(2000) 01 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14362 of 1992

T.M. Reddy and Others — APPELLANT

Vs

Secretary, Revenue Dept. and Others — RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 80(1), 81

Citation : (2000) 01 AP CK 0043

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : B.S. Reddy, for the Appellant; G.P. for Endowments, for the Respondent

Judgement

Goda Raghuram, J.—This writ petition is filed by former trustees of Sri Balaji Eswara Veerabhadra Swamy Temple (hereinafter called "the temple" for short), Titikonda, Buthpur Mandal, Mahabubnagar District and persons, describing themselves as devotees of the temple.

2. The petitioners assail the proceedings of the second respondent dated; 25.9.1992 whereby the second respondent has rejected the objections, inter alia, of the petitioners and has accorded permission to the Executive Officer of the temple to sell the certain specified lands by way of public auction, after following the rules in force.

3. The temple is said to own 32.00 acres of dry and wet lands, of which about 11.09 gts is in the possession of 5th respondent who has been a tenant of the said land since a considerable time. Since, the lands were not, in view of the Department, fetching adequate return, steps were initiated since the year 1980 to lease out the lands by way of auction in the first instance and thereafter that process not having reached fruition, to dispose of the lands by way of sale and in the process of such deliberations a decision was taken to dispose of the lands by way of sale to the sitting tenant (5th respondent). This decision was taken by the

State Government in G.O.Ms.No. 526 Revenue (Endowments II) Department dated: 15.6.1992 in purported exercise of powers available to it u/s 81(c) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter called " the Act" for short).

4. Subsequent to the said decision of the Government, the second respondent issued a notice dated: 28.2.1992 calling for objections from interested persons to the proposal to dispose of the land to the 5th respondent. The petitioners submitted objections to the said proposal. By the impugned proceedings dated; 25.9.1992, the second respondent recorded chronology of events leading to the decision of the Government contained in G.O.Ms.No.526 dated: 15.6.1991 recorded the objections put-forth by the persons interested and having considered the said objections, rejected the same and accorded permission to the Executive Officer to sell the land in question by way of public auction after following the rules in force.

5. The decision contained in the second respondent''s proceedings dated: 25.9.1992 was amended by issuance of errata in memo dated: 18.1.1992 and by the said correction, a decision was taken to sell the land to the sitting tenant otherwise than by public auction. It is this decision of the second respondent set out in the proceedings dated: 25.9.1992 has been assailed in the writ petition.

6. During the course of hearing, the orders of the State Government contained in G.O.Ms.No. 526 dated: 15.6.1991 have been brought to the notice of this Court and the order of the Government having been considered in the context of legislative environment contained in Section 80 of the Act, this Court is constrained to come to the conclusion that the decision of the State Government set out in the Government Order has been arrived at without compliance with the substantive procedural discipline ordained by the legislation. Section 80(1) of the Act, to the extent necessary is extracted hereunder:

"80. Alienation of immovable property:-(1) (a) Any gift, sale, exchange ORDER: 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 affected 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."

7. A true and fair construction of the aforesaid legislative provisions makes it clear that where the sale of any immovable property is sanctioned by the Commissioner under clause (b) to be effected otherwise than by the standard mode prescribed namely tender-cum-public auction and subject to confirmation by the Commissioner within a prescribed period, such decision shall be arrived at by the State Government for reasons and on grounds permitted by the Statute namely that the alternative mode decided upon is in the interest of institution or endowment and with the satisfaction of the Government that the legislative requirement is met, by reasons recorded in that behalf, in writing. This legislative safeguard cannot be wily-nily subverted by the State Government by recourse to a laconic and ritualistic exercise of power.

8. A perusal of the orders of the Government in G.O.Ms.No. 526 dated: 15.6.1991 discloses that the State has failed to record any reasons whatsoever except that it has carefully considered the circumstances reported by the Commissioner. The Government is obligated in law to record reasons in justification of the decision to sell the lands to the sitting tenant otherwise than by tender-cum-public auction. In doing so the Government must clearly record reasons for its departure from the standard mode prescribed by the legislature, a mode that has been sanctified by the binding decision of the Supreme Court vide Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, . Such abdication of statutory duty constitutes a subversion of the statutory obligation and warrants strong disapproval by this Court.

9. True that the validity of G.O.Ms.No. 526 dated: 15.6.1991 has not been canvassed expressly or by any implication in the writ petition. That however does not detract from the obligation of this Court to go into the validity of the Government Order having regard to the fact that the lands belonging to the temple are in question and this Court has clearly come to the conclusion that the orders of the State Government contained in G.O.Ms.No. 526 dated:15.6.1991 have been issued in clear transgression of the mandatory requirement of the legislation. In a public law proceedings matters such as the one referred to cannot be glossed over by reference to a technical lacunae in the pleadings of the parties.

10. The interest and competing claims of the petitioners, may be adversary but the obligation of the Court, is to he public interest dehors the adversarial trajectory of the litigating parties.

11. In the circumstances, without recording any observations on the propriety or otherwise of the action by the respondents 1 to 4 in deciding to dispose of the lands in favour of the 5th respondent, this Court invalidates the orders of the Statement in G.O.Ms.No. 526 dated: 15.6.1991 and all further proceedings integrally and incidentally connected therewith. The official respondents are, however, at liberty to initiate such fresh proceedings as are available to them in law to deal with the lands of the temple situated in S.Nos. 638, 639, 656, 665 and 666 situated at Tatikonda village, Mahabubnagar District.

12. The writ petition is disposed of as above. No order as to costs.

