(1997) 01 AP CK 0050

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9104 of 1989

Meka Kondaiah APPELLANT

Vs

State of Andhra Pradesh and Others RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 74

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 159, 80

Citation : (1997) 4 ALT 618

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : T. Veerabhadrayya, for the Appellant; G.P. for Respondent Nos. 1 to 3 and C.S.K.V. Ramanamurthy, for the Respondent

Judgement

Krishna Saran Shrivastav, J.—In this writ petition, under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ of Certiorari for requisitioning and quashing the order of the Government in G.O.Ms.No. 593, Revenue (Endowments-IV) Department, dated 15-6-1989.

2. The 4th respondent-temple is the owner of Ac.11.56 cts. of land in R.S.No. 163 of Satyavada village. On the southern edge of this land, Harijanawada is situated. The 4th respondent divided this Ac. 11.56 cts. of land into six bits admeasuring Ac. 1.98 cts., Ac.1.68 cts., Ac. 1.90 cts., Ac.2.10 cts.. Ac. 1.90 cts. and Ac. 1.92 cts. Excluding, inter alia, Ac.1.90 cts. of land in R.S. No. 163 of Satyavada village (hereinafter referred to as ''the disputed land''), the Revenue (Endowment-IV) Department, Government of Andhra Pradesh, that is the first respondent, Vide G.O.Ms.No. 593, dated 15-6-1989, at the instance of the Commissioner, Endowments Department, that is the second respondent, permitted it to sell Ac.7 of land in Survey No. 163 (re-numbered as RS 163/2) owned by the 4th respondent-temple to Social Welfare Department, Government of Andhra Pradesh, for providing house sites to weaker sections of the society at

the rate of Rs. 53,000/- per acre u/s 80 (1) (c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, ''Endowment Act of 1987'') and thereafter the 4th respondent delivered the possession of the aforesaid land of Ac.7 to the Social Welfare Department, Government of Andhra Pradesh on 4-3-1993 and pattas were distributed to the beneficiaries.

3. The case of the petitioner, in brief, is that he is a lessee of the 4th respondent-temple in respect of the disputed land, that is to say Ac.1.90 of land in Survey No. 163 of village Satyavada and had also filed A.T.C.78/87 against one Manthena Peda Suraparaju in the Court of Special Officer-cum-District Munsif, Tanuku, under the Andhra Pradesh (Andhra Area) Tenancy Act 18 of 1956 (for short, ''Andhra Area Tenancy Act''), for a declaration that he is a cultivating tenant in respect of the land in question. The permission granted by the first respondent to sell the land admeasuring Ac.7 is Survey No. 163/2 at the rate of Rs. 53,000/- per acre to the Social Welfare Department of the Government of Andhra Pradesh for the purposes of providing house sites to the weaker sections of the society vide G.O.Ms.No. 593, dated 15-6-1989 is illegal and without jurisdiction because (1) the petitioner is a cultivating tenant and his right as a cultivating tenant is protected under the Andhra Area Tenancy Act read with the amending Act 39 of 1974 and, therefore, he cannot be dispossessed from the land in question; (2) the provisions of the Andhra Area Tenancy Act have overriding effect on the provisions of the Endowment Act; (3) the petitioner has right to exercise his option to purchase the land in question including Ac.7 of the aforementioned land and his valuable right cannot be taken away by resorting to the provisions of Section 80 of the Endowment Act and (4) no objections were invited as per rules before sending the proposal for selling the land and the second respondent did not apply the mind for seeking permission to sell the land by private negotiation and, therefore, the impugned notification is liable to be quashed.

4. The fourth respondent, through its counter, denied the claim of the petitioner, alleging that the land in question was never leased out to the petitioner for any amount much less Rs. 1,320/- per acre for Fasli years 1377-1382 or for any period. It has denied that the land in question was ever in possession of the petitioner as a lessee or otherwise. It has alleged that the aforementioned land of Ac. 11.56 cts. was divided into six plots and one plot admeasuring Ac. 1.90 cts. (disputed land) was given on lease to one Manthena Peda Suraparaju, in the year 1967. The said lessee had died in the year 1986. After his death, the petitioner falsely claimed himself to be a tenant of the said plot and tried to encroach upon the said plot, but this respondent-temple has been in cultivating possession of the same under agency system and this fact has been admitted by the petitioner. This respondent-temple filed a suit for permanent injunction against the petitioner in O.S. 206/93 on the file of the I Additional Munsif Magistrate, Tanuku, along with an application for temporary injunction bearing No. 1402/1993 and obtained a temporary injunction against the petitioner on

22-7-1993 and the suit is pending. Therefore, the writ petition is liable to be dismissed.

