
(2001) 04 AP CK 0107

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20506 of 2000

M.R. Gopalakrishna Reddy and Others

APPELLANT

Vs

Tirumala Tirupati Devasthanams and Others

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 23(2), 31(3)
Constitution of India, 1950 — Article 14, 21, 226, 300A
Land Acquisition Act, 1894 — Section 4(1), 5A, 6

Citation : (2001) 3 ALD 274 : (2001) 2 ALT 672

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. N. Subba Reddy for Mr. M.S. Ramachandra Rao, for the Appellant; Mr. D. Prakash Reddy, Addl. Advocate-General, for the Respondent

Judgement

1. The petitioners in the instant writ petition challenge the proceedings in ROC No.POI/2080/AEO(P)ATML/81, dated 20-10-2000 on the file of the first respondent. The petitioners accordingly pray for issuance of a writ of mandamus declaring the said proceedings as illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India. The petitioners seek consequential directions to provide alternative accommodation before dispossessing them from premises bearing No.1/67 in North Mada Street, Tirumala, Chittoor District.

2. It may be necessary to notice relevant facts leading to filing of this writ petition :

One Vyasa Raja Mutt is admittedly the owner of the structures bearing D.No.1/67 in North Mada Street, Tirumala, Chittoor District (hereinafter referred to as "the said premises"). The same has been acquired by way of a notification issued u/s 4(1) of the Land Acquisition Act, 1894 dated 29-4-1987 and published in A.P. Gazette dated 25-5-1987. The premises along with many other structures and sites were acquired on behalf of Tirumala Tirupathi Devasthanam for a public

purpose, namely widening the road and for construction of Kalyana Mandapam and for Cottages for pilgrims. The enquiry u/s 5-A of the Land Acquisition Act was conducted on 26-8-1987 after getting the notices duly published and served on all the interested persons as is required under the Act. The Manager of Vyasa Raja Mutt, Tirumala sent an objection petition dated 20-8-1987 requesting to drop the acquisition proceedings. However, no objection has been expressed to allow the area of the land actually required for the purpose of free movement of Vahanam, Ratham etc. The objections so raised were, however, rejected holding that the acquired property is required for a bona fide public purpose. The writ petitioners who claimed to be the tenants of the said Vyasa Raja Mutt never raised any objection whatsoever to the proposed acquisition.

3. The draft declaration u/s 6 of the Act was approved in Government Memo dated 3-2-1988 and the same was published in the A.P. State Gazette dated 17-3-1988. The draft notification as well as the draft declarations were duly published in the newspapers as is required in law. The substance of the notification and draft declaration was also published in the locality on 18-4-1988.

4. In the meanwhile the representative of Vyasa Raja Mutt, Tirumala filed Writ Petition No.8551 of 1988 in this Court. Petitioners also filed Writ Petition No.9896 of 1988 and obtained interim orders from this Court. The writ petitions so filed by the petitioners as well as the Mutt were dismissed. The Writ Appeal No.1373 of 1989 and 185 of 1990 filed by the Mutt and the petitioners were also dismissed by this Court on 16-3-1990.

5. The Land Acquisition Officer passed Award dated 15-2-1990 awarding compensation to Vyasa Raja Mutt represented by its Peetadhipathi. In the award itself it is stated there is no other person appeared as an interested person or occupier in respect of the said premises. The petitioners never challenged the award, nor claimed any compensation in respect of the said premises. The award has become final.

6. The Tirumala Tirupathi Devasthanam passed resolution No.346, dated 5-7-1990 resolving to provide alternative accommodation to traders who are affected by the acquisition of buildings under their occupation by the Devasthanam. The petitioners filed WP No.4960 of 1991 in this Court seeking a writ of mandamus for directing the Devasthanam to implement the resolution No.346, dated 5-7-1990 and not to dispossess the petitioners from the premises, which are in the occupation of the petitioners. This Court by an order dated 10-9-1996 dismissed the said writ petition. This Court in categorical terms held that "the resolution passed by the Board of Management of TTD is only an enabling provision to consider the claims of the petitioners in the similarly circumstanced for alternative accommodation in the newly constructed shopping complex and by this resolution it cannot be held that the Management of the TTD had incurred a liability or legal obligation not to dispossess the petitioners from the acquired land particularly when the land acquisition proceedings have attained finality. It is hardly necessary to state that once acquisition is complete

the State is entitled to take over possession of the property and all the interest and title in the divested property stand vested in the State. Therefore, no mandamus would issue compelling the TTD-Management not to dispossess the petitioners from the acquired lands till they are provided with alternative accommodation in the newly constructed shopping complex".

