
(1994) 10 MAD CK 0002
In the Madras High Court

P. Arumugham

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 11-10-1994

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 114, 34

Citation : (1995) 2 MLJ 269

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—This writ petition seeks to quash paragraphs 3 (iii) and (iv) of G.O.Ms. No. 30, dated 28.1.1993 of the 1st respondent

and to direct respondents 3 and 4 to release the sale deed already executed by the 3rd respondent after completing registration.

2. Thus short facts are as follows:

Pursuant to application by the petitioner, who was tenant of the temple in question, the 2nd respondent by order dated 6.5.1987, accorded

sanction u/s 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the "the Act") for the

Executive Officer of the said temple (3rd respondent) to sell the temple property in question to the petitioner for a sum of Rs. 2,30,000. The 5th

respondent who had raised objection to the said sale before the 2nd respondent, preferred both revision petition before the 1st respondent and

W.P. No. 6423 of 1987 on the file of this Court, against the abovesaid order dated 6.5.1987. In the writ petition, this Court directed the 2nd

respondent to accept the petitioner's higher offer of Rs. 3,05,000 and confirmed the same in favour of the petitioner and dismissed the writ

petition. But, in the Writ Appeal No. 255 of 1988 filed by the 5th respondent herein, a Division Bench of this Court, by order dated 3.3.1988, set

aside the abovesaid order in the writ petition. However, it also dismissed the writ petition on the ground that the 5th respondent herein (writ

petitioner therein) having already availed of the alternative (revision) remedy, must prosecute the same. So, by the same order, the Division Bench

directed the said revision to be heard at an early date. It also held that in event of revisional authority coming to the conclusion that the abovesaid

land should be sold in public auction the upset price may be fixed at Rs. 3,05,000 Thereafter, it appears that after reminders from the petitioner

herein the 1st respondent passed the abovesaid impugned order dated 28.1.1993, whose operative portion is as follows:

(i) In supersession of the orders issued in G.O. Rt. No. 948, Commercial Taxes and Religious Endowments, dated 31.10.1988, the revision

petition filed u/s 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 by Thiru S. Dhandapani, is rejected:

(ii) The stay granted in Govt. Lrd. No. 3746/SEC 2(1)87-1, Commercial Taxes and Religious Endowments, dated 28.7.1987 is cancelled.

(iii) The Commissioner. Hindu Religious and Charitable Endowments Administration Department is requested to return the entire deposit amount

with interest accumulated thereon to Thiru P. Arumugham.

(iv) The Commissioner, Hindu Religious and Charitable Endowments Administration Department is requested to place the matter relating to sale of

the land measuring an extent of 4.84 acres in T.S. Nos. 2750/1,2750/2, and 2751 in Cuddalore Town belonging to A.M. Varadaraja Perumal

Temple. Thirupathiripuliyur in Cuddalore Taluk in public auction by fixing the upset price as Rs. 3,05,000 as per directions of the High Court

before the Temple Administration Board.

3. Aggrieved by the abovesaid paragraphs (iii) and (iv) of the operative portion of the abovesaid order the present writ petition has been filed to

quash the abovesaid paragraphs (iii) and (iv). The writ petition further seeks a direction to release the sale deed already executed by the 3rd

respondent, after completing the registration.

4. When W.M.P. No. 8435 of 1993 in this writ petition for stay of operation of the abovesaid paragraphs (iii) and (iv) of the impugned order,

came up for hearing, this Court passed the following order, dated 29.4.1994:

2. Mr. S. Sampathkumar, learned Counsel appearing for the petitioner, after some arguments has agreed for selling the suit land in public auction

subject to one suggestion. According to the learned Counsel, the petitioner has already deposited a sum of Rs. 3,05,000 and in the impugned

Government Order, the Government have directed the temple authority to return the said sum of Rs. 3,05,000 with interest to the petitioner. In the

event of the land in question were to be sold in the public auction at a price lesser than the amount payable, i.e., Rs. 3,05,000 with interest, then,

according to the learned Counsel for the petitioner, the sale in favour of the petitioner must be confirmed. If, on the other hand, the land fetches

more price than the abovesaid amount, the authority can decide the sale in favour of the successful bidder in the proposed public auction. To this

course, all the learned Counsel for the respondents also agreed.

3. In view of the agreement by learned Counsel on both sides as mentioned above, I pass the following order:

The concerned temple administration Board is directed to take steps to sell the land in question, namely, an extent of 4.84 acres in T.S. Nos.

2750/1, 2750/2 and 2751, in Cuddalore Town belonging to the third respondent Temple, in public auction, by fixing the upset price at Rs.

