
(1999) 07 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 41 and 11552 of 1999

L. Kanta Rao

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Alienation of Immovable Property Rules, 1987 — Rule 14
Constitution of India, 1950 — Article 226

Citation : (1999) 4 ALT 419

Hon'ble Judges : T.Ch. Surya Rao, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : A. Rajasekhara Reddy, for the Appellant; K. Manikyala Rao, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The petitioner in both the writ petitions is the same. The subject matter of the writ petitions is the sale of Ac. 1.81 cents belonging to 2nd respondent- Temple situate in R.S. No. 691 of Eluru town. The 3rd respondent representing M/s. Srinivasa Enterprises was the highest bidder in the public auction conducted on 24-6-1998 pursuant to the permission granted by the Government. The bid was knocked down in favour of 3rd respondent for Rs. 13.01 lakhs per acre. The sale was confirmed by the Commissioner of Endowments (1st respondent) on 22-12-1998 in supersession of his decision taken earlier to cancel the auction and to hold re-auction.

2. The 1st writ petition is filed seeking a declaration questioning the action of respondents 1 and 2 in proceeding to complete the sale pursuant to auction held on 24-6-1998 as illegal and arbitrary. It is the case of the petitioner that the land in question which is valuable and suitable for house-sites and commercial buildings, did not fetch fair price at the auction. The petitioner submits that the land will fetch not less than Rs. 30 lakhs whereas the 3rd respondent offered only Rs. 23.54 lakhs. The petitioner offered to furnish guarantee for the amount of Rs. 30 lakhs and prayed for re-auction. The learned single Judge of this Court

while admitting the writ petition on 5-1-1999 granted interim stay of further proceedings subject to the condition of the petitioner furnishing bank guarantee for a sum of Rs. 30 lakhs to the satisfaction of the 1st respondent within two weeks. It appears that the petitioner complied with the said condition. By an order dated 10-2-1999, the Commissioner cancelled the sale confirmation order "in view of the High Court orders" and directed re-auction keeping the upset price at Rs. 30 lakhs. No show cause notice was given to the buyer. Against this order, a revision petition was filed before the State Government (Endowments Department). The Government by its order dated 8-3-1999 while calling for the remarks from the Commissioner, stayed the operation of the order dated 10-2-1999 pending consideration of the matter. Questioning this order of the Government, the 2nd writ petition is filed.

3. It is seen from the file produced by the learned Government Pleader that in the light of the discussions the Commissioner had with the Government Pleader of the High Court, the Office order dated 10-2-1999 directing re-auction of the land was cancelled by issuing telegraphic instructions to the Executive Officer. The letter addressed to the Government Pleader is dated 11-3-1999. Though it is not clear from the record, evidently, the decision was taken to revoke the earlier order dated 10-2-1999 in view of the fact that the matter is subjudice.

4. Soon after the auction, one Jagat Kumar filed a petition that the price fetched in the auction was low and that there were certain irregularities in the conduct of the auction. He claimed that the land will fetch more than Rs. 20 lakhs per acre. Ultimately, he backed out from the offer and expressed his willingness to purchase only 1200 Sq. yds. at that rate. But in the meanwhile on the representation of Jagat Kumar, telegraphic orders were issued on 24-7-1998 by the Commissioner cancelling the auction. This decision was taken even before the report was obtained from the subordinate authorities. Again, on 31-8-1998, the Commissioner directed the Executive Officer to conduct re-auction. In the meanwhile, the 3rd respondent filed revision petition before the Government and the same was pending. However, after receiving the detailed report of the Asst. Commissioner of Endowments, the Commissioner thought it fit to confirm the auction in exercise of power under Rule 14 and accordingly, issued proceedings dated 22-12-1998. A sale deed was also executed in favour of the 3rd respondent. The events that took place thereafter have already been noted. Now, the revision petition is pending before the Government and the Government has issued stay orders.

5. The learned Counsel for the petitioner contends that the valuable land fit for house-sites and shops was sold on acreage basis, without fixing proper upset price. The Commissioner of Endowments having realised this fact, directed cancellation of sale and re-auction, but he went back on it and again confirmed the sale when the 1st revision petition filed by the 3rd respondent was pending before the Government. It is further submitted that the confirmation of sale was not done within the time stipulated in Rule 14 and therefore, the confirmation

itself was invalid. Finally, it is submitted that in the interest of the Institution, the offer made by the writ petitioner should be accepted, more so when he has furnished bank guarantee as per the interim order of this Court.

6. The contention of the learned Counsel for the 3rd respondent is that the auction sale having once been confirmed under Rule 14 of the Alienation of Immovable Property Rules, cannot be re-opened or revoked, more especially when there is no allegation of fraud or collusion. It is submitted that the price paid by his client is fair and reasonable and the Institution could not get higher offer even after waiting for six months. It is pointed out that the petitioner did not participate in the auction and his belated offer to pay more amount cannot be a ground to set aside the auction at this stage. The learned Counsel for the 3rd respondent also contends that the cancellation of sale before the confirmation was done hurriedly without considering all the aspects at the instance of a person who was ultimately not willing to deposit the amount offered. As such cancellation was found to be unwarranted, the Commissioner rightly confirmed the auction after receiving the reports of the concerned officials. It is further submitted that the Commissioner was not justified in cancelling the sale after confirmation during the pendency of the writ petition, that too without assigning any specific reasons. It is also contended by the learned Government Pleader as well as the 3rd respondent's Counsel that the Government has jurisdiction to entertain the revision and to pass appropriate interim orders.

7. A perusal of the record and the various decisions taken by the Commissioner from the date of auction held, reveals inconsistent stand on the part of the Commissioner from time to time. Though, we do not want to go to the extent of holding that the Commissioner acted mala fide, we observe that it has given rise to unnecessary controversies and uncertainties. Be that as it may, in these writ proceedings under Article 226, it is neither appropriate nor proper to go into the questions as to the sufficiency of the price realised, correctness of the procedure adopted at the auction and other allied questions of fact, more so, when the proceedings confirming sale in favour of 3rd respondent have not been questioned before us. In the normal course, we would have left it to the Government to adjudicate all these matters in the pending revision petition as it cannot be said that the Government has no power to entertain the revision petition. Nor can we find fault with the grant of an interim order pending consideration of the revision petition. But, there is one problem which we have to take note of. The order dated 10-2-1999 directing re-auction after the interim order was passed by this Court, was the subject matter of revision before the Government. As already noticed, the record reveals that the said order has been revoked by the Commissioner himself, obviously because the Commissioner felt that when the writ petition was pending, it was not proper to pass any order of that nature. Moreover, the said order dated 10-2-1999 was passed without giving any notice or opportunity of hearing to the 3rd respondent who is undoubtedly affected by that order. The Commissioner has done the right thing in revoking

that order. The result is that the order dated 10-2-1999 assailed before the Government no longer holds the field. Thus, the revision petition has practically become infructuous. In these circumstances, the Government cannot be expected to decide the issue on merits, unless it takes up revision proceedings suo motu against the order confirming the sale. Irrespective of the fact whether the Government initiates such proceedings suo motu, it is open to the petitioner to file a revision petition to the Government questioning the order of confirmation of sale dated 22-12-1998. If such petition is filed within 15 days from to-day, the same shall be entertained without raising any objection as to limitation and disposed of by the Government as per law as expeditiously as possible, at any rate within a period of three months from the date of filing of the revision petition. Accordingly, the writ petitions are disposed of. No costs.