5. The second respondent took almost similar pleas as have been taken by the fourth respondent. It is admitted that the petitioner had obtained an ex parte order by the Special Officer under the provisions of the Tenancy Act in respect of the laird in question, but pleaded that the 4th respondent has obtained a temporary injunction against the petitioner in O.S. No. 206/93 on the file of the I Additional District Munsif, Tanuku, and the land in question has been leased out on agency system for the year 1993-94 to Sri V.V. Raju who is in cultivating possession of the land in question on behalf of the fourth respondent for the years 1994-95,1995-96 and 1996-97 also. It is further alleged that the District Collector, Warangal, had initiated proceedings for acquiring the land in Survey No. 163/2 admeasuring Ac.7 (wrongly typed as 200 Ac.) belonging to the 4th respondent-temple for providing house sites to the weaker sections in consultation with the Endowment Department. The proposal has been considered by the first respondent which has issued G.O.Ms.No. 593, dated 15-6-1989 according permission to sell Ac. 7 of land in Survey No. 163/2by private negotiations at the rate of Rs. 53,000/-per acre to the Social Welfare Department for providing house sites to the weaker sections. The petitioner has no locus standi and, therefore, the writ petition is liable to be dismissed.

6. I have heard the learned counsel of the petitioner, the learned Government Pleader and the learned Standing Counsel of the respondents No. 3 and 4.

7. It is no longer in dispute before me that the 1st respondent has given permission to the second respondent to sell the disputed land by private negotiation to the Social Welfare Department for providing house sites to weaker sections of the society.

8. Whether the petitioner is a cultivating tenant of the disputed land or he is a trespasser is a disputed question of fact which cannot be decided in summary proceedings under Article 226 of the Constitution of India, particularly when the 4th respondent in O.S.No. 206/93 has filed a suit for permanent injunction against the petitioner and has obtained a temporary injunction which is still subsisting and the civil suit is pending.

9. For the reasons stated above, it does not appear necessary to decide whether the petitioner is a cultivating tenant of the 4th respondent or not, that the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act have got overriding effect over the provisions of the Endowment Act and that the petitioner has got a right to exercise his option to purchase the disputed land and/or the land of 7 Acs. in question by resorting to the provisions of Section 80 of the Endowment Act or not, for deciding the validity of the impugned notification whereby the 1st respondent-State has permitted the second respondent to sell the 7 Acs. of land in question to the Social Welfare Department.

10. In case of Chenchu Rami Reddy and Another Vs. Government of Andhra

Pradesh and Others, , the Revenue (Endowments-III) Department vide G.O.Rt.No. 232, dated 12-2-1982 had accorded permission under proviso to Clause (c) of Sub-section (1) of Section 74 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (hereinafter referred to as the ''Endowment Act 1966'') for sale of the lands belonging to Sri Bugga Math, Tirupathi, Chandragiri Taluk, Chittoor District in favour of the sitting tenants by private negotiations, on the basis of the circumstances reported by the Commissioner, Endowment Department in references mentioned in the aforementioned G.O. The apex Court, reproducing the provisions of Section 74 (1) (c) of the above said Act, which are in pari materia with Section 80 (1) (c) of the Endowment Act of 1987, held that there was nothing to show that the authority which passed the impugned order was even aware of the essential pre-conditions envisaged by the Statute. If the concerned authority has 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 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. It further held that the impugned order deserves to be quashed as it suffers from the vice of non-application of mind to essential matters, and as there is no compliance with the relevant statutory provision.

