(2013) 12 AP CK 0107

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 29931 of 2010 and 4526 of 2011

P.B. Ramesh and Others APPELLANT

Vs

Government of Andhra Pradesh and Others RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) 4 ALD 339 : (2014) 3 ALT 584

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J;K.C. Bhanu, J

Bench : Division Bench

Advocate : K.S. Murthy, for the Appellant; S.R. Ashok, appearing for Sri Sivaraju Srinivas, Spl. Standing Counsel for Tirumala Tirupati Devasthanams for Respondent Nos. 3 and 4, Sri B. Adinarayana Rao, for Respondent Nos. 5 to 12, Sri V. Jagapathi for Respondent No. 13, for the Respondent

Final Decision : Disposed Off

Judgement

Kalyan Jyoti Sengupta, C.J.—These two writ petitions were heard together, as the subject matter of the writ petitions being identical. The following prayer was made in W.P. No. 29931 of 2010.

...to issue a Writ of Mandamus declaring the action on the part of the respondents in deciding to give lands belonging to deity Sri Laxmi Narayana Swamy Lord Sri Venkateswara, Tirumala Tirupati Devasthanams, Chittoor District, Andhra Pradesh, at S.V. Poor Home (25 acres), S.V. Dairy Farm (20 acres), Vinayakanagar (6 acres), S.G.S. Arts College (6 acres) for house sites, as illegal and unconstitutional and consequently set aside the G.O. Ms. No. 1153, dt. 1.10.2008 issued by respondent No. 1 and the resolution of the TTD dt. 12.10.2006, item No. 416 after declaring that the property of deity Sri Laxmi Narayana Swamy and lands of Lord Venkateswara, Tirupati, cannot be alienated, given off by the TTD....

In the second writ petition, being W.P. No. 4526 of 2011, the following relief was claimed:

...to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action on the part of the respondents in alienating the lands belonging to Lord Sri Venkateswara, Tirumala Tirupati Devasthanams, Chittoor District, Andhra Pradesh, at S.V. Poor Homes (25 acres), S.V. Dairy Farm (20 acres), Vinayakanagar (6 acres), S.G.S. Arts College (6 acres) in the name of giving house sites, houses to employees is illegal and unconstitutional and consequently set aside the G.O. Ms. No. 1153, dt. 1.10.2008 after declaring that the lands of immovable properties of Lord Sri Venkateswara, Tirupati, cannot be alienated by the Tirumala Tirupati Devasthanams, after declaring that the TTD and the Government cannot alienate the properties of deity of Sri Venkateswara...

Thus, in both the writ petitions, the challenge is focused on G.O. Ms. No. 1153, dt. 1.10.2008 and of course also the action of respondent No. 3, namely, Tirumala Tirupati Devasthanams (hereinafter referred to as "TTD") to alienate the plots of lands in the manner and to the persons as mentioned in the prayers.

2. It has been alleged commonly that respondent No. 3 has no power to alienate or sell the lands belonging to any person, other than by public auction. Of course, in the first writ petition it has been alleged that the land previously belonged to deity Sri Laxmi Narayana Swamy Temple, cannot be sold on the strength of resolution of respondent No. 3, dt. 12.10.2006 as at that point of time it has no power to alienate or sell by reason of the fact that the said property did not vest on respondent No. 3.

In our view, by passage of time, the aforesaid question has become infructuous, because subsequently, the land belonging to Sri Laxmi Narayana Swamy Temple has been vested lawfully on TTD.

3. Upon reading of pleadings in both the writ petitions, it is now established fact that by virtue of the order dt. 24.6.2008 passed by a Division Bench of this Court in W.P.M.P. No. 3400 of 2008 in W.P. No. 11812 of 2005, in modification of earlier interim order passed, respondent No. 3 can sell or alienate the property. The relevant portion of the said order reads as under:

In the circumstances, the order dated 17.6.2008 passed in W.P.M.P. No. 15055 of 2005 is modified to the effect that the applicant shall be permitted to do the needful for getting the lands referred to in paragraph-1 acquired and upon acquisition, the same can be granted to its employees in pursuance of the housing project. There are certain lands, which belong to the applicant itself, and for that purpose, no acquisition proceedings are required and hence it would be open to the applicant to use the said land for allotting the same to its employees. Needless to say that the provisions of Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 shall be to lowed while dealing with the said land.

