

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**W.P.M.P.No.9816 of 2015**

**AND**

**WRIT PETITION No.3062 of 2001**

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**ORDER:**

Heard Sri N.Ashwani Kumar, learned Counsel for the petitioner, Sri M.Adinarayana Raju, learned Counsel for the first respondent and the learned Government Pleader appearing for respondent Nos.2 to 4.

This Writ Petition was filed challenging the action of the respondents in including the name of the petitioner Association at Sl.No.II in Annexure III of G.O.Ms.No.578, Revenue (Endts.IV) Department, dated 19.08.2000 as illegal and arbitrary and for issuance of consequential direction that the said Government Order has no application to the case of the petitioner, in as much as the petitioner's case is governed by G.O.Ms.No.1824, Revenue (Endts.I) Department, dated 14.12.1981.

The case of the petitioner is that their members are the employees of Naval Science and Technological Laboratory. They occupied an extent of Acs.3.00 of land in Survey No.275 of Adivivaram Village of Visakhapatnam District, belonging to the first respondent. While so, in the year 1981 the State Government issued G.O.Ms.No.1824, Revenue (Endts.I) Department, dated 14.12.1981, according permission to the Commissioner of Endowments, Andhra Pradesh, to sell the land admeasuring 2,14,733 square yards in the said survey number to the encroachers at the cost fixed by a Committee constituted for this purpose after private negotiations. Pursuant to the said Government Order, the first respondent passed a resolution No.230, dated 11.06.1982, constituting a Sub-Committee consisting of three members to enquire into matter and fix up the value of the land. The petitioner submitted an application indicating

the extent of land in their occupation. The Executive Officer of the first respondent, by letter in Rc.No.C1/6475/80, dated 22.07.1982, requested the petitioner to attend the meeting on 24.07.1982 for negotiating the sale of land with the Committee. The Sub-Committee allotted an extent of Acs.3.00 of land to the petitioner Association at a total cost of Rs.3,75,000/-, at the rate of Rs.1,25,000/- per acre. The petitioner Association paid the said amount by Demand Draft No.109/2031, dated 30.07.1982, of Andhra Bank payable at Simhachalam. A receipt was also issued by the Treasury Superintendent of the first respondent. The first respondent submitted a report to the third respondent with regard to the sale of the said land by private negotiations. But, no sale deed was executed since the procedure under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act (for short, the Endowments Act), was not followed. The third respondent issued a notice under the proviso to Section 74(1) of the Endowments Act calling for objections and suggestions in respect of the proposed sale of land to the petitioner Association. The same was also published in the Andhra Pradesh Gazette Part II Extra Ordinary, dated 20.12.1982. The Tahsildar, Visakhapatnam, was addressed to furnish valuation certificate and when it was not forthcoming for several years, the first respondent's Executive Officer addressed a letter 13.01.1984 to the Commissioner to dispense with the obtaining of valuation certificate from the revenue authorities. In the meanwhile, the Government issued Memo No.2300/E.IV-2/82-1, dated 06.12.1982, instructing the first respondent not to sell its land until further orders. It is the case of the petitioner that they formed a layout and were in occupation of their respective plots of land. But no construction took place in the absence of any sale deed. On 12.01.1992 a legal notice was issued to the first respondent requesting the first respondent to register the lands either in favour of the Association or its members. The first respondent sent a reply on 24.02.1992 informing the petitioner that though the Commissioner for Endowments recommended the case to the Government, the Government returned the same as there

