(2001) 03 AP CK 0144

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 19936 of 1993 and 2111 of 1994

Somanatha Reddy and Others APPELLANT

Vs

Govt. of A.P. and Others RESPONDENT

Date of Decision : 23-03-2001

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 80, 80(1)

Citation : (2001) 2 ALT 515

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; G.P. for Endowments, V. Raja Gopal Reddy and C. Rama Krishnaiah, for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—These two writ petitions are filed assailing the action of the first respondent in according permission for the sale of land in an extent of Ac. 1-35 cts in R.S.No. 293 in Penugonda village, West Godavari District belonging to Sri Nageshwara Swamy and Sri Vasavi Kanyaka Parameshwari Temples, Penugonda of West Godavari District, by way of private sale in favour of the fourth respondent as the same is in contravention of the provisions of Section 80 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short ''the Act'').

2. The petitioners are the villagers of Penugonda and they are the devotees of Sri Nageswara Swamy, Sri Mahishasura Mardhini, Sri Vasavi Kanyaka Parameshwari Temples of Penugonda. The said temples own an extent of Ac. 1.96 cents in R.S.No. 293 of Penugonda. According to the petitioners, the third respondent in collusion with the fourth respondent proposed to alienate the said land for a meagre price causing loss to the Institution, and therefore, they have approached this Court and filed W.P.No. 19936 of 1993 and sought for stay of further proceedings and this Court was pleased to pass interim orders staying all

further proceedings by an order dated 27th December, 1993. In spite of the order of this Court, the respondents 3 and 4 proceeded to execute the registered sale deed and presented it for registration. Thereafter, as the petitioners came to know that the first respondent Government has issued G.O.Ms.No. 937, Revenue (Endts. IV) Department, dated 24-09-1993 according permission to the third respondent for sale of property by private negotiations other than by public auction, the second writ petition is filed for quashing the said proceedings as well as the consequential sale deed that was executed by the third respondent in favour of the fourth respondent on 23-12-1993 and presented on 28-12-1993 for registration and the sale deed was registered on 21-01-1994.

3. In the second writ petition, the petitioners have also sought for a direction to the respondents not to change the nature of the land pending writ petition. An interim order was granted by this Court and was also made absolute.

4. The principal grievance of the petitioners is that the land belongs to the temple and it is very valuable, and the land would fetch huge amount if sold by public auction. But, in view of the collusion between the respondents 3 and 4, it was agreed to be sold at Rs. Two lakhs or Rs. 2.5 lakhs per acre. In support of their claim, the petitioners have also filed a registered sale deed showing that an extent of two cents were sold for a consideration of Rs. 19,000/- by registered sale deed dated 12-10-1992 and according to the petitioners, the said land is situated faraway from the village and still it had fetched the sale consideration of Rs. 8,50,000 per acre. According to the petitioners, the land in question would fetch more than Rs. 20,00,000/- per acre. Therefore, the permission granted by the first respondent for a private sale in favour of the 4th respondent is not in the interest of the Institution, which owned the land. The petitioners also contended that the first respondent did not follow the required procedure to be followed under the provisions of Section 80 of the Act. It is contended by the learned Counsel for the petitioners that in the normal course, the lands belonging to the temple have to be sold only by way of public auction as contemplated u/s 80(1)(c). But, there are exceptional circumstances where the Government may, in the interest of the institution or endowment and for the reasons to be recorded therefore in writing, permit the sale of such immovable property, otherwise than by public auction. It was therefore contended that unless there are exceptional circumstances and that too. in the interest of the institution only, the sale of the temple lands by private negotiations is permissible. According to the petitioners, the present sale of the temple lands by private negotiations is not in the interest of the institution and in fact the Government did not record its reasons for according such permission. Therefore, the permission and consequential alienation in favour of the fourth respondent is liable to be quashed.

5. The learned Government Pleader appearing for the first respondent contended that the fourth respondent is All India Vasavi Kanyaka Parameswari Temples Federation, which intends to develop Vasavi Vignana Museum in order to develop the Kanyaka Parameswari Temple as it was the birth place of the Goddess.