11. In the case of Employees Association Vs. Sri Chenna Keshava Swamy Temple and Others, . examining the statutory provisions of Section 74 of the Endowment Act of 1966, a Full Bench of this Court has held:

"The object of the Act is to protect the property of Charitable and Hindu Religious Institutions and Endowments and ensure their proper administration and governance. Section 74 contains specific words that any sale of immovable property belonging to any religious or charitable institution shall be null and void unless such sale is effected with prior sanction of the Commissioner. Sub-section (1) of Section 74 itself prescribes the procedure that has to be followed by the Commissioner in according sanction for the sale of the immovable property. It provides that the Commissioner has to publish in the Andhra Pradesh Gazette the particulars relating to the proposed sale and invite objections or suggestions from the trustees or other person having interest in the religious or charitable institution or endowment. On a consideration of those objections or suggestions as the case may be, the Commissioner has to take a decision whether to accord sanction or not for the sale of the property, having regard to the criteria laid down in the section, viz., whether such sale is necessary or beneficial to the institution, whether the sale is consistent with the objects of the institution and whether the consideration fetched therefore is reasonable and proper. Clause (c) of Sub-section (1) of Section 74 in mandatory terms provides that every sale of immovable property sanctioned by the Commissioner shall be effected by public auction. This is subject to the exception that in the interest of the institution and for reasons to be recorded threrefor in writing, the State Government may permit the sale of such property otherwise than by public auction. Section 105 provides that no order passed, decision made in the instant case is the one which can be said to have been passed or made u/s 74 of the Act."

It further held :

"Thus, it is manifest from the provisions of the Act that any sale of immovable property belonging to a religious institution or endowment shall be null and void unless such sale is effected with the prior sanction of the Commissioner. When the Act itself prescribes the procedure to be followed by the Commissioner in according sanction for the sale of the property, it is needless to mention that the decision whether sanction shall be accorded or not shall be taken only by following the prescribed procedure."

12. Section 74 of the Endowment Act, 1987 (sic. 1966) reads as under :

"Alienation of immovable property:- (1) (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 or endowment shall be null and void unless any such transaction, not being a gift, is effected 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) the consideration therefore is adequate and proper.

(c) 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 :......"

13. As noted above, Section 74 of the Endowment Act, 1966 is in pari materia with Section 80 of the Endowment Act, 1987. The sit tight position of law as emerges from the principles of law laid down in the case of Chenchu Rami Reddy (1 supra) and in the case of Employees Association (2 supra) is that it is obligatory on the Commissioner of Endowments to follow the following pre-conditions:

(1) It should publish in the Andhra Pradesh Gazette the price relating to the proposed transaction and inviting objections and suggestions;

(2) It should consider whether the transaction is necessary or beneficial to the institution or endowment and is consistent with the object of the institution or endowment;

(3) The consideration is reasonable and proper.

After considering the aforementioned pre-conditions, the Commissioner, if satisfied and itself accords sanction, then, the sale of concerned immovable property should be effected by public auction, but the Government on its satisfaction that it is in the interest of the institution or endowment, permit the sale of the immovable property in question otherwise than by public auction and it should record its reasons for reaching such conclusion.

14. It is fairly conceded on behalf of the second respondent that the Commissioner, Endowment Department has not published in the Andhra Pradesh Gazette the price relating to the proposed sale inviting objections and suggestions from the trustee or other person having interest in religious or charitable institution or endowment. On 17-12-1988, the second respondent vide Lr.No. M1/54635/88, dated 17-12-1988 wrote to the Principal Secretary to Government, Revenue (Endts) Departments, Government of Andhra Pradesh, Hyderabad, that the Revenue Authorities and the Assistant Commissioner, Endowments, Eluru, have jointly inspected the lands belonging, inter alia, to the 4th respondent-temple and felt that the said lands were suitable for house sites. A joint meeting had been convened by the Joint Collector, West Godavarai District, on 26-9-1988 with the Deputy Commissioner, Endowments, Deputy Director, Social Welfare Department, Eluru and Assistant Commissioner, Endowments, Eluru, and they have resolved to request the Commissioner, Endowments, Andhra Pradesh, Hyderabad, for obtaining permission from the Government duly fixing the land value as detailed in the tabular form in that letter. It has been further mentioned in his letter that there were no alternative lands or the lands belonging to the Government (Poramboku) for providing house sites to weaker sections as per G.O.Ms.No. 776 Rev. (E-II) Dept., dated 9-5-1984, except the above said lands belonging to the above said temples. It has also been mentioned in it that the report of the Assistant Commissioner, Endowments, Eluru, would be submitted to the Government as soon as it is received.