was a dispute over the land. Pursuant to the letter of the Additional Commissioner, Endowments, dated 19.07.1995, the petitioner Association sent further information as required in the said letter on 16.08.1995. It was followed by a reminder on 04.10.1995. It is the further case of the petitioner that though a sale deed was executed on 10.01.1997 in favour of the employees of Simhachalam Devasthanam, who encroached the land of an extent of Acs.4.00 of the first respondent, no sale deed was executed in respect of the petitioner. The Andhra Pradesh Legislative Assembly constituted a House Committee to go into the issue relating to lands belonging to the first respondent in the Villages of Adivivaram, Vepagunta, Venkatapuram, Purushothampuram, Cheemalapalli, which were occupied by various people and the Committee submitted its report suggesting regularization of their occupation. The Government issued G.O.Ms.No.578, Revenue (Endts.IV) Department, dated 19.08.2000, detailing the procedure for regularization of their lands. The name of the petitioner society was shown at serial No.II of Annexure III of the said Government Order. The basic value was indicated as Rs.1000/- per square yard. It is their case that the said Government Order has no application to the petitioner society, since they were in occupation of the land prior to 1980 and their encroachment was regularized in terms of G.O.Ms.No.1824 on payment of Rs.3,75,000/- on the recommendations of the Sub-Committee to the Devasthanam and hence the question of again regularizing would not arise. In this background, the above Writ Petition was filed.

The first respondent filed a counter affidavit stating that the first respondent was endowed with the landed property situated in the five Villages to an extent of Acs.11282.26 cents by the erstwhile Maharaja of Vizianagaram Estate. The lands were situated abutting Visakhapatnam Municipal Corporation limits. A systematic fraud took place by the real estate brokers by creating forged and false documents. The investigation by CBCID and ACB proved that fraud had taken place in dealing with the properties of the first respondent

under the guise of encroachments. By the fraudulent acts there was a loss of nearly 100 crores to the first respondent. Criminal complaints were filed against the persons responsible. These Villages were declared as “not inam estates” and they were continued as inam villages belonging to the first respondent. After enquiry under the provisions of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short, the Inams Abolition Act), ryotwari pattas were issued in favour of the Devasthanam. In the meanwhile, some portion of land in Survey No.275 of Adivivaram Village was unauthorisedly occupied by several people. G.O.Ms.No.578, Revenue (Endts-IV) Department, dated 19.08.2000, was issued after the recommendations of the Cabinet Sub-Committee. Earlier one Sarojini Devi Mahila Mandali by name K.Lakshmi and 237 others filed W.P.No.33966 of 1998 against the first respondent and others and the Writ Petition was dismissed on 15.02.1999 observing that unless specific permission of the Government is obtained for alienation by private negotiations, neither the Government nor the Executive Officer of the temple have any power to dispose of the temple properties through private negotiations as per the provisions of the Endowments Act. W.A.No.388 of 1999 was also dismissed on 16.03.1999 holding that the Devasthanam cannot be compelled to sell the land in question to the encroachers. The petitioner Association is not an encroacher covered by G.O.Ms.No.1824 dated 14.12.1981. The Sub-Committee was constituted by the Trust Board of Devasthanam to sell the land of an extent of Acs.3.00 in Survey No.275/P of Adivivaram Village by fixing the rate at Rs.1,25,000/- per acre and the petitioner society paid Rs.3,75,000/- with an undertaking agreeing to take back the deposit in the event of sale not approved by the Government at a later date without claiming interest thereon. The land is not in possession of the petitioner society and the Devasthanam cannot deliver the possession without approval of the Government. The proposal to sell the land in favour of the petitioner was not finalized and hence the petitioner cannot get any right. The proposal to sell the land in

favour of employees of Simhachalam Devasthanam in the name of Sri Lakshmi Narasimha Swamy Employees Cooperative House Building Society was proposed during the year 1978 and was approved by the Government vide G.O.Ms.No.104, Revenue (Endts-IV) Department, dated 25.01.1983, and hence, the petitioner cannot compare their case with that of the employees of the Devasthanam. The department where the petitioner's members were working is having staff quarters in the locality of NSTL, whereas the employees of Devasthanam were not having any quarters. The petitioner is not entitled for any regularization and in view of the order of this Court in W.P.No.33966 of 1998, dated 15.02.1999 this case is liable to be dismissed.