7. However, while dismissing the writ petition, the Court observed that the said order would not come in the way of the Devasthanam considering the claims of the petitioners for alternative accommodation in the newly constructed shopping complex in terms of the resolution No.346, dated 5-7-1990 and provide them alternative accommodation. Suffice it to notice that no relief has been granted by this Court to the petitioners. On the other hand, this Court declared that the petitioners are not entitled for any relief and no mandamus would issue compelling the Devasthanam not to dispossess the petitioners.

8. It is thus clear that this Court having upheld the validity of the very acquisition proceedings rejected the claim of the petitioners to remain in occupation of the premises until an alternative accommodation is provided to them in terms of resolution No.346, dated 5-7-1990. Yet the petitioners remain in occupation of the acquired premises in respect of which compensation had already been paid to the owners. The Devasthanam, having due regard to the observations made by this Court considered the claim of the petitioners for alternative accommodation and rejected the same under the proceedings dated 20-10-2000, which is impugned in this writ petition.

9. In the affidavit filed in support of the writ petition, it is stated that the Board of TTD passed resolution No.39 of 29-4-1999 reiterating its earlier policy of rehabilitation that tenants who lost shop be given another shop. Pursuant to the said policy decision, the respondents have allotted a shop to one Smt. O. Chenchamma vide proceedings dated 22-5-1999 and one Avula Subbaiah vide proceedings dated 24-8-1999 respectively. It is claimed that the petitioners are entitled for similar benefit.

10. In the counter-affidavit filed by the Devasthanam it is stated that the petitioners are not entitled for any relief whatsoever in this writ petition. The claim of the petitioners that they are the tenants of the acquired premises is denied. It is also stated that the petitioners are bound by the orders passed by this Court in WP No.4960 of 1991. The petitioners are not entitled to be in possession of the premises, which absolutely vest in Devasthanam free from all encumbrances. It is the case of the respondents-Devasthanam that the Devasthanam never recognised the petitioners as the tenants of the acquired premises. The letter if any addressed by the Mutt, which is not received by the Devasthanam itself, would not confer any right upon the petitioners. It is also stated that all the resolutions that were passed by the Devasthanam to provide rehabilitation to the effected persons are kept under suspension by the Government and, therefore, the petitioners cannot be permitted to rely upon the said resolutions which are under orders of suspension passed by the competent

authority.

11. Sri N. Subba Reddy, learned senior Counsel appearing on behalf of the petitioners contends that the impugned order passed by the first respondent-Devasthanam suffers from incurable legal infirmity. It is contended that the order is vitiated by non-application of mind. The petitioners are entitled to remain in the acquired premises until an alternative accommodation is provided to them by the Devasthanam in terms of their own resolution. At any rate, it is contended that the petitioners claim may have to be considered along with the other similar claims pending before the Government and until final decision is taken in the matter by the Government, the Devasthanam is not entitled to dispossess the petitioners from the premises.

12. Sri D. Prakash Reddy, learned Additional Advocate-General appearing on behalf of the Devasthanam contends that the writ petition is totally misconceived. The petitioners have no legal right to remain in possession of the acquired property, which absolutely stood vested in the Devasthanam. It is also contended that the judgment of this Court in WP No.4960 of 1991 operates as *res judicata* and the petitioners cannot be permitted to re-agitate the very same issue, which has been finally settled between the parties by this Court. Learned Additional Advocate-General further contends that the petitioners approached this Court with unclean hands by suppressing certain relevant facts, The resolutions proposing to provide alternative accommodation to the tenants effected by the acquisition themselves would not confer any legally enforceable right upon the petitioners to remain in possession of the acquired property. The claim for alternative accommodation has nothing to do with the Devasthanam's right to take possession of the acquired premises from the petitioners. It is lastly contended that the petitioners are not entitled for discretionary relief under Article 226 of the Constitution of India.

13. I have given my anxious consideration to the rival submissions made during the course of hearing of this writ petition.

14. It had already been noticed that the proceedings initiated under the Land Acquisition Act acquiring the premises in question had become final as early as in the year 1988. An award was passed and compensation was accordingly paid to the owners of the premises. The acquired premises absolutely stood vested free from all encumbrances in Devasthanam. The petitioners, in law, have no right as such to continue in occupation of the premises in question. Their claim to remain in possession of the land till the consideration of their claim for alternative accommodation in the newly constructed shopping complex in terms of resolution No.346, dated 5-7-1990 had already been rejected by this Court vide judgment dated 10-9-1996 in WP No.4960 of 1991. The petitioners are bound by the said order. The very same issue is sought to be re-agitated by the petitioners by relying upon the interim order passed by this Court in the said writ petition directing the respondents not to dispossess the petitioners from possession till alternative accommodation is provided to them in pursuance of resolution

