

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

WRIT PETITION No.4634 of 2006

ORDER:

In this Writ Petition, the petitioner has questioned the proceedings in Memo.No.31922/Endts.II(1)/2004-3 dt.10-02-2005 issued by the 1st respondent asking the petitioner to show cause why orders issued by 1st respondent in G.O.Ms.No.1322, Rev.(Endts.IV) Department dt.17-09-1982 should not be cancelled.

2. The petitioner is the founder President of Balasiva Universal Peace Foundation, Hyderabad which is a Society registered under the Societies Registration Act, 1860. According to the petitioner, the Society was established with the object of performing yagnas for the welfare of the Universe, to promote religious and cultural activities, publication of spiritual books, to render medical aid and feeding centers to the poor. It also runs educational institutions in the name of Sri Balasiva Yogindra Maharaj and had established a degree college at Kasibugga, Srikakulam District, a degree college in Kurnool, Kurnool District and also a degree college at Mydukur,Cudapah District.

3. An extent of Ac.16.94 cents in Sy.No.1943/B located at Mydukur, Kadapa District belonged to Sri Madhavaswamy and Sri Anjaneya Swamy Temples. The

Endowments Department put this land to public auction. According to the petitioner, no one quoted market value since the bidders including traders, farmers and villagers formed as a cartel and had not allowed the Endowments Department to get the market value for the land. Having coming to know this, on 02-12-1981, the petitioner offered to purchase the said land for Rs.1,50,000/-. According to the petitioner, at that time the market value of the land was only Rs.5,000/- per acre i.e. Rs.85,000/- as per the statistics obtained by the District Collector, Kadapa. The negotiations for sale were conducted by the then Hon'ble Minister for Endowments Sri P.V.Chowdhary in his chambers with the petitioner. Ultimately G.O.Ms.No.1322 Revenue (Endts.IV) Department

dt.17-09-1982 was issued by 1st respondent invoking its power under Section 72(1)(c) of the Andhra Pradesh Charitable and Religious Institutions and Endowments Act, 1966 deciding to sell away the above land belonging to the said Temples in favour of petitioner Society for construction of buildings for the Balasiva Universal Peace Foundation Decree College at Mydukur otherwise than by public auction.

4. Pursuant to the said decision, a registered sale deed was executed on 04-10-1982 by the Manager of the above temples in favour of the petitioner. Under the terms of the sale deed, consideration of Rs.1,50,000/- was received by the said Temples. The above property was

transferred to the petitioner to hold the same absolutely with full rights of alienation, gift, mortgage or otherwise enjoy the property for future generations without any hindrance from vendor or of his successors, assignees or legal representatives. The petitioner was also put in possession of the property on the same day by the vendor.

5. According to petitioner, subsequent to purchase of the above land, certain portions of it had to be sold on 24-10-1985 and 31-10-1985 to his brothers for the purpose of constructing buildings to set up Sri Balasiva Yogindra Maharaj Degree College at Mydukur. This institution, according to petitioner, was recommended for grant-in-aid on 28-12-1992 by the Director of Collegiate Education and G.O.Ms.No.52 dt.05-09-1993 was also issued admitting the posts to grant-in-aid w.e.f. 10-04-1990.

6. The petitioner alleges that 3rd respondent, who was the sitting M.L.A. of Mydukur made false allegations against him and the College set up by him through one M.J.Subbarami Reddy alleging that temple lands purchased by petitioner were sold contrary to the Government Order and the property be resumed and criminal action be initiated against him.

7. Petitioner contends that on the basis of the said

complaint, the District Collector, Kadapa issued a show cause notice dt.27-04-1995 to the petitioner asking him to show cause why the said lands should not be resumed since portions of it are alienated to others contrary to the Government Orders.

8. After submitting explanation, petitioner filed an appeal before the 1st respondent and obtained stay of all further proceedings pursuant to the said notice vide memo No.35534/Endts.II-1/95-1 dt.07-06-1995. According to petitioner, nothing transpired thereafter till date and the proceedings appear to have been dropped by the District Collector, Kadapa.