The third respondent also filed a separate counter affidavit stating that the land claimed by the petitioner Association is not in their possession as the Devasthanam did not deliver possession by obtaining necessary orders from the competent authority. Enquiries were conducted under Section 9 of the Andhra Pradesh Estates Abolition (Conversion into Ryotwari) Act, 1948, by the settlement authorities and it was finally decided that the five Villages are "not inam estates" and hence, the provisions of the Inams Abolition Act were made applicable to those Villages. The land of an extent of Acs.5279.57 cents was declared as Devasthanam land as per G.O.Ms.No.406, Revenue (Endts-IV) Department, dated 20.06.2000, and the remaining extent of Acs.2213.04 cents in the five Villages was declared as land vested with Government. It was also stated that in Public Interest Litigation in W.P.No.11812 of 2005 dated 07.06.2005, as modified in orders dated 22.11.2005, it was held that no compromises shall be effected under Section 89 of the Endowments Act till further orders in respect of endowment lands except permitting sale of lands by public auctions. Accordingly, they prayed for dismissal of the Writ Petition.

Learned Counsel for the petitioner vehemently contended that the case of the petitioner is governed by G.O.Ms.No.1824 and in

pursuance of the same, they paid an amount of Rs.3,75,000/- by depositing the same by way of Demand Draft on 30.07.1982 and the respondents are estopped from reopening the issue by issuing G.O.Ms.No.578, dated 19.08.2000. It is also his case that including the name of the petitioner in G.O.Ms.No.578, dated 19.08.2000, and demanding a sum of Rs.1000/- per square yard is illegal. He further submitted that the petitioner was discriminated when compared to the employees of the Simhachalam Devasthanam in whose favour a sale deed was registered.

Learned Counsel for the first respondent, on the other hand, submitted that the auction for alienation of Devasthanam land has to be approved by the Government and then only they can handover possession and regularize the sale. In the instant case, no such approval has come forward from the Government and, on the other hand, the recommendation of the Commissioner was returned by the Government. He further submitted that the petitioner deposited the amount by giving an undertaking on 24.07.1982 that in the event of sale not being sanctioned by the competent authority, they will not take any legal action against Devasthanam and they would not claim any interest on the advance paid by them to the Temple. He submitted that in view of the said letter, the petitioner is entitled for refund of the said amount of Rs.3,75,000/-.

Learned Government Pleader submitted that the land belonging to the Devasthanam cannot be sold without following due procedure and obtaining orders from the Government and in the absence of the orders from the Government, the claim made by the petitioner is not tenable.

It is clear from the above facts that the land of an extent of Acs.3.00 claimed by the petitioner in Survey No.275 of Adivivaram Village of Visakhapatnam District, was held to be the land belonging to the first respondent by virtue of G.O.Ms.No.406, Revenue (Endts-IV) Department, dated 20.06.2000. The said land formed part of erstwhile Vizianagaram Estate and held by the revenue

authorities as “not inam estates” and hence the provisions of the Inams Abolition Act were made applicable. The enquiry under the provisions of the said Act were conducted during 1977-78 and it was declared that all wet and dry lands held by the religious institution, except the lands which were classified as waste and poramboke, vested in Government under Section 2A of the Inams Abolition Act. After completion of several rounds of litigation, including the cases before this Court, the Mandal Revenue Officer, Visakhapatnam (Rural) and Pendurthi, had granted ryotwari patta under Section 7(1) of the Inams Abolition Act in favour of the first respondent during 1996-97. The entire hilly area of an extent of Acs.5279.57 cents was declared as Devasthanam land as per G.O.Ms.No.406, dated 20.06.2000, and it has become final. Though the Committee was constituted by the Trust Board and recommendation was made to consider the case of the petitioner, the Government did not accept the proposal. The petitioner’s name was shown at serial No.II of Annexure III of G.O.Ms.No.578, dated 19.08.2000, but the petitioner did not avail the benefit of the said Government Order. On the other hand, they filed the present Writ Petition contending that the said Government Order is not applicable to them and their case is governed by G.O.Ms.No.1824, dated 14.12.1981. It is also pertinent to notice that the petitioner had deposited the amount on 24.07.1982 with a specific undertaking as follows:

“To

The Executive Officer,

Simhachalam Devasthanam,

Simhachalam.