15. A bare look at the aforementioned letter reveals that the second respondent-Commissioner did not apply his mind whether the transaction was necessary or beneficial to the institution or endowment and whether the consideration therefore was reasonable and proper. It is pertinent to note that the Commissioner has not sanctioned the sale of the land of Ac.7 referred to above and belonging to the fourth respondent and has not sought permission of the first respondent for alienating the land by private negotiation. He has simply mentioned what had been recommended to him in the impugned letter. Thus, it is crystal clear that there is no compliance with the pre-conditions ?engrafted in the relevant provision.

16. The impugned G.O.Ms.No. 593, dated 15-6-1989, in so far as material, reads as under:

Revenue (Endowments (4)) Department

G.O.Ms.No. 593 Dated 15-6-1989 Read the following:

(1) Commissioner, Endowments Department letter No. M-1/54635/ 88, dated 17-12-1988.

(2) Government Memo No. 144730/EndowmentsDepartment4-2/88, dated 29-12-88.

(3) Asst. Commissioner, Endowments Department, Eluru, Letter No. A17227/88, dt. 5-2-89.

**** ORDER:

Commissioner, Endowments Department informed in his letter No. 1, referred to above sought permission to sell the undermentioned temple lands to social welfare department for providing house sites to weaker Sections

S.No Subject Price Area & Determined Survey No. 1. Sri Someswaraswami Devasthanam, Vadluru village, Undrajavaram Mandal, W.G.Dt. Rs. 65,000 Ac.5-50- per acre 264/1 2. Sri Rudreswaraswami Temple, Velpur, Tanuku Mandal, WG. Rs. 60,000 Ac.7-12-214 per acre 3. Sri Sitharamaswami Temple, Satyawada village, Trigavaram Mandal, W.G.Dt. Rs. 53,000/- Ac. 7-00- per acre 163/2 2. In view of the proposals of the Commissioner, Endowments Department and u/s 80 (1) (c) of Endowments Act, permission is accorded to Endowments Department Officials to sell the above named temple lands at the rates indicated against them to the Social Welfare Department to provide house sites to weaker Sections."

17. On a comparison of the G.O.Rt.No. 232, dated 20-2-1982 and the G.O. in question, that is G.O.Ms.No. 593, dated 15-6-1989, it appears that both the G.Os. have been issued mutatis mutandis on almost similar lines.

In this G.O., the letter of the second respondent dated 17-12-1988 has been referred. Vide Government Memo No. 144730/Endowments Department 4-2/88, dated 29-12-1988, it appears that trust board resolution was required by the first respondent from the second respondent and the Assistant Commissioner, Endowments Department, Eluru, vide letter dated 5-2-1989 has forwarded his recommendation. This Memo and the letter have also been referred in the aforesaid G.O.Ms.No. 593, dated 15-6-1989.

18. It appears that the concerned authority has lost sight of the main two pre-conditions which are mandatory and should be complied with while granting permission to the Commissioner to sell the immovable property by private negotiation and, therefore, the question of recording its reason in support of sanctioning the sale by public auction does not arise. The duty cast on the

concerned authority to record reasons in the order itself for granting sanction has not been performed.

19. The argument on behalf of the second respondent that in compliance with the G.O.Ms.No. 776, dated 9-5-1984, the Commissioner had forwarded the proposal for alienating the land vide impugned letter dated 17-12-1988 and, therefore, the G.O.No. 593, dated 15-6-1989 is legal and valid, has been made only to be rejected for the following reasons.

20. The material portion of G.O.Ms.No. 776, dated 9-5-1984 reads as under:

"(2) Social Welfare Department which has taken up several housing schemes for Weaker Sections has expressed that obtaining consent of the Commissioner of Endowments Department and the Government for the acquisition of these lands under the Land Acquisition Act has been a time consuming process and therefore suggested that the procedure may be simplified so as to enable that department to acquire the lands quickly.