4. Now, the issues involved in both the writ petitions have become narrower, namely, whether the resolution taken by respondent No. 3 and subsequently the sanction of the Government by the impugned order are valid or not.

5. In the context as above, learned counsel for the petitioners submits that the petitioners, who are devotees, filed the writ petitions complaining alienation of immovable property of agricultural land, belonging to a Hindu deity temple, Sri Laxmi Narayana Swamy Temple, Tirupati. This temple has distinct identity from main temple at Tirumala. The immovable properties belonging to one deity cannot be alienated by the Trust Board administering another temple. The TTD Board passed a resolution on 12.10.2006 resolving to allot/alienate the land belonging to Sri Laxmi Narayana Swamy Temple (100 Acres) and 45 Acres of land belonging to TTD, to the employees of TTD. The Government issued G.O. Ms. No. 1153 on 1.10.2008 purporting to grant permission to allot land to the employees in terms of resolution of the TTD Board dated 12th October 2006 read with order of this Court dated 24th June, 2008. He submits that Section 80 of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 (Act 30 of 1987) [for short, "the Act"], deals with alienation of the temple land. A procedure has been contemplated u/s 80(1), i.e., prior sanction of the Commissioner, inviting objections especially regarding whether it is beneficial to the institution, and sale shall be only by tender/auction. The Government must record a finding that the sale is for the benefit of institution and then dispense with the public auction. There is nothing on record that the aforesaid legal provision has been complied with.

6. He further submits that even it is now settled law by the decision of the Supreme Court in Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, and decisions of this Court in Board of Trustee of Sri Balaji Eshwara Veerabhadra Swamy Temple, Tatikonda and others Vs. State of Andhra Pradesh and others, and G. Raghava Reddy Vs. Government of A.P. and Others, that the land belonging to the deity must be sold only in public auction. He further submits that Chapter XXII of Powers and Functions of the T.T.D. Board Rules, 1990 (for short, ''the Rules'') confer amongst other powers upon Board to deal with alienation of immovable property by the TTD but the notice contemplated under this Chapter was not published. Rule 166 says that the sale shall be only by public auction and it must be beneficial to the TTD. He further submits that Section 111 of the Act deals with how to handle the funds of the TTD. This provision has been clearly violated. This temple being a distinct temple the TTD cannot deal with the properties at its own sweet will. Going by the records, respondent No. 3 acquired the property belonging to Sri Laxmi Narayana Swamy Temple by virtue of a Notification issued in 2007. Thus any resolution adopted in 2006 is invalid insofar as this portion is concerned. Rules 162 and 166 of the Rules relate to Section 95 and 97 of Chapter XIV of the Act. As these are statutory Rules passed by legislature they must be read into the Act and these are not contrary to Section 80 of the Act. These Rules evolve a separate self contained scheme for alienation of TTD properties. These are to be read together in harmony to protect the properties of deity. When Special Rules are there general provision is excluded. In support of this portion of this argument, he has placed reliance on the decision of the Supreme Court in Maharashtra State Board

of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and Cherukuri Kutumbayya Vs. The Municipal Council, Vijayawada, .

7. Learned counsel for the petitioners also argues on the question of locus that a devotee can file a case for protection of property of deity and in this connection he relied on decisions of the Supreme Court in Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, and Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others, and a decision of this Court in Gundala Krishna Reddy Vs. Tirumala Tirupati Devasthanams and Another,

8. It was further argued that in any event it will appear in Section 80 of the Act it deals with alienation of immovable property. Procedure thereof contemplated u/s 81 of the Act prior sanction of the Commissioner inviting objections specifically regarding whether it is beneficial to the institution and sales, are only by public auction, the Government must record a finding that the same is for the benefit of the institution and then dispense with public auction.

9. Sri S.R. Ashok, learned Senior Advocate, appearing for respondent No. 3 submits as follows. The allegations that respondent No. 3 is alienating the property belonging to Sri Laxmi Narayana Swamy Temple is factually incorrect for the following reasons. The subject temple was taken over as per the orders of the Commissioner, Endowments, dt. 13.11.2003 u/s 145(1) of the Act. Thereafter, the possession of the subject lands was taken over by respondent No. 3 as per the orders of the Assistant Commissioner of Endowments, dt. 17.6.2005. The temple has been included by the orders of the Government in the First Schedule to the Act, at S. No. 19 vide orders in G.O. Ms. No. 218, dt. 1.2.2007 and notified in Part 1 of the Andhra Pradesh Extraordinary Gazette No. 70, dt. 6.2.2007, including the Temple and its properties as a part of the definition of TTD. Further Pattedar Passbooks have been issued in favour of TTD over the entire extent of Ac. 127.41 cents in favour of Executive Officer, TTD, vide orders of Tahsildar, Tirupati Rural Mandal, dt. 9.2.2008.