According to the learned Government Pleader proposals have been initiated by the third respondent-the Managing Trustee of the Temple, and the said proposals were considered and approved by the authorities and finally the Commissioner of Endowments-2nd respondent herein recommended for grant of permission for the sale of the land in question by private negotiations to the 4th respondent and the State Government after considering the proposals and for the reasons contained in the Commissioner''s recommendation has approved and accordingly issued G.OXMs.No. 937 for sale of the property at the market value. Therefore, there is no irregularity or illegality in effecting the sale at the market rate to the 4th respondent by private negotiations. The learned Counsel also contended that by virtue of the development of the museum by the 4th respondent, the centre would be developed as a place of pilgrimage and thereby number of pilgrims visiting temples of the third respondent institution would also increase and therefore, the sale was in the interest of the institution. Hence, there are no grounds for quashing the Government order according permission to the third respondent for alienation of the temple lands to the 4th respondent by private negotiations. The learned Government Pleader also stated that the reasons are very much in the recommendations of the Commissioner and for those reasons, the permission was accorded by the first respondent.

6. The learned Counsel Mr. V. Raja Gopal Reddy appearing for the 4th respondent contended that as the sale was effected in favour of the 4th respondent, it is intending to develop the land in question by constructing Vasavi Vignana Museum by spending huge amount of Rupees sixty to seventy lakhs by way of private negotiations and the sale at the market value would be in the interest of the institution of the temples owning the land. The learned Counsel also contended that the authorities under the Act have enquired into the market value of the lands and have recommended the alienation in favour of the 4th respondent at the market value at Rs. 2.5 lakhs per acre which the 4th respondent had agreed to pay. Therefore, there is no illegality in the transaction of private alienation and the sale at the market value was also in the interest of the temples owning the land. Further, the purpose for which the land was alienated to the 4th respondent is also in the interest of the institution. Therefore, there are no grounds warranting interference with the Government orders permitting the sale by private negotiations at the market value.

7. From the above rival contentions the issue to be considered is whether the sale of the land owned by Sri Nageshwara Swamy, Sri Mahishasura Mardhani and Sri Vasavi Kanyaka Parameshwari Temples in an extent of Ac. 1.35 cts out of Ac. 1-96 cts in R.S.No. 293 in Penugonda village, West Godavari District by private negotiations in favour of the fourth respondent is in accordance with the provisions of the Act and in the interest of the institution.

8. The facts are not in dispute. At the request of the fourth respondent, the third respondent initiated the alienation of Ac. 1-35 cts., in R.S.No. 293 in Penugonda village by private negotiations. The said proposal was recommended by the

authorities including the second respondent-Commissioner and finally the first respondent also accorded its permission and it was in fact sold under a registered sale deed though the orders were passed by this Court in W.P.No. 19936 of 1993 staying all further proceedings in pursuance of a publication given in the Newspaper.

9. The main contentions of the petitioners are that the sale is not in the interest of the institution as according to them the market value fixed is far below the real existing market value and further the first respondent did not record its reasons in writing before according permission. In support of their contention the petitioners have filed a sale deed which was executed on 12-10-1992, under which two cents of land situated in S.No. 138/1 in Penugonda village was sold for a total consideration of Rs. 19,000/-. This is not in doubt as the document is shown as an agricultural land. According to the petitioners, the land was also situated a little away from the village. The said sale deed shows that the land which was sold would work out at Rs. 8,50,000/- per acre. According to the petitioners, the land in question would fetch Rs. 20 lakhs per acre as it is situated within the residential localities and abutting the temple. But, however, the petitioners did not produce any other documentary evidence showing that the said land would fetch Rs. 20 lakhs. But, in any case as the sale deed filed by the petitioners shows that the land sold under the said document was at the rate of Rs. 8,50,000/- per acre, I do not find that the claim of the petitioners is devoid of merit and it is contended that the land in question would fetch Rs. 20 lakhs per acre. Even assuming that the land in question would also fetch the value which was fixed in the sale deed filed by the petitioners, the said sale consideration is much more higher than the rate at which it was ordered to be sold in favour of the fourth respondent. The said sale deed which was filed by the petitioners was also executed much before the Government orders of sale by private negotiations.

10. The other contention advanced by the learned Counsel for the petitioners is that the Government did not comply with the provisions of Section 80 of the Act before according its permission for sale by private negotiations. It would be appropriate to extract the provisions of Section 80 of the Act for convenience:

"80. 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 affected 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 the 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:

Provided that the Government may, in the interest of the institution or endowment and for reasons to be recorded therefore in writing, permit the sale of such immovable property, otherwise than by public auction."

