act , reads as follows:

Sec. 80(A) Any gift , sale, exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution, endowment shall be null and void unless any such transaction, not being a gift, is affected with the prior sanction of the Commissioner.

(B) The Commissioner, may, after publishing in the Andhra Pradesh Gazette the particulars relating to the proposed transaction and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any received from the trustee or other person having interest, accord such sanction where he considers that the transaction is-

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)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;

Provided further that the Government may purchase the lands situated in Scheduled Areas belonging to institutions or endowments, wherever necessary, otherwise than by public auction and assign such lands to the members of the Scheduled Tribes.

49. Explanation: In this section, the expression "Scheduled Tribe" shall have the meaning assigned to it in clause 25 of Article 366 of the Constitution and the expression "Scheduled Area" shall have the meaning assigned to it in sub-paragraph (1) of paragraph 6 of the Fifth Schedule to the Constitution of India.

50. No doubt, first provision says that the Government may in the interest of the Institution or Endowment and for the reasons to be recorded in writing permit the sale of such property otherwise than by public auction.

51. In the present case, it had been urged that such stage had not reached at all, and it is at the stage of only proposal.

52. The Hon''ble Supreme Court in C. RAMI REDDY Vs. GOVERNMENT OF A.P. while deprecating the action of resorting to alienation of the temple properties by private negotiations held as follows:

"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 respondent 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 of clause (3) herein.

(6) The other terms and conditions may be such as are usually incorporated in such public auctions by the Commissioner who shall specify them along with the

above mentioned terms in the public notice."

53. The same view was expressed by this Court, even in V. NARASIMHACHARYULU Vs. STATE OF A.P. and EMPLOYEES ASSOCIATION Vs. SRI CHENNA KESHAVA SWAMY TEMPLE. In the light of this clear legal position, the decision taken by the Commissioner of Endowments changing the mind of shifting the stand and resorting to proceed with the public auction cannot be said to be either arbitrary or illegal. In my considered opinion, the Commissioner of Endowments even at a later point of time had arrived at a correct conclusion especially in the light of the fact that the institution is taking a stand that finalisation of the proceedings by private negotiations will be detriment to the interest of the institution.

54. As far as the stand taken by the writ petition in W.P. No. 19486 of 1996 is concerned the result of the writ petition will depend upon the result in the main writ petition i.e., W.P.816 of 1996, where in the land acquisition proceedings had been questioned by the institution. The notification issued in Eenadu Telugu Daily dated 4-12-1995 by first respondent relating to acquisition of the lands in the aforesaid survey Numbers had been questioned. As can be seen from the notification, urgency clause had been invoked and section 5(a) enquiry under the Act had been dispensed with, the validity or otherwise of this action may have to be viewed , in the light of the background of the case and several facts and circumstances involved in the case.

55. It is brought to my notice that the proposed public auction also was notified and published in the gazette on 23-11-1995. It is pertinent to note that the notification published in Eenadu Telugu Daily, dt. 4-12-95 in RC No. K89/95 dated 23-11-1995 which h is questioned in W.P.816/1996 also is on the same day.

56. The Institution also had raised an objection saying that several alternative lands are available and the other guidelines even under G.O.Ms.No. 456 had not been followed at all, which ought to have been followed while proposing to acquire the lands of an institution and even in this view of the matter, dispensing with sec. 5(a) enquiry is bad. It is also pertinent that immediately after issuance of Sec. 4(1) notification, the Executive Officer rightly had raised an objection dated 15-12-1995 stating that the interest of the institution will be prejudiced if land acquisition proceedings are resorted to . Here, is a case, where the Government purported to exercise powers in pursuance of the policy resorted to the land acquisition proceedings by issuing Sec. 4(1) notification and the very institution raising an objection stating that the land acquisition proceedings will not be in the interest of the institution but it will be detrimental to the interest of the institution. In such cases of acquisition of temple lands, in my considered opinion the interest of the institution must also have to be kept in mind, especially in view of the guidelines issued in G.O.Ms.No. 456, in the light of the fact that validity of the same had already been upheld by this Court in

V. V. SEETARAMA SASTRY Vs. STATE OF A.P.

57. Viewed from any angle, since none of these aspects had been considered and invoking the urgency clause u/s 17 of the Land Acquisition Act, by dispensing with Section 5(a) enquiry also cannot be sustained, in the light of the facts and circumstances of the case. The section 4(1) notification , in this regard, in my opinion, cannot be sustained in law. No doubt, the learned Asst. Government Pleader for Land Acquisition had submitted that if this Court feels that the dispensing with Section 5(a) enquiry is bad, even at this stage, an opportunity can be given to the institution to be heard and on that ground the 4(1) notification need not be quashed.

58. As already stated supra, the Commissioner of Endowments, who is the competent authority to decide these matters under the provisions of the Act 30 of 1987 had taken a decision taking all the facts and circumstances into consideration to proceed with public auction by exercising powers u/s 80 of the Act. Hence, in the light of the same, I do not see any justifiable reason to resort to invocation of provisions of the Land Acquisition in this regard, especially keeping in view the interest of the institution, which should be the prime consideration, this Court is inclined to make the following order.

59. Writ Petition No.25292 of 1995 is devoid of merits and the same is dismissed. Accordingly, Writ Petition No. 19486 of 1996 also is without any substance, hence the same is accordingly dismissed.

60. Writ Petition No. 816 of 1996 is hereby allowed and impugned 4(1) notification is quashed. However, in the light of the peculiar facts and circumstances, this Court is not inclined to make any order in relation to costs.