No.346, dated 5-7-1990. The said interim order has emerged into the final order passed by this Court. In the affidavit filed in support of the writ petition, it is stated as if this Court directed the respondents to consider the claims of the petitioners for alternative accommodation in the newly constructed shopping complex in terms of resolution No.346, dated 5-7-1990. There is no such direction from this Court. The Court merely observed that the order dismissing the writ petition shall not come in the way of Devasthanam if it proposes to consider the claim of the petitioners for alternative accommodation. On the other hand, this Court in categorical terms held that the resolution passed by the Board of Management is only an enabling provision to consider the claims of the petitioners. It is held that once the acquisition is completed, the State is entitled to take over the possession of the property. In my considered opinion, the petitioners cannot be permitted to re-agitate the very same question in a different manner. The petitioners cannot be permitted to do so. Their claim to remain in occupation of the premises in question until an alternative accommodation is provided to them in terms of the resolution No.346, dated 5-7-1990 had already been rejected by this Court in categorical terms. The order passed by this Court in WP No.4960 of 1991 operates as resjudicata.

15. In my considered opinion, it is the Devasthanam, which had invited this trouble for itself. It is not known as to why the proceedings were kept pending for a period of four years after the dismissal of the writ petition filed by the petitioners. The Devasthanam was not under any legal obligation to pass the impugned order dated 20-10-2000.

16. The impugned order, in my considered opinion, does not suffer from any non-application of mind as such. No doubt in the impugned order it is observed that the Government of Andhra Pradesh had issued G.O. Ms. Nos.510 and 511 dated 28-6-1996 duly annulling the Resolutions of the Board of Trustees/Specified Authority of TTDs., pertaining to rehabilitation benefit to the owners/tenants at Tirumala. Much is sought to be made, out of it, by the learned senior Counsel appearing on behalf of the petitioners. According to the learned senior Counsel, the resolutions are kept under suspension but not annulled. May be so The fact remains that the resolutions under which the petitioner's claim for benefit are not in operation as on the date when the Executive Officer passed the impugned order. Inartistic and inarticulate expressions, if any, used in the impugned order by themselves would not give rise to any cause for issuing any writ of mandamus as prayed for by the petitioners. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot go by the form of the order. What is required to be reviewed is the substance of the order. It is not a case of non-application of mind as such by the Executive Officer of Devasthanam. The Executive Officer rightly referred to the Governmental order. The expression that the resolutions were "duly annulled" is not of any consequence. That itself would not reveal any non-application of mind.

17. Learned senior Counsel also contends that the observation of the Executive

Officer to the effect that the petitioners' names do not find place in any land acquisition notification issued by the Special Deputy Collector (LA), TTD, Tirupathi, while issuing the notification in respect of TS No.8, Ward No.3, Block-C in which the petitioners are said to be petty traders in building D.No.1-67, Tirumala is factually incorrect. Learned senior Counsel relies upon the statement dated 14-8-1992 showing the allotment of shops in the shopping complex to the displaced persons in which the petitioners' names are also shown. The list is not the one prepared under the provisions of the Land Acquisition Act. The notification issued u/s 4(1) and declaration made u/s 6 of the Land Acquisition Act do not contain the names of the petitioners. The compensation was awarded to Pecthahhipathi of Vyasa Raja Mutt represented by the General Power of Attorney. The petitioners never claimed any compensation whatsoever in respect of the acquired premises. The petitioners never raised any objection during the enquiry u/s 5-A of the Land Acquisition Act. In the circumstances, the observations made by the Executive Officer that the names of the petitioners did not find place in any of the land acquisition notifications is absolutely correct. The contention advanced in this regard is accordingly rejected.

18. There is no dispute whatsoever that the Government vide its Memo dated 4-10-1994 having examined the proposal of the Executive Officer, TTD, suspended the resolution No.346, dated 5-7-1990 with effect from 28-7-1993. The suspension continues to be in operation. The petitioners, therefore, cannot raise their claim upon resolution No.346, dated 5-7-1990 which is not in operation for whatever purpose as on today. Even otherwise, the resolution No.346, dated 5-7-1990 does not confer any legally enforceable right upon the petitioners to remain in occupation of the acquired premises even after finalisation of the acquisition proceedings initiated under the provisions of the Land Acquisition Act, 1894. The petitioners are unnecessarily mixing up both the issues. The decision, if any, to provide an alternative accommodation as a part of rehabilitation scheme in no manner would affect the right of TTD to take over possession of the acquired premises. The Devasthanam has every right to enter into possession of the acquired premises and resume the same from the occupants thereof. The petitioners cannot get over the judgment of this Court dated 10-9-1996 in WP No.4960 of 1991. The decision of this Court holding that "the management of the TTD had not incurred a liability or legal obligation not to dispossess the petitioners from the acquired premises" has become final. The same has to be given effect to.