11. A perusal of the above provision dealing with the alienation of immovable properties, clearly contemplates that every sale of such immovable property sanctioned by the Commissioner shall be effected by tender-cum-public auction in the prescribed manner subject to the confirmation by the Commissioner within the period prescribed. But, however, under the proviso, the Government was given power which may, in the interest of the institution or endowment and for reasons to be recorded therefore in writing, permit the sale of such immovable property, otherwise than by public auction. Therefore, in order to exercise this power by the Government for ordering alienation by private negotiations, a finding must be recorded by the Government that the said sale by private negotiations is in the interest of the institution or endowment and reasons have to be recorded for granting such permission. Here it is contended by the learned Government Pleader that the sale was in the interest of the institution as the fourth respondent intends to develop the land by the construction of Vasavi Vignana Museum by spending huge amounts, which would have effect of increase in the visit of pilgrims to the temples in question which owned the land. In support of his contention the learned Government Pleader also placed the record before this Court. A perusal of the record shows that the fourth respondent made a representation for the purpose of alienation of the land in question at a nominal cost. The temple management i.e., trustee of the temple-the third respondent herein has given his consent for the sale by private negotiations at the market rate. Thereafter, the record further shows that the Inspector of Endowments has ascertained the market value as according to him the basic value and market value of the land in question was Rs. 49,000/- and Rs. 75,000/- per acre respectively. Thereafter, the Assistant Commissioner, Eluru, to whom the matter was referred, has stated that if the land is sold in public auction for the purpose of house sites, it may fetch an amount ranging from Rs. 2,00,000/-to Rs. 2,50,000/- per acre. Therefore, the Assistant Commissioner recommended for the sale of the land at Rs. 2,00,000/- per acre in favour of the fourth respondent and that was approved by the Deputy Commissioner of Endowments and further approved and sent by the Commissioner to the 1st

respondent Government. Thereafter, the first respondent considered the matter and approved the proposal under the circumstances reported by the Commissioner of Endowments. But, in the proceedings, no reference was made that the sale of the land in question in favour of the fourth respondent is in the interest of the institution owning the lands. In fact, a perusal of the communication of the Commissioner-the second respondent would only show that All India Vasavi Kanyaka Parameswari Temples Federation, Hyderabad was formed in the year 1983 with the sole object of improving Sri Kanyaka Prameshwari Temples in the country and they have decided to develop the birth place of Goddess Sri Kanyaka Prameshwari Ammavaru as a pilgrim centre and they want to build Vasavi Vignana Museum at Penugonda for that purpose and they have identified the land in question. The Commissioner has stated that as required under the provisions of Section 80(1) of the Act, a notification was issued in the Gazette inviting objections, but no objections have been received in response to the said notification, therefore recommended to the Government to accord necessary permission for the sale of the land in question by private negotiations. But nowhere in the said report it was stated that the said sale was in the interest of the institution in question. Apart from that, the learned Government Pleader was also not able to place before this Court the reasons that are recorded by the first respondent before according permission. In the absence of the reasons, which are required to comply the provisions of Section 80(1) of the Act, the Government order issued is not in accordance with law and unsustainable. Though the learned Government Pleader tried to substantiate his contention stating that the purpose and the interest of the institution is available from the records, I am unable to accept the said contention of the learned Government Pleader.

12. Apart from the above, the issue as to the sale by private negotiations in respect of the lands owned by the Charitable Institutions was considered by the Apex Court in the case of Chenchu Rami Reddy v. Government of A.P. the following observations are apt:

6. We cannot conclude without observing that property of such institutions or endowments must be jealously protected. It must be protected, for, a large segment of the community has beneficial interest in it (that is raison of d''etre of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of to-day. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction? Why then permit sale by private negotiations which

will not be visible to the public-eye and may even give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment. With these words of caution we close the matter."

13. Similar issue was also considered by this Court in the case of Vangala Narasimhacharyulu Vs. The State of A.P. and others, and this Court following the judgment of the Supreme Court (1 supra) cancelled the alienation that was effected by private negotiations.

14. Under the above circumstances, the writ petitions are allowed quashing the notification issued by the Government in G.O.Ms.No. 937, Revenue (Endts. IV) Department, dated 24-09-1993 and also the consequential sale deed that was executed by the third respondent in favour of the fourth respondent on 23-12-1993 and registered on 21-01-1994. However, this order will not preclude the second respondent, if he so desires, to effect the alienation of the land in question by way of public auction, and in that case, it is open to the fourth respondent also to participate in the auction and purchase the land in question. No costs.