9. In 2004, the 3rd respondent got elected as M.L.A. from Mydukur Constituency and petitioner alleges that he again made a false representation to the District Collector, Kadapa and to the then Hon'ble Chief Minister of the State of Andhra Pradesh in respect of transfer of land made by petitioner, which was purchased in 1982 from the above institutions. In that representation the 3rd respondent requested the Hon'ble Chief Minister and the Endowments Minister to resume the property sold to petitioner.

10. Thereafter impugned show cause notice in memo No.31922/Endts.II(1)/2004-2 dt.10-02-2005 was issued by

1st respondent stating that the sale deed was executed in favour of the Society, of which the petitioner is a President, but the Society acted detrimental to the terms and conditions stipulated at the time of sale of land, violated the conditions imposed and sold away portion of land to others against the aims and objects of the Trust and the Society had only Ac.2.00 of land in which the college building was constructed and the remaining had been sold away by petitioner to his kith and kin. The said memo referred to the then market value of Rs.15,00,000/- per acre and the Sub-Registrar value at Rs.37,000/- per acre as per the report of the Additional Commissioner of Endowments. It asked petitioner to show cause why the land should be resumed by cancelling the G.O.Ms.No.1322 Revenue (Endts.IV) department dt.17.9.1982 on the ground that objects for which he got the land were not fulfilled.

11. Although this notice is dated 10-02-2005, the petitioner alleged that this was served on 02-03-2006.

12. Petitioner contends that the said memo is illegal and contrary to law; that in the said memo there is already a predetermination of the decision and issuance of show cause is nothing but an empty formality; that on 17-09-1982, G.O.Ms.No.1322 was issued by

1st respondent according permission to sell the land at Mydukur in favour of petitioner by exempting it from public

auction on petitioner paying Rs.1,50,000/-, which was the double the market value at that time; that the recitals in the sale deed indicate that there is a transfer of full rights in the land to petitioner without any restriction; that the contention of 1st respondent that only Ac.2.00 cents of land remained with the college is not correct, since the college had Ac.8.00 of land apart from another Ac.17.50 cents purchased by petitioner at the time when the college was admitted to grant-in-aid vide G.O.Ms.No.52 dt.05-03-1993.

13. Learned counsel for petitioner relied upon the judgment of this Court in **A.B.C. India Limited Vs. The A.P. Industrial Infrastructure Corporation Limited**^[1] wherein this Court has held that after sale deeds are executed without any condition, the same cannot be cancelled unilaterally. He also relied on Section 11 of the Transfer of Property Act, 1882 and contended that when the transfer of immovable property is completed by execution of a sale deed, even if there is any restriction in the sale deed disentitling the transferee from operating or disposing of his interest, such a condition would be void and the transferee can enjoy the property ignoring the same.

14. On the other hand, learned Government Pleader appearing for respondents supported the impugned memo and relied upon the judgments in **Chenchu Rami**

Reddy and another Vs. The Government of A.P. and others^[2] and Somanatha Reddy and others Vs.

Government of A.P. and others^[3]. He contended that sale by private negotiations instead of public auction is prohibited by law and that the very proceeding G.O.Ms.No.1322 dt.17-09-1982 sanctioning sale by the above temples of the land in favour of Sri Balasiva Universal Peace Foundation is not valid and consequently no rights flowed to petitioner under the registered sale deed dt.04-10-1982 executed by the said temples in his favour.

15. I have noted the contentions of both parties.

16. A reading of the impugned memo, which asks the petitioner to show cause why G.O.Ms.No.1322 Revenue (Endts.IV) Department dt.17-09-1982 should not be cancelled, nowhere indicates that the said sale was not in the interest of the vendor Temples. The only reason why the said G.O. is sought to be cancelled under the impugned memo by 1st respondent is that certain alienations have been done by petitioner out of the land purchased under the sale deed dt.04-10-1982 in favour of his kith and kin.

