

HONB'E SRI JUSTICE CHALLA KODANDARAM

WRIT PETITION No.4691 OF 2009

ORDER:

The writ petition is filed questioning the action of the respondents 1, 2 and 3 in issuing the notices dated 02.11.2008 and 08.01.2009 proposing to auction the land of 2865 sq. yards of open land belonging to the 2nd respondent-temple.

Brief facts as set out in the respective parties' pleadings and in the chronological list of dates submitted by the learned counsel for the petitioners are that the 2nd respondent owns a vast extent of land in Sy.No.844 of Malkajigiri Village, Vallabanagar Taluq, Ranga Reddy District that over a period of time the land belonging to the temple was encroached to the large extent and finally out of the land which was available and to prevent further encroachment, the 2nd respondent had approached the competent authority the Endowment Commissioner seeking permission to sell Ac.8.00 of land to the 4th respondent's society; that such permission was accorded by the respective authorities vide G.O.Ms.No.44 dated 15.01.1982; that thereafter for a consideration of Rs.25,000/- per acre a part of the land over an extent of Ac.8.00 in Sy.No.844/16 was sold by executing a registered sale deed bearing No.3927 of 1982 on 6.3.1982; that the land was also demarcated and the possession was handed over to the said society. As part of the agreement entered into with the society, society was required to lay a 40 feet road around the Ac.8.00 of land, so as to provide access to the temple and also to the proposed lay out of the 4th respondent. The 4th respondent approached the Hyderabad Urban Development Authorities and initially submitted a layout plan under file No.663/MP2/HUDA/88 for creating 120 plots. However, the final approval was given only for 108 plots vide their sanctioned letter dated 16.8.1991 under File No.663/MP2/HUDA/88. Under the sanctioned plan, the 4th respondent

developed the layout and in the process finding the lack of funds re-worked out the layout plan by increasing the plots into 122 in place of 108. Certain areas which were shown as open areas and parks were converted into plots and the 4th respondent-society offered the same for sale through the auction and the petitioners became highest bidders for plots Nos.119 and 120 respectively. By 01.01.1996 petitioners paid the sale consideration, however, the 4th respondent failed to register the plots in their names. Thereafter, the Petitioners filed suits in O.S.Nos.2039 and 2042 of 2005 on the file of II Additional Senior Civil Judge, Ranga Reddy District, seeking specific performance and the said suits were decreed on 8.2.2008 and 23.01.2008 respectively in favour of the petitioners. Thereafter by virtue of orders of Court below in E.P.Nos.58 and 59 of 2008, registered sale deeds were executed through Court vide document Nos.2593 of 2011 and 2594 of 2011 dated 03.09.2011 and possession was also handed over to the petitioners. However, it may be noted that the respondent No.4 disputes the same by specifically contending that as the petitioners insisted for allotment of plots within the plots as approved by the HUDA the society had sold the plot Nos.119 and 120 in favour of one M. Pandurangan, S/o. late M. Narayana and M. Ramachandrayya, Son of M. Ilaiah by registered sale deeds dated 26th May, 2005 vide registered document Nos.3416 of 2005 and 3417 of 2005. The plot Nos.119 and 120 are towards eastern side of the layout and the 40 feet road has been laid around the layout.

It is the contention of Ms. G. Sudha, learned counsel for the petitioners that the auction notice is liable to be set aside on the following grounds:

- i) The notification does not set out the schedule of the land and there is a dispute with respect to identity of the property as in the first notification dated 17.9.2008 the land which is proposed to be sold is Ac.1.00 whereas in the notification dated 9.1.2009, the same is shown as 2864 sq. yards and the identity of the property was shown as opposite the temple.

- ii) On earlier occasion part of the land over an extent of 1577 sq. yards covered by plots and road east to south with a length of 210 feet and width of 40 feet was old and the same is included in the impugned auction notice for sale, which cannot be done.
- iii) The Government ought not to have granted permission without ascertaining the availability of the land on ground.
- iv) The areas earmarked for roads cannot be sold. Now the roads are being sold.
- v) No cause of action for 2nd respondent to make a claim for the area earmarked to lay the road from east to south with a length of 210X 40 feet. The trustees of the temple have acted in a *malafide* manner by misusing the trustee's power depriving the rights of the members of the society.

The learned Government Pleader Smt Pramadha, while contending that the counter filed on behalf of the 2nd respondent had been adopted by the 1st respondent, submits that the writ petition does not deserve for any consideration as the petitioners' dispute with respect to respondent No.4 society and the Government has nothing to do with the same. She asserts that the land which is proposed to be auctioned is the land belonging to the 2nd respondent temple and necessary permission and admittedly necessary sanction as required under law was obtained by the 2nd respondent for the sale of the same. She refutes the allegation that prior to granting of the permission no proper exercise was done to ascertain the availability of the land. By drawing attention to the averments in the counter-affidavit of the 2nd respondent, she submits that a survey was conducted by the officials and only thereafter auction notice was issued.

Learned counsel appearing for the 2nd respondent would reiterate the averments in the counter-affidavit and further specifically asserts that the land that is proposed to be sold through auction is outside the land which was sold. The Temple has nothing to do with the internal disputes of the society and its members.

The 3rd respondent in its counter had refuted the allegations of *malafides*. In the counter affidavit it was asserted that the temple authority had no intention to put the societies land in public auction.

Sri K. Venkata Ranga Das, learned counsel appearing for impleading party submits that the petitioners participated in the open auction pursuant to the auction notification dated 19.1.2009 and also had paid a sum of Rs.69,36,020/- towards sale consideration in favour of the temple and it is between the 2nd respondent and the implead petitioners to work out the details of all further actions required to be taken pursuant to the auction notification and the petitioners can have no grievance with respect to the auction and thus the respondents prayed for dismissal of the writ petition.