10. He further informs this Court that in W.P. No. 24457 of 2006, filed basing on a Newspaper Report, against the Board Resolution 416, dt. 12.10.2006, an ad interim order dt. 23.11.2006 granted ex parte has been vacated by the Hon''ble High Court on 13.4.2007 by specifically holding that the scheme proposed to providing house sites to employees cannot be said to be against public interest. Further, orders have also been passed by the High Court in W.P.M.P. No. 3400 of 2008 in W.P. No. 11812 of 2005 expressly permitting the very scheme of alienation of house sites in favour of its employees by TTD, subject to the condition that the provisions of the Act shall be followed. Thus, the scheme providing residential accommodation to the employees was scrutinized twice by the Courts and it was more or less accepted. He further submits that Chapter XIV of the Act specifically includes the provisions applicable to TTD exclusively u/s 95 of the Act. Section 95(2) provides expressly that the other provisions of the Act shall apply to the TTD, subject to the provisions of Chapter XIV. Section 96 deals

with constitution of a Board of Trustees and Section 97 deals with the Powers & Functions of the Board. Section 111 of the Act deals with the manner in which the funds can be utilized and sub-section 4 thereof provides that the funds may be utilized for maintenance, management and administration of the temples, endowments and the educational and other institutions specified in II Schedule. He further submits that the Powers and Functions of respondent No. 3 Board are to be exercised under Rules notified in exercise of powers u/s 97 read with Section 153 of the Act, under G.O. Ms. No. 311, dt. 9.4.1990. Chapter XXII of the Rules deals with Alienation of Immovable Property, under Rules 162 to 171, by way of sale, exchange or mortgage. However, there is no provision in Chapter XIV of the Act or in the Rules notified, dealing with alienation of immovable property belonging to TTD, in a manner other than by way of public auction. Section 80 of the Act deals with alienation of property. The Government alone has power to permit the sale of any immovable property belonging to an institution, other than by way of public auction under the proviso to Section 80 of the Act. Pursuant to the orders of the High Court dt. 24.6.2008, permission has been obtained from the Government, vide G.O. Ms. No. 1153 dt. 1.10.2008 under the provisions of the Act. He conclude that the scheme of providing housing to its employees is as per the provisions of the Act and cannot be said to be against public interest since the scheme on hand envisages allotment of plots to the employees of TTD and since it is not feasible to conduct a public auction, permission has been sought by the TTD for implementing the scheme and the same has been accorded under G.O. Ms. No. 1153, dt. 1.10.2008.

11. Learned counsel for respondent Nos. 5 to 12 appears and submits that provisions of Section 80 of the Act have no manner of application and this has been held so by a learned single Judge of this Court in Gundala Krishna Reddy (supra).

12. After hearing the learned counsels appearing for the parties and after considering the arguments, it appears to us that it cannot be said now that respondent No. 3 has no power to dispose of the property previously belonged to Sri Laxmi Narayana Swamy Temple, as Sri Ashok, learned Senior Counsel appearing for respondent No. 3 has correctly stated on fact that this temple was taken over by orders of the Commissioner of Endowments dt. 13.11.2003 u/s 145(1) of the Act. Thereafter, possession was taken vide orders of the Assistant Commissioner of Endowments dt. 17.6.2005. The property has vested in respondent No. 3 on being taken over followed by possession prior to above resolution. Subsequent notification is nothing but information to the public by the Government. According to us, the notification does not create nor perfect the title. The property vests in this case the moment order of Commissioner being passed. Therefore, we are in agreement with Sri S.R. Ashok that the resolution taken by respondent No. 3 which is under challenge cannot be said to be invalid. Moreover, as rightly contended by Sri S.R. Ashok, the aforesaid resolution was sought to be challenged by the subsequent Writ Petition and interim order was passed on 23.11.2006 restraining respondent No. 3 for giving effect to the same

resolution containing proposal for scheme providing house sites to the employees. Subsequently, the said interim order was vacated by a Division Bench of this Court on 13.4.2007, so at the moment proposal contained in the said resolution is accepted by the Court.

