

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.2478 OF 2009

DATED 27TH JULY, 2011

BETWEEN

Pattolla Madhava Reddy and another.

...Petitioners

And

Government of Andhra Pradesh rep. by its
Principal Secretary to Government,
Revenue (Endowments) Departments,
Secretariat, Hyderabad and others.

...Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION NO.2478 OF 2009

ORDER:

The petitioners assail the action of the respondent authorities in proposing to lease out two acres of land in T.S.Nos.22/2, 24 and 35/1 of Gudimalkapur Village, Hyderabad District, belonging to Jhamsingh Balaji Venkateswara Swamy Temple, Gudimalkapur, the fifth respondent, to Kshatriya Seva Sangam, Hyderabad, the sixth respondent, on the ground that the same is in violation of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 and the Rules framed thereunder in G.O.Ms.No.866, Revenue (Endowments-I) Department, dated 08.08.2003.

This Court, by order dated 11.02.2009, directed the respondents not to pass further orders without disposing of the objections filed by the petitioners and without communicating the orders passed thereon to them.

It is admitted that the objections of the petitioners are yet to be disposed of by the Government. In the meanwhile, WVMP No.2540 of 2010 was filed by the authorities, respondents 1 to 4, to vacate the said order.

With the consent of the learned counsel, the main writ petition is taken for disposal.

Heard Sri K.S.Murthy, learned counsel for the petitioners, the learned Government Pleader for Endowments appearing for respondents 1 to 4, Sri Ch.Satish Kumar, learned counsel for the fifth respondent Temple and Sri P.Yadagiri Rao, learned counsel for the

sixth respondent Sangam.

The material placed on record demonstrates that the proposal for leasing of the property of the fifth respondent Temple emanated from the sixth respondent Sangam itself. It appears that the fifth respondent thereupon passed a resolution to the effect that the sixth respondent Sangam's offer to take its property on lease should be considered. A notification was issued in the newspapers calling for objections with regard to this proposal to lease out the extent of two acres belonging to the fifth respondent Temple in favour of the sixth respondent Sangam. The petitioners and others appear to have submitted their objections thereto. Thereupon, the Commissioner of Endowments, Andhra Pradesh, addressed letter dated 03.06.2009 to the Secretary to the Government, Revenue (Endowments) Department, Government of Andhra Pradesh, advertng to the objections filed by various parties and requesting the Government to issue necessary orders on the objections as per the interim order passed by this Court in the present writ petition.

The aforestated chain of events reflects a clear and manifest violation of the procedure stipulated in the Rules framed by the Government, titled the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights (other than Agricultural Lands) Leases and Licences Rules, 2003, in G.O.Ms.No.866 dated 08.08.2003. Rule 3(1) thereof stipulates that all leases or licences shall be made by way of public auction. However, the proviso thereto empowers deviation from this procedure. It reads as under:

“Provided that the Commissioner may on a request made in writing by the Executive Authority permit the lease of any property or right other wise than by way of public auction, if he is satisfied for reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby. He may grant permission to such executive authority to grant a lease otherwise than by way of public auction.”

It is therefore clear that only upon a written request by the executive authority of the institution to permit the lease of its property or right other wise than by way of public auction, the Commissioner of Endowments is required to satisfy himself, duly recording the reasons therefor in writing, that the interest of the institution would not suffer owing to the deviation from the prescribed procedure of resorting to a public auction.

In the present case, there was no written request from the fifth respondent Temple asking the Commissioner to permit deviation from the prescribed procedure. On the other hand, the proposal of the lease emanated from the beneficiary itself, the sixth respondent Sangam. Thereupon, the authorities swung into action and the fifth respondent Temple toed the line by passing a resolution favouring the sixth respondent Sangam. Further, the record does not reflect any consideration whatsoever by the Commissioner of Endowments as to whether the deviation from the procedure prescribed was in the interest of the fifth respondent Temple. In fact, there is no record as to why a public auction in respect of the proposed lease was not considered necessary in the instant case. It appears that a decision was taken to consider the sixth respondent's offer favourably, completely ignoring the requirement of the rules.

In the light of the clear violation of the prescribed statutory procedure, the action taken by the authorities upon the proposal of the sixth respondent Sangam must necessarily fail. Though the learned Government Pleader would contend that the writ petition is premature as the matter is yet to be decided and the Government is seized of the issue and that all objections, including those of the petitioners, would be considered, this Court is not impressed. Once the authorities were mandatorily required to follow the procedure prescribed under the rules and they failed to do so, such action cannot be permitted to stand even if it has not fructified as yet in favour of the sixth respondent Sangam. The action taken by the respondent authorities upon the

proposal initiated by the sixth respondent Sangam is accordingly declared to be illegal.

The Writ Petition is allowed. Miscellaneous petitions filed in the writ petition shall stand dismissed in the light of this final order. In the circumstances, there shall be no order as to costs.

SANJAY KUMAR, J.

27TH JULY, 2011.

Note:

Order to be despatched after payment of costs as per order dated 27.07.2011 in WPMP No.24174 of 2011 in WP No.2478 of 2009.

B/O

VGSR