(3) The Government have examined the matter carefully and decided that the following procedure shall hereafter be adopted for acquisition of land belonging to the Endowments Department and Wakf Board by the Social Welfare Department for the purpose of allotment of House sites to the Weaker Sections.

1. Wherever Endowments lands are absolutely- required for housing purposes of weaker section, they may be obtained by private negotiations u/s 74 (1)(c) of the Endowments Act

2. To streamline the procedure and to cut down delay, it was agreed that the concerned Deputy Commissioner, Endowments, the representative of the institutions, and the Collector should at a final meeting examine the request of the Social Welfare Department and arrive at a decision on the following points in respect of cases where Trust Boards of Institutions have given their consent:

(a) Whether the acquisition of the proposed land is absolutely necessary for the Social Welfare Department and whether there is no other alternative land available for acquisition in the village, and

(b) to fix reasonable price to be paid for Endowments property. Thereafter a report shall be sent to the Commissioner of Endowments who will obtain necessary sanction from the Government u/s 74 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966)."

21. In the face of the provisions of Section 74 of the Endowment Act, 1966, I have no hesitation to say that the first respondent was not competent to issue G.O.Ms.No. 776, dated 9-5-1984. It is feebly urged on behalf of the second respondent that by virtue of Section 159 of the Endowment Act of 1987, the second (sic. first) respondent was competent to issue such G.O. in order to remove the difficulty. u/s 159 of the Endowment Act of 1987, the Government

can pass any order to remove the difficulty, but such order should not be inconsistent with the provisions of the Endowment Act of 1987. The formula prescribed by the first respondent in G.O.Ms.No. 776, dated 9-5-1984 runs counter to the provisions of Section 74 of the Endowment Act, 1966 and Section 80 of the Endowment Act of 1987 and, therefore, the act of the second respondent in forwarding the case to the first respondent on the basis of the G.O.Ms.No. 776, dated 9-5-1984 and, in turn, the act of the first respondent in issuing G.O.Ms.No. 593, dated 15-6-1988 (sic. 1989), being beyond jurisdiction are void and, therefore, the impugned G.O.Ms.No. 593, dated 15-6-1988 (sic. 1989) deserves to be ignored.

22. On a reading of the G.O.Ms.No. 776, dated 9-5-1984 and Lr.No. M1-54635/88, dated 17-12-1988, it appears that the Social Welfare Departmenthas undertaken several housing schemes for weaker sections of the society and in order to expedite its scheme, it approached the Government to sort out a simple procedure for acquiring lands quickly and in pursuance thereof, the first respondent had issued the aforesaid G.O.Ms.No. 776, dated 9-5-1984 and in pursuance thereof, the 7 acres, of land of the 4th respondent was purchased by the Social Welfare Department. The decision to sell the land was taken jointly by the Joint Collector, W.G.Dist, the Deputy Commissioner, Endowments, Kakinada, the Deputy Director, Social Welfare Department and the Assistant Commissioner, Endowments, Eluru. There appears to be no trust board in existence to the temple of the 4th respondent at the relevant time.

23. The G.P. for Endowment, that is the second respondent, has shown me the file from which it appears that, after the first respondent has accorded permission to sell the 7 acres of land of the 4th respondent sale deed was executed in favour of the Social Welfare Department, which divided the land in various plots and allotted the same to the members of weaker sections of the society and they, as stated by the G.P. for Endowment, in turn have constructed their houses in the meantime. The petitioner has dragged the fourth respondent to the Court of law and considering the resultant loss not only to the large number of the weaker section of the society, who might have invested their whole earnings for a shed over their heads, as also to the 4th respondent, I direct, in the larger interest of justice, the second and the first respondents to proceed further in the matter as per the provisions of Section 80 of the Endowment Act, 1987, keeping in mind the aforementioned peculiar situation and take appropriate decision accordingly. The effect of quashing the impugned G.O. is that the members of the weaker sections of the society shall be treated as licencees of the fourth respondent. There appears to be no need to pass an order restraining the fourth respondent and the second respondent from taking any action against them, because they had agreed to sell the 7 acres of land to the Social Welfare Department and I do hope that they will not take any action to dispossess them pending final decision by the respondents.

24. The writ petition is thus disposed of and the order in the aforementioned

terms is accordingly passed. No costs.