In the above set of facts the question which is required to be considered by this Court is whether the auction notice dated 02.11.2008, issued by the 2nd respondent is liable to be interfered by this Court.

Having perused the record and having considered the arguments of respective counsel, at the out set, it may be stated that on a query from the bench, learned counsel for the petitioners fairly submits that the alleged plot Nos.119 and 120 are within the layout prepared by the 4th respondent and the land proposed to be sold by the temple which is opposite to the temple and the plot Nos.119 and 120 are separated by a 40 feet road, at least in the layout plan on which the petitioners themselves rely on (the draft plan in File No.6635/MP2/HUDA/88). It is also an admitted and undisputed fact that the plot Nos.119 and 120 are not shown in the approved plan and even as per the lay out plan relied on by the petitioners the boundaries at the eastern side is the 40 feet road, western side plots bearing Nos.95 and 96. In other words, there is no dispute that in fact fairly admitted by the petitioners themselves that the plots are within the over all land of Ac.8.00 which was purchased by

the 4th respondent from the 2nd respondent. The land that is proposed to be sold through the auction by the 2nd respondent is outside the layout and separated by a 40 feet road. The petitioners themselves even remotely do not have any claim or right over the property of the 2nd respondent which is proposed to be auctioned. Except vaguely stating that the permission accorded to the 2nd respondent temple is *malafide* to sell the land is not proper and irregular. There was no effort on the part of the petitioners as to how and in what circumstances the permission accorded by the Government is vitiated. It may also be noted that there is no challenge as such in the writ petition to the permission accorded by the Government to sell the land of the 2nd respondent temple. In those circumstances, it is not necessary for this Court to consider the grounds raised by the petitioners.

In the counter-affidavit of the 2nd respondent it was categorically asserted that 2865 sq. yards is not part of the existing road or the plots and as a matter of fact there was a survey conducted by Tahsildar showing the temple land existing as open lands and it is only after demarcation by the department officials the auction notification was issued. Though a reply affidavit was filed, this aspect of the matter was not denied. In the reply affidavit of the petitioners, it was categorically asserted in para No.7 that the plots 119 and 120 purchased by the petitioners are within the Ac.8.00 of the land already sold to the 4th respondent. It was further asserted in para No.8 that the petitioners have no objection if the respondents 3 to 5 allocate 2864 sq. yards to the proposed petitioners (auction purchasers) other than the respondents' plots as well as the land covered by 40 feet road which the 6th respondent yet to develop and lay the road. In the absence of any substantial interest of the petitioners in the land of the 2nd respondent, there is no cause of action for the petitioners to challenge the auction notice. So far as the discrepancy in the area between 2008 notification and notification

issued in the year 2009, it is not in dispute that no auction was conducted pursuant to the auction notice dated 2.11.2008. The fact that the reduced area was sought to be auctioned itself go to establish that the 2nd respondent had taken into consideration of the land available for auction and in that view of the matter the ground raised on that count deserves to be rejected. There is no material placed before this Court by the petitioners even remotely to consider the allegation that the land earmarked for road is sought to be sold and on the other hand the material on record discloses that as per the sanctioned plan in 1991 layout was developed and 40 feet road was laid. Assuming that there is an element of overlapping on account of the shortage of land it is for the 2nd respondent and the auction purchasers to work out the details pursuant to the auction notice. It is not necessary for this Court to enter into the allegations and counter allegations pleaded and submitted before this Court between the petitioners and respondent No.4 for the reason the same do not have any thing to do with the auction notice issued by the 2nd respondent to sell its own land. The allegations and counter allegations between the petitioners and the 4th respondent disclose there are other proceedings pending before the Courts and at any rate they being disputed question of facts, this Court is not required to advert, decide and express any opinion. In the ultimate analysis there is no merit in the writ petition and the writ petition is liable to be dismissed as the same does not disclose any cause of action much less any right of the petitioners even remotely being affected with the proposed auction of the 2nd respondent.

In the result, the writ petition is dismissed. The observations made in the writ petition with respect to the facts shall not be construed as expressing any opinion with respect to the rights of either petitioners or the 4th respondent or other claiming through the 4th respondent and

they are only made for the purpose of deciding the validity of the auction notices. No order as to costs.

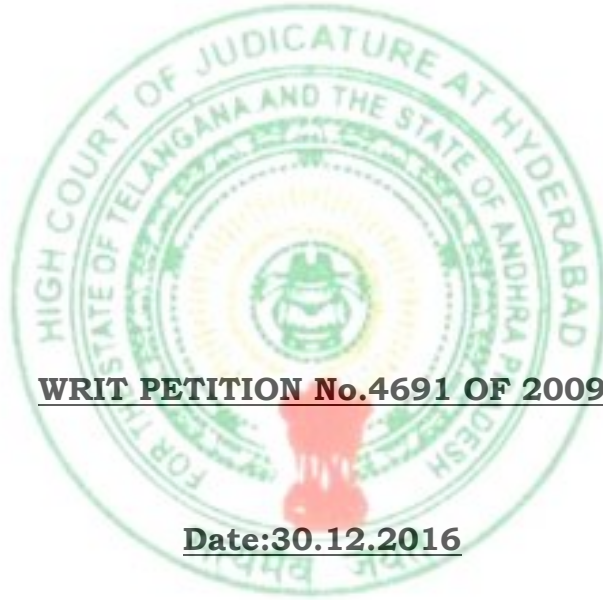
Miscellaneous Petitions, if any pending in this writ petition shall stand also closed.

CHALLA KODANDA RAM,J

Date:30.12.2016
Gk.



HONB'E SRI JUSTICE CHALLA KODANDARAM



WRIT PETITION No.4691 OF 2009

Date:30.12.2016

Gk