19. The petitioners however, would rely upon the subsequent resolution No.39 dated 29-4-1999 under which the Devasthanam is stated to have reiterated its policy to provide alternative accommodation to the tenants who lost the shops. According to the petitioners, one O. Chenchamma and Avufa Subbaiah having provided alternative shops by the respondents vide proceedings dated 22-5-1999 and 24-8-1999. The petitioners seek similar relief on par with those persons. In the counter-affidavit filed by the Devasthanam, it is clearly explained that the said resolution has no application to the facts of the case. The resolution No.39

dated 29-4-1999 is intended to consider for providing shops to the persons affected by virtue of acquisition of site and structure in Pullareddy thota, Golla Krishnaiah Lafle, Shops near by wooden Them and in Rambhagicha Road. The premises bearing No.1-67, with which we are now concerned, are not covered by resolution No.39 dated 29-4-1999. But the fact remains that the Devasthanam passed such a resolution to provide alternative accommodation to persons affected by virtue of acquisition of site and structure in Pulla Reddy Thota etc. It is rather strange to notice that the Devasthanam refused to learn its lessons. It is not known as to why such a resolution has been passed by the Devasthanam even when such similar resolutions are kept in abeyance/suspension by the Government in exercise of its power under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. However, as observed by this Court in WP No.4960 of 1991 dated 10-9-1996 the Devasthanam has not incurred any liability or legal obligation as such to continue the petitioners in possession of acquired premises. It is not known as to under what circumstances, such resolutions have been passed by the 1TD. It is however stated that no shop is provided so far in pursuance of the resolution No.39 dated 29-4-1999 and the same has not been approved by the Government so far.

20. At this juncture it would be relevant to notice the decision in K. Jayaramaiah Chetty Vs. Spl. Dy. Collector and Land Acquisition Officer, TTD, Tirupathi and others, , wherein a learned single Judge of this Court after referring to the provisions of Chapter XIV of the A.P. Charitable and Hindu " Religious Institutions and Endowments Act, 1987 and various rules observed:

"A reading of the various rules referred to hereinabove, prima facie shows that the Tnist Board has no power or authority to allot alternate site to a owner of a land whose land has been acquired in accordance with the provisions of Act No.30 of 1987. Though under Chapter XXII, "exchange" of land is permissible, such action has to satisfy Rule 165 of the Rules; that is to say that such exchange is beneficial to TTD consistent with the object of TTD. When the TTD passed resolution No. 159, dated 28-5-1992 accepting the recommendations of the sub-committee, it is not clear whether these statutory rules made by the Governor vide G.O. Ms. No.311, dated 9-4-1990 were brought to the notice of the TTD Board or not.....it is rather curious as to how TTD passed a resolution to allot alternative sites to shops and choultries whose land was acquired In this case, the owner of the land was paid compensation and the Act does not provide for giving benefit of allotment of alternate site and therefore TTD has no power to allot land free of cost to the land oustees".

21. In the circumstances, it is not possible to place any reliance upon the said resolution and grant any relief to the petitioners.

"It is well settled that merely because the respondent-authority lias passed one illegal/unwarranted order, it does not entitle this Court to compel the authority to repeat that illegality again and again. The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible,4he

Court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if cannot be corrected, such an illegal or wrongful order cannot be made a basis for its repetition. The Court cannot give effect to an illegal or unwarranted action and any such direction from this Court would perpetuate the illegality and would be prejudicial to the interest of law and will do incalculable mischief to the public interest (See *Bakhtawar Singh and Another Vs. Union of India (UOI) and Another*,).

22. The Supreme Court in *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, , in some what similar facts situation explained the nature and scope of Article 14 and held:

"There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination. None of the 98 stall-holders was impleaded a party to the writ petitions. The appellants questioned the validity of the allotment of 98 shops on concessional rates, without trade zoning restrictions in favour of the stall-holders of Panchkuian Road, but they were primarily interested that some concessions in respect of licence fee and relaxation in trade zoning restrictions, be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution."