13. Now the question remains is whether the aforesaid Government Order is legally valid or not. In our considered view, the permission of the Government Order dispensing with public auction u/s 80 of the Act is contemplated. We have examined the provisions of the Act. Naturally the question is whether Section 80 has any manner of application or not in this case. This issue came up before a learned single Judge of this Court in the case of Gundala Krishna Reddy (supra). The learned Single Judge has held that Section 80 of the Act has no manner of application in case of alienation of property by TTD. We have checked up the correctness of the aforesaid legal ratio. We think the decision on this issue is absolutely correct on the legal point of view. Chapter XIV of the Act has been provided exclusively for respondent No. 3. Section 95 of the Act, being part of Chapter XIV clearly stipulates as follows.

95. Application of the Act to Tirumala Tirupathi Devasthanams:--

(1) The provisions of this Chapter shall apply only to the Tirumala

Tirupathi Devasthanams.

(2) The other provisions of this Act shall, subject to the provisions of this Chapter, apply -

(i) to the Tirumala Tirupathi Devasthanams which shall be constituted into a single religious institution for the purpose of inclusion in the list published under cl. (a) of Section 6;

(ii) to every specific endowment attached either to the said Devasthanams as a whole or to any temple or institution thereof;

as if all powers and functions assigned therein to a Dy. Commissioner or an Assistant Commissioner had been assigned to the Commissioner instead.

Section 97 of the Act, being part of the aforesaid Chapter, read with Section 153 undoubtedly empowers the Government to make Rules. Accordingly, the Rules, namely, Powers and Functions of T.T.D. Board Rules, 1990, have been framed, vide G.O. Ms. No. 311, Revenue (Endowments-I), dt. 9.4.1990. Therefore, this Rule has to be accepted to be the Rule framed u/s 97 of the Act. By virtue of sub-section (2) of Section 95 of the Act, said Rule is governing the field. The learned Single Judge has noted that Rules 162 to 171, being part of Chapter XXII of the said Rules, deals with alienation of immovable property by the Trust Board either to sell, or exchange, or mortgage any of the immovable property. After issuing public notice, the properties can be sold only by public auction and as per Rule 165, the Trust Board will sanction the sale, exchange or mortgage only if such alienation is necessary and beneficial to TTD consistent with the object of the

TTD and after considering if it as reasonable and proper.

14. Sri S.R. Ashok, learned Senior Counsel, appearing for respondent No. 3 further says that since there is no express provision for permitting scheme for providing housing accommodation to the employees in the said Rules, then machinery of Section 80 of the Act had to be resorted. In our view, it is not possible simply because power must be expressed in the law. What is not expressedly provided, cannot be inferred for application. It appears respondent Nos. 1 and 3 have proceeded on the basis as if Section 80 of the Act has application. We hold that while accepting the decision of the learned Single Judge of this Court in Gundala Krishna Reddy (supra) that outright transfer has to be made under the Rules framed for this purpose. However, we accept the argument of Sri Ashok that the resolution passed by respondent No. 3 for providing housing accommodation to the employees is not invalid or illegal not because above legal provision permit but order of this Court (supra) also allows however, allotment of land if it is a case of otherwise alienation or outright sale, then provisions of the Rules quoted above have to be followed as the Division Bench of this Court in its order clearly mentioned that the sale has to be made in accordance with the provisions of the Act obviously Rules framed thereunder. We are told that conveyance has not been executed as yet. Therefore it is not late at all to take appropriate legal measure before the same is executed.

15. In view of the above discussion, we set aside the impugned Government Order as no such permission can be granted by it, more so when in this case the Court has permitted. However, we uphold the Resolution of respondent No. 3, but the scheme has to be made in such a way that it shall be in conformity with the Rules read with Order of this Court quoted above. Accordingly it needs to be harmonized. When the Court permitted to allot the land to the employees having examined necessity and/or element of benefit to the temple, no public auction is required, but object of above order has to be fulfilled by absolute alienation upon payment of market price prevailing at the time of adopting resolution, for object of public auction by notification is to get highest and best price. The writ petitions are accordingly disposed of. There will be no order as to costs.

Consequently, pending miscellaneous petitions, if any, in these writ petitions, shall stand dismissed.