17. Section 74(1)(c) of the Act states:

“(c) Every sale of any such immovable property sanctioned by the Commissioner under Clause (b) shall be affected by 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 therefor in writing, permit the sale of such immovable property, otherwise than by public auction."

18. According to petitioner, at the time when 1st respondent approved the sale of the above land in petitioner's favour for Rs.1,50,000/-, the District Collector had obtained the market value of this land from the Tahsildar, Proddutur, which indicated that the market value was Rs.5,000/- per acre only. Petitioner has placed before me proceedings D.Dis.No.4259/B2 dt.10-05-1982 of the then District Collector, Cuddapah addressed to the Secretary to Government, Revenue (E.IV) Department, A.P., Hyderabad stating this fact. No counter affidavit is filed by 1st respondent disputing the fact that the offer made by petitioner at Rs.1,50,000/- is far in excess of the market value of Rs.85,000/- as provided by the Tahsildar, Proddutur to the District Collector, Kadapa in May, 1982. Therefore undoubtedly the sale in favour of petitioner on 04-10-1982 is in the interest of the temples referred to above even though it was done by negotiations and not by public auction. It is not as if anybody had offered a higher rate according to respondents in the public auctions conducted for the sale of the said lands by the Temples prior to May, 1982.

19. No doubt in the decisions cited by the learned

Government Pleader a view was taken that normally sale of properties of institutions ought to be by public auction and not by private negotiations, but the fact remains that the sale in favour of petitioner by the Temples was on 04-10-1982 and even the 1st respondent is not contending that the sale in favour of petitioner on 04-10-1982 preceded by G.O.Ms.No.1322 dt.17-09-1982 was not for the benefit of the institution. In any event, the said sale is sought to be questioned more than 22 years after it has happened only on the ground that the petitioner had alienated some of the purchased land to his kith and kin. Therefore the decisions cited by the learned Government Pleader have no application to the facts of the case.

20. Section 11 of the Transfer of Property Act, 1882 states:

***“11. Restriction repugnant to interest created :-** Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.*

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.”

21. This was considered in **A.B.C. India Limited** (1 supra) by this Court and this Court had categorically held

that when transfer is completed on execution of sale deed, even if there is any restriction operating on the transferee, such a restriction would be void and the transferee is entitled to receive and dispose of his interest as if there was no direction. In that case, allotment of land was made by the A.P. Industrial Infrastructure Corporation Limited to various persons followed by registered sale deeds executed in favour of the purchasers. Ten years later the said sale deeds were sought to be cancelled on the ground that the purchasers had not set up industrial units pursuant to the allotments made in their favour. This Court had held that the A.P. Industrial Infrastructure Corporation Limited cannot unilaterally cancel the sale deeds on the ground that the transferee did not fulfill the terms of the allotment.

22. Having regard to the above legal position, I am of the opinion that after the registered sale deed was executed in favour of petitioner by the above referred Temples without any restriction therein about the enjoyment of the sale of land or use of the said land by petitioner, it is not open to 1st respondent to attempt to cancel the same unilaterally on the ground that some portion of the land purchased by petitioner was alienated by him to his kith and kin, more so, when this is attempted to be done 23 years after the sale in favour of petitioner.

23. The Writ Petition is accordingly allowed and the

Memo.No.31922/Endts.II(1)/2004-3 dt.10-02-2005 of the
1st respondent is set aside as being arbitrary, illegal and
not *bona fide* and the respondents are restrained from
taking any action against petitioner on the above ground.
No costs.

24. As a sequel, the miscellaneous petitions, if any
pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-03-2016

Vsv

[\[1\]](#) 2010(6) ALT 142

[\[2\]](#) AIR 1986 SC 1158(1)

[\[3\]](#) 2001(2) ALT 515