3,05,000 after giving wide publicity about the sale of the land in public auction and report the result of the public auction to this Court on or before

30.6.1994. This petition is ordered accordingly, No costs. (Office is directed to post the writ petition for further orders on 2.7.1994)

5. Then, the writ petition was posted before me on 28.7.1994: Learned Counsel for the 3rd respondent represented that the abovesaid Temple

Administration Board was not a party to the writ petition and that probably because of the said reason, the directed auction sale had not been

conducted yet and that if the 3rd respondent is given the above referred to direction, he would hold the auction and report the result in the first

week of September, 1994. Therefore, such a direction was given by me and the matter was directed to be called subsequently on 5.9.1994. But,

when once again the matter came up before me on 6.9.1994, learned Counsel for the petitioner vehemently argued that despite the earlier

directions in April itself, so far auction has not been held and that no further

extension should be granted for holding the auction. He also pointed out that he no doubt agreed to the abovesaid course of holding the auction afresh only in deference to the suggestion of the court in April, 1994 but since the auction is not held for a long time, it should not be taken that the consent given by him would enure any longer or for ever. He also pointed out that as per the above referred to order dated 29.4.1994, auction must have been conducted and the report thereof should have been given to this Court on or before 30.6.1994 itself, but, till now, no auction has been held at all. Further, he points out that earlier W.M.P. No. 19047 of 1994 dated 30.6.1994 was filed for extension of time for holding the auction by as much as three months. Further, even subsequently W.M.P. No. 22983 of 1994, dated 18.8.1994 was filed by the 3rd respondent for further extension of two months. Like this, according to him, the respondents are only trying to postpone the holding of the auction. That is why the said learned Counsel urged that the writ petition itself should be taken and disposed of on merits. No doubt, learned Counsel for respondents prayed for extension. But, finally in W.M.P. No. 22983 of 1994, I passed the order on 6.9.1994 refusing to grant any further extension and directing the posting of the writ petition itself for disposal on its merits. Accordingly the writ petition is hereby disposed of on merits.

6. In the impugned order, no specific reason has been stated at all for passing the abovesaid operative portion of the order, excepting stating as follows:

The Commissioner, Hindu Religious and Charitable Endowments Administration Department, who has been consulted on the observation and directions of the High Court in W.A. No. 225 of 1988 and on the revision petition and petition of Thiru C.S. Dhandapani and P. Arumugham mentioned at paras 1 and 2 above, has suggested to take de novo proceedings in this case and to issue orders according to the merits of the case in accordance with the judgment in W.A. No. 255 of 1988. Accordingly the Government examined the case in detail and enquired both Tvl. C.S.

Dhandapani and P. Arumugham on 12.8.1991 and passed the following orders:

Thus, it appears that the 1st respondent, for passing the impugned order, has mainly taken into account the observations in the abovesaid judgment

in W.A. No. 255 of 1988, though it also says that the Commissioner ""has

suggested to take de novo proceedings in this case.

7. Therefore, in this connection the relevant observations of the Division Bench have to be seen. They are as follows:

After giving our anxious consideration to the matter, we are of the view taking into account the interest of the institution and also taking note of the

fact that the price already offered by the 3rd respondent does not reflect the correct market value, the parties must be directed to agitate the matter

before the statutory appellate authority in the statutory appeal preferred by the appellant herein. In that way, we feel that the order of the learned

Judge accepting the offer and confirming the sale in favour of the 3rd respondent cannot be sustained as, in our view, the sale, in the circumstances

must not be by private negotiation. Accordingly, the order of the learned Judge is set aside, and we dismiss the writ petition on the ground that the

petitioner having already availed of the alternative remedy, must prosecute the same.

The learned Counsel for the petitioner submits that the abovesaid observations could only be taken as passing remarks made by the Division

Bench since the Bench only dismissed the writ petition on the sole ground that the alternative remedy of revision had been already availed of by the

writ petitioner therein (5th respondent herein). So according to learned Counsel for the petitioner, the statutory revision filed by the writ petitioner

therein must be heard independent of the abovesaid passing remarks made by the Division Bench. Learned Counsel also points out that that is why

even though one of the abovesaid passing remarks is that the sale must not be by private negotiation, the Division Bench finally concludes that, ""in

the event of the appellate authority coming to the conclusion that the landed property in question must be sold in public auction."" In other words,

according to him, the revisional authority must give independent reasons for coming to the conclusion that the landed property in question should be

sold in public auction, irrespective of what has been observed by the Division Bench. But, no such reason has been given at all in the impugned

order.