23. In the Counter-affidavit it is also explained that resolution No.39, dated 29-4-1999 is not approved by the Government and the same is under the consideration of the specified authority to cancel/suspend as it was issued prior to the Judgment of this Court delivered in a Batch of writ petitions and writ appeals. Similarly, the allotment issued in favour of one O. Chenchamma and

Avula Subbaiah is also stated to be under the active consideration for cancelling the same. The allotments were made prior to the judgments of this Court referred to hereinabove. In such view of the matter, the said resolution No.39, dated 29-4-1999 and some allotments made to the land oustees cannot form the basis for issuing any writ as prayed for. In my considered opinion, any such direction from this Court would amount to compelling the respondents to perpetuate the illegality. No writ of mandamus lies compelling the statutory authority to perpetuate the illegality. In the circumstances, question of hostile discrimination does not arise.

24. The judgments of the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and *S. Gurdial Singh and others Vs. Ludhiana Improvement Trust*, upon which reliance is placed by the learned senior Counsel would in no manner advance and strengthen the case of the petitioners. The learned senior Counsel would contend that the petitioners have a right to carry on trade or business and they cannot be evicted from the place and any such eviction would deprive their right to life guaranteed under Article 21 of the Constitution of India. The decision in *Olga Tellis (supra)* is at the instance of the weaker sections of the society who lived on the footpaths of Bombay nearer to that place. The Supreme Court observed that "the pavement dwellers choose a pavement or a slum in the vicinity of their place of work the time otherwise taken in commuting and its cost being forbidding for their slender means. To lose the pavement or the slum is to lose the job. The conclusion, therefore, in terms of the constitutional phraseology is that the eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life". It is difficult to appreciate as to how the said judgment would be applicable to the facts on hand. The premises in question has been acquired and the owners were already awarded compensation under the provisions of the Land Acquisition Act. If the petitioners are really the tenants as claimed by them, even they could have claimed compensation awarded under the Act. They cannot have better rights than the owners of the premises. The question of issuing any further notices to the petitioners does not arise. They are not entitled for any notice. The principles of natural justice are not attracted to the facts situation.

25. In this context it would be appropriate to refer to the decision of the Supreme Court in *New Riviera Coop. Housing Society and Another Vs. Special Land Acquisition Officer and Others*, in which the Supreme Court held that compulsory acquisition of the land for public purpose does not violate Article 21 of the Constitution nor the right to livelihood or right to shelter or dignity of person. It is observed:

"Right to shelter is undoubtedly a Fundamental Right. A person may be rendered shelterless, but it may be to serve a larger public purpose. Far from saying that he will be rendered shelterless this Court did not circumscribe the State's power of eminent domain, even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless. If that contention is

given credence no land can be acquired under the Act for any public purpose since in all such cases the owner/interested person would be deprived of his property. He is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, Section 23(2) provides solatium for compulsory acquisition against his wishes. Under those circumstances, it cannot be held that the acquisition for public purpose violates Article 21 of the Constitution for public purpose violates Article 21 of the Constitution or the right to livelihood or right to shelter or dignity of person,

In a case where the State comes forward with proposal to provide alternative sites, certainly the Court gives affect to that proposal and appropriate directions in that behalf were issued"ty this Court. But that principle cannot be extended as condition in every case of acquisition of the land that the owner must be given alternative site or flat. Only exception was as provided in Section 31(3) of the Act which does not apply to the petitioner. If that principle is extended, in no circumstances the State could acquire any land for public purpose. Thus considered, we are of the view that there is no substance in the contention raised by the Counsellor the appellant that the acquisition of the land violates his right to life offending Article 21 of the Constitution. (Emphasis is of mine).

26. The decision in Gurdial Singh (supra) does not support the case of the petitioners. It was a case where the respondents conceded that the petitioners could get a plot of land as Local Displaced Person in lieu of their acquired land according to the rules on the subject. It was under those circumstances the Supreme Court observed that it will be open to the appellants therein to make an application to the respondents for their consideration according to the scheme already framed for providing lands to Local Displaced Persons. The petitioners herein cannot be held to be displaced persons.

27. The petitioners cannot be granted liberty to approach the Government for consideration of their cases along with some claimants to whom show-cause notices have been issued by the Government proposing to cancel the resolutions of the Devasthanam regarding the allotment of alternative site/shops. The show-cause notices were upheld by this Court in Writ Appeal No.582 of 2000 and Batch dated 16-6-2000. The petitioners have not derived any benefit under any of the resolutions of the Devasthanam. The case of the petitioners is not similar to that of those claimants to whom the show-cause notices were directed to be issued by the Government.

28. In the circumstances, the operation of the impugned order cannot, be postponed until the disposal of the issue by the Government relating to providing alternative accommodation to the effected persons nor any direction could be given to the Devasthanam to await the orders of the Government.

29. For all the aforesaid reasons, the writ petition fails and shall stand accordingly dismissed with costs.