Sir,

Sub:- Sale of lands – Regarding.

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I approached the Devasthanam Trust Board in regard to purchase of the land as mentioned in the schedule in this letter after having the negotiations with the Sub Committee. The Sub Committee fixed the rate of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) per acre to my Association. I am willing to purchase the land as per the rate fixed by the Sub Committee and I am also willing to purchase an extent of land as mentioned in the schedule.

I hereby undertake to pay any advance payment to the temple accounts without claiming any interest on the said payment and also undertake that in the event of sale not being sanctioned by the competent authority, I will not take any legal action against the Devasthanam or do not claim any interest on the advance paid by me to the temple. I shall be satisfied fully with the return of the advance to me in the event of the sale is not sanctioned.

Yours faithfully,

E.Krishna Reddy,

24.07.1982,

Secretary,

NSTL Employees Welfare Association.”

In the absence of any sanction by the Government and in view of the undertaking given as above, the petitioner is not entitled to the relief claimed in the Writ Petition.

With regard to the case of the petitioner that they were discriminated when compared to the employees of the Devasthanam, who formed a Society by name Varaha Lakshmi Narasimha Swamy Employees Cooperative House Building Society is concerned, it is to be noted that the Government issued G.O.Ms.No.104, Revenue (Endts-IV) Department, dated 25.01.1983, in their case and in the absence of such a Government Order, the petitioner cannot raise the plea of

discrimination. The counter affidavit filed by the first respondent also discloses that in similar circumstances this Court dismissed W.P.No.33966 of 1998 on 15.02.1999 and W.A.No.388 of 1999 filed against the said order also ended in dismissal on 16.03.1999. Viewed from any angle, the petitioner is not entitled for the relief as sought for by them in the present Writ Petition.

At this stage it is necessary to point out that this Writ Petition was heard on 23.01.2015 and at the request of the learned Government Pleader it was adjourned to 06.02.2015. On 06.02.2015, when the learned Counsel for the first respondent brought to the notice of this Court the letter of undertaking, dated 24.07.1982, filed by the Secretary of the petitioner association, learned Counsel for the petitioner sought time and went on seeking adjournments. Ultimately, a petition was filed, being W.P.M.P.No.9816 of 2015, seeking amendment of the prayer in the Writ Petition as follows:

“The petitioner therefore prays that this Hon’ble Court may be pleased to issue a writ, more particularly one in the nature of Writ of Mandamus directing the respondents 1 to 4 allot the land admeasuring an extent of 3 acres in S.No.275 of Adivivaram Village, Visakhapatnam District belonging to the 1<sup>st</sup> respondent be granted to the petitioner Society, by regularizing the occupation by the petitioners herein to the tune of Rs.1000/- per sq. yard as per G.O.Ms.No.578 Revenue (ENDTS.IV) Department dated 19.08.2000 and consequently direct the respondents to issue sale deeds in favour of the petitioner society as a conclusive step of regularizing the extent of land occupied by the petitioners herein and pass such other or further order or orders as are deemed fit and proper in the circumstances of the case.”

The first respondent filed counter affidavit opposing the same. The amendment sought, as above, is not only in complete opposition to the relief sought in the original Writ Petition, but also filed after conclusion of the arguments, as aforesaid, on 23.01.2015 and

06.02.2015. The number of adjournments sought after the conclusion of the arguments and filing a petition at a later stage is deprecated, and W.P.M.P.No.9816 of 2015 is dismissed.

For the above reasons, the Writ Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid to the first respondent. The miscellaneous petitions pending, if any, shall stand closed.

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**(A.RAMALINGESWARA RAO, J)**

24.04.2015

Note: LR copy to be marked: No

B/o.

vs