8. Further, though the Division Bench observes that the price already offered by the writ petitioner herein does not reflect the correct market value,

learned Counsel points out that the Division Bench also observes, ""the parties

must be directed to agitate the matter before the statutory appellate authority in the statutory appeal preferred by the appellant herein." (Though the expression "statutory appeal" is used here, it is really "statutory revision") Learned Counsel also points out that there was no data before the Division Bench regarding the correct market value and so the abovesaid observation cannot be taken as a conclusive one and it could be taken only as a passing remark. (In this regard I may also point out that learned Counsel for the respondents also could not point out that there was any data before the Division Bench regarding the correct market value). In this connection, learned Counsel for the petitioner also relies on the decisions of *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, and *Philip Jeyasingh Vs. The Joint Registrar of Co-operative Societies and Others*, . The relevant observation in *The State of Orissa Vs.*

Sudhansu Sekhar Misra and Others, , is as follows:

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein

nor what logically follows from the various observation made in it.

So, according to the said learned Counsel, the only decision of the Division Bench is that the writ petition has to be dismissed on the ground that

the writ petitioner therein has already availed the statutory revisional remedy and has to seek redress only in that statutory revision.

9. The relevant observations in *Philip Jeyasingh Vs. The Joint Registrar of Co-operative Societies and Others*, , therein is as follows:

What is binding in a judgment is only the ratio decidendi, which means, the reason or principle on which a case is decided.

According to the learned Counsel the ratio decidendi in the abovesaid Division Bench judgment is that the writ petition there in has to be dismissed

and the reason for coming to such a conclusion is that the statutory revisional remedy has been already availed of by the petitioner therein and he

has to seek redressal only therein and not in the writ petition.

10. On the other hand, learned Counsel for the respondents very much relied on the above referred to observation of the Division Bench and

according to them they should not be treated as passing remarks out as conclusive findings of the Division Bench.

11. But, I see very great force in the argument of learned Counsel for the

petitioner, particularly in the light of above referred to Supreme Court decision and the decision of this Court. If really, the above referred to observations of the Division Bench are taken as conclusive findings strictly speaking, there is nothing material to be done by the abovesaid revisional authority at all. Therefore, without taking note of the above referred to observations, the revisional authority should have reasoned out the whole case independently and come to a conclusion. But, that has not been done in the impugned order, as I have already mentioned.

12. Learned Counsel for the petitioner also argues that Section 34 of the Act does not provide for any public auction being conducted for the sale

of a temple land when sanction is asked for a particular sale by the temple authority in favour of a particular person. He also points out to the

admission by the Executive Officer - himself in the counter to W.P. No. 6433 of 1989 states, "The sale questioned...was held after due compliance

with the procedure. No doubt, in this connection learned Counsel for the respondents rely on *Chenchu Rami Reddy and Another Vs. Government*

of Andhra Pradesh and Others, , where the Supreme Court deprecated the action of the Government in permitting the sale of land belonging to

Charitable Endowments by private negotiation instead of by public auction and directed the land to be sold by public auction. But, this Supreme

Court decision can have no application to the present case in relation to Section 34 of the Act. The relevant portion of Section 34 of the Act runs

as follows:

any...sale...and any lease...belonging to... any religious institution shall be null and void unless it is sanctioned by the Commissioners being

necessary or beneficial to the institution. Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall

be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto: and all objections and suggestions

received from the trustee or other persons having interest shall be duly considered by the Commissioner.

So, it appears to me that Section 34 of the Act only contemplates giving or not giving sanction to a proposed sale, lease, etc. If the sale, lease etc.,

is necessary or beneficial to the institution, the Commissioner can sanction it, if not, he can say "no" to it. I do not think that Section 34 of the Act

contemplates that the Commissioner could instead of the proposed sale, suggest sale by any other mode, viz., sale by public auction. The term

proposed transaction"" used in the proviso therein would also corroborate my abovesaid view. No doubt if sanction is not granted for a particular

negotiated sale and the trustee comes forward with a request for sanction for a sale by a different mode, that is, sale by public auction, then no

doubt the Commissioner could consider the same in the light of what is contained u/s 34 of the Act. But, that is not the case here.

13. No doubt, learned Counsel for one of the respondents drew my attention to one of the. Rules u/s 116(2) (xiii) of the Act, saying that lease of

immovable property belonging to a religious institution shall be made by the public auction. But, that Rule only provides for a lease and not for a

sale. It can also be argued that the fact that there is no such similar rule with reference to sale, shows, that sale need not necessarily be by public

auction.

14. For all these reasons, I quash the abovesaid impugned order in its entirety and direct the abovesaid revisional authority, viz., the 1st respondent

to dispose of the matter afresh in the light of my above observations. The writ petition is accordingly allowed. No costs.