

(1995) 02 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6784 of 1992

Vangala Narasimhacharyulu

APPELLANT

Vs

The State of A.P. and others

RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

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

Citation : AIR 1995 AP 220 : (1995) 1 ALT 371 : (1995) 1 APLJ 414

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Judgement

1. One Vangala Narasimha-charyulu, Professor of Physics has filed this writ petition as a public interest litigation seeking a declaration that the action of the respondents 1 to 4 in proposing to sell the properties of Sri Kesavaswamy temple, Kothalaparru village, to an extent Of Acs. 3-00 from out of Acs. 6-82 cents comprised in R. S. No. 27 of Pandithavilluru village, Poduru mandal, West Godavari district by way of private negotiation or otherwise than by a public auction as illegal and arbitrary. Further he has sought for a consequential direction to the respondents 1 to 4 not to complete the said sale transaction in favour of the fifth respondent by private negotiations.

2. The respondents 4 to 5 on service of notice have filed their respective counters whereas no counter is filed on behalf of respondents 1 to 3. The facts are many and legal contentions raised are also many. After hearing the learned counsel for the parties I found that the writ petition is entitled to be allowed on a short ground in the light of the decision of the Apex Court rendered in the case of-

Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, and R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, and-/a decision of this Court rendered in the case of Y. Nageswara Rao v. Government of Andhra Pradesh represented by the Secretary to

Government, Revenue (Endowments-IV) Department, Secretariat Buildings, Hyderabad, 1989 (2) APLJ 121.

3. The property in question belongs to Sri Kesavaswamy temple. It appears that the Board of Trustees of the temple passed a resolution at its meeting held on 18-1-1981 resolving to alienate the land in question in favour of the 5th respondent at the rate of Rs. 50,000/- per acre. In pursuance of the resolution the Executive Officer of the temple made an application to the State Government under S. 80(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 for short "the Act" seeking sanction for the alienation. The Government by its proceeding in G.O. Rt. No. 1719 dated 11th November, 1991 accorded the sanction to the temple authorities to alienate the property in favour of the fifth respondent. In pursuance of the Government Order the Endowment Commissioner passed the consequential order on 26-3-1992 permitting the temple authorities to sell the land by private negotiations. After these two orders are made by the Government and the Endowment Commissioner the writ petition was filed in this Court on 25-5-1992, and this Court while issuing rule nisi stayed all further proceedings in pursuance of the aforementioned two orders made by the Government and the Endowment Commissioner. Of course in the writ petition, the petitioner has not specifically sought for quashing these two orders. But after going through the pleading of the petitioner it should be noted that the main attack was against the Governmental authorities in according sanction to the temple authorities to alienate the land. The petitioner has also produced those two orders along with the writ petition. In that view of the Order I permitted the petitioner's counsel to amend the prayer so as to seek quashing of the impugned orders also.

4. Sri P. S. Narayana, the learned counsel for the petitioner submitted multifold arguments attacking the actions of the temple authorities as well as the actions of the Governmental authorities in proposing to sell the land in question in favour of the fifth respondent. He contended that the whole process to alienate the land in favour of the fifth respondent emanated from a clandestine understanding between the Executive Officer of the temple and the fifth respondents; there was/is absolutely no need for the temple to alienate the property; the disposal of the property in favour of the fifth respondent is not beneficial to the third respondent temple; the conditions the existence of which is a must for the Government to accord sanction as specified under C1. (b) of sub-sec. (1) of S. 80 of the Act are non-existent and therefore the order made by the Government according permission is ultra vires and contrary to the provisions of S. 80 of the Act and before passing the order under S. 80(1) of the Act the Government did not comply with the procedure prescribed under the Act and the Rules framed thereunder. On the other hand, the learned counsel appearing for the respondents including the learned Government Pleader supported the action of the respondent-authorities. They maintained that the action was taken in a bona fide interest of the temple and in lawful exercise of the power vested in the temple to manage its properties and the transferee is not a private person; it is a

school management run and managed by a local body and therefore it could not be said that the proposed alienation are not in the interest of the temple. They also pointed out that the prescribed procedure has been complied with by the authorities before the Government has passed the order according permission.

5. As pointed out supra all the controversies which arise out of these rival contentions need not be gone into and resolved for the purpose of disposal of this writ petition because I find that the decisions of the Supreme Court and this Court referred to above squarely cover the facts of this case also. Even accepting everything in favour of the respondents, it should be held that the properties owned by a religious and charitable institution stand on par with the properties held by the public authorities and therefore whenever a religious and charitable institution wants to dispose of its property, the interest of the institution requires that such a property, in a normal course, should be disposed of by a mode of public auction. There is a reason and rationale behind this requirement. Disposal of a property by applying public auction mode ensures the maximum return for the property parted with and that procedure will also inspire the confidence of the public. The Supreme Court in the case of *Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others*, observed in para 6 thus:

"6. We cannot conclude without observing that property of such institutions or endowments must be zealously protected. It must be protected, for, a large segment of the community has beneficial interest in it (that is the *raison d'être* 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 today. 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 person 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."

6. In addition the Supreme Court in para 3 of the same judgment observed that it would be beneficial to the Institution or the Endowment to sell the land cannot be gainsaid provided the price is reasonable and fair price, thereby meaning that the requirement of disposing of the property by public auction is intended to secure maximum price or value for the property sold or disposed of by the Institution. The view taken by the Supreme Court in this case subsequently

referred to and affirmed by the Supreme Court in the case of R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, . This Court also speaking through M. N. Rao, J, in the case of-- Y. Nageswara Rao v. Government of Andhra Pradesh Represented by the Secretary to Government, Revenue (Endowments-IV) Department, Secretariat Buildings, Hyderabad, 1989 (2) APLJ 121 after referring to the above two aforementioned decisions of the Supreme Court held that disposal of a property belonging to the religious and charitable institutions is invariably by way of public auction. Of course at this juncture it should be noted that it is not the requirement of the Act that the charitable and religious endowments and institutions should always dispose of the property only by adopting the mode of public auction. There may be compelling circumstances where the disposal of the property by such institution By way of private negotiation may be necessary. In fact that has been indicated by the Supreme Court itself in the case of-- R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, referred to above. The Supreme Court in para 13 of that judgment indicated that the institution may depart from the mode of public auction if there are special reasons to justify the same. In the present case I do not find any special reasons on the part of the third respondent temple authorities to depart from the normal mode. It is complained by the petitioner who is a Professor of Physics that the property sought to be disposed of could fetch market value at a rate more than one lakh rupees per acre. Of course that allegation has been denied the respondents in their counters. But none of the parties have produced any sale documents involving sale of the properties situated nearby the land in question. Therefore the public interest and the protection of the interest of the third respondent-temple require that the properties should be disposed of by way of public auction.

7. Accordingly I allow this writ petition and quash the impugned orders. However, this order shall not come in the way of the respondents taking necessary action to dispose of the property in question in accordance with law and in the light of the observation made in this order,

8. It is a cause espoused by a public spirited man. He is not seeking any relief to himself. Therefore, it is just and reasonable to compensate him reasonably towards the expenses that might have been incurred by him in prosecuting this cause before this Court. In that view of the matter the respondents 1 to 3 are directed to pay Rs. 1500/- to the petitioner towards the costs of this litigation within a period of three weeks from today.

9. Petition allowed.