

THE HON'BLE SRI JUSTICE A.V. SESA SAI
WRIT PETITION No.11611 of 2005

ORDER:

Initially petitioner No.1 herein filed the present writ petition, assailing the order of the first respondent State Government in Revision Petition No.36765/2004 Endowments II/O4, dated 18.05.2005 and subsequently this Court ordered an application filed by the petitioners seeking amendment and in the result the main relief prayed in the writ petition is as follows:

“To issue any writ, order of direction, more particularly one in the nature of Writ of Mandamus, declaring that the permission accorded for sale by private negotiations by the 1st respondent in favour of P.Srinivasula Naidu or persons named by him as conveyed in G.O.ms.No.981 Revenue (Endts.II) Department dated 23.09.1992 as illegal, arbitrary and opposed to public policy and non-rectification of the illegality by the 1st respondent while passing the order in Memo No.36765/Endts.II(A)/2005 dated 18.05.2005 as arbitrary and illegal and consequently direct the respondents 1 to 3 to take steps favouring sale of land Ac.24.25 cents in Sy.No.205 situated at Timminaidupalayam Village, Chittoor District in favour of legal heirs of late J.Natarajan, son of J.Ranga Bhashyam Reddy at Rs.40,000/- per acre with right for adjusting the compensation amount for Ac.6.78 and 0.27 cents and put in physical possession after recovering possession from respondents 4 to 15; and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Pending writ petition, the sole writ petitioner, Sri J.Ramesh Babu passed away and the petitioners 2 to 6 got themselves impleaded as the legal representatives of the deceased first petitioner vide order dated 01.09.2014 in WPMP.No.11701 of 2014.

3. According to the pleadings in the writ affidavit, Sri Swamy Hathiramji Math, Tirupathi, third respondent herein, owned the land admeasuring Ac.24.25 cents situated in R.S.No.205 of Timminaidupalayam Village, Chittoor District and the land was given as patta lease on annual rent of Rs.25/- per year and the petitioner claims to

be in possession of the land along with others since the year 1950 under a Thakid from the Mahanth of the third respondent Math and he also claims to have developed the land. It is the further case of the petitioner that the third respondent filed O.S.No.240 of 1971 for possession and damages and the same was dismissed and A.S.No.6 of 1977 filed before the Principal Sub-Court, Tirupathi was also dismissed and against the same S.A.No.470 of 1986 was preferred before this Court.

4. It is the further case of the petitioner that one Mr. Srinivasula Naidu, a person, representing the first petitioner herein and others as General Power of Attorney Holder made a collusive affair with the department and under the guise of the L.R petition obtained their signatures and got filed a partition suit vide O.S.No.7/1988 through the first petitioner and others on 25.01.1988 in which he represented other side branch as GPA and as a collusive affair filed a Memo of Compromise within one month and the same was recorded on 25.02.1988 thereby rights of the first petitioner and others stood extinguished and S.A.No.470 of 1986 was dismissed on 08.07.1988. It is further alleged that the said G.P.A Srinivasula Naidu managed in the department and in collusion with the staff of the third respondent Math got filed the petitions for alienation of the subject land in his favour, knowing fully well that he was only a G.P.A Holder. Thereafter, the State Government vide G.O.Ms.No.981 Revenue (Endts.II) Department dated 23.09.1992 accepted the proposal to sell the lands @ of Rs.40,000/- per acre in favour of Sri Srinivasula Naidu and the Commissioner of Endowments issued consequential proceedings Rc.No.M3/46239/91, dated 01.10.1992.

5. Thereafter, the first petitioner herein and others filed W.P.No.26716 of 2003 against the proceedings of the Commissioner, dated 01.10.1992, and a learned Single Judge of this Court by way of an order dated 29.12.2003 dismissed the same and W.A.No.274 of 2004 was filed and a Division Bench of this Court by way of an order dated 15.09.2004 allowed the Writ Appeal, giving liberty to workout their remedies as per

law. Subsequently, on 14.10.2004, petitioner and others filed revision before the State Government under Section 93 of the Endowments Act against the orders of the Commissioner, dated 01.10.1992. The State Government vide Memo No. No.36765/Endts.II(A)/2005 dated 18.05.2005 dismissed the said revision.

6. Initially, challenging the validity of the memo issued by the first respondent, dismissing the revision dated 18.05.2005 and consequently to set aside the Commissioner's Memo dated 1.10.1992, writ petition came to be filed. In view of the subsequent amendment, the orders of the State Government vide G.O.Ms.No.981 Revenue (Endts.II) Department dated 23.09.1992 are also under challenge in the writ petition.

7. Heard Sri E.Manohar, learned Senior Counsel, representing Sri V.Ramchander Goud, learned counsel for the petitioners on record and the learned Government Pleader for the respondents 1 and 2 and Sri V.Venugopal Rao, for the third respondent Math and Sri P.Jagadish Chandra Prasad for the unofficial respondents apart from perusing the material available on record.

8. It is contended by the learned Senior Counsel, appearing for the petitioners that the impugned memo is highly erroneous, contrary to law and is the result of abdication of power by the first respondent which is a quasi judicial authority. It is further contended that the first respondent ought not to have dismissed the revision as time barred as the transactions are tainted with fraud. It is also the submission of the learned Senior Counsel that the first respondent herein should have verified whether the transaction took place with the knowledge of the petitioners and other interested parties and the action of the first respondent in seeking to drive the petitioner and others to civil Court is unwarranted and the first respondent herein ought to have permitted sale in favour of the persons in possession. It is also submitted that the first respondent grossly erred in dismissing the revision as time barred.

9. On the contrary, it is contended by the learned Government

Pleader, learned counsel for the third respondent Math and the learned counsel for the unofficial respondents that there is absolutely no illegality nor there is any procedural infirmity in the impugned action, as such, the orders impugned are not amenable for any judicial review of this Court under Article 226 of the Constitution of India and the writ petition is liable to be dismissed as not maintainable. It is further submitted that since the first respondent herein cannot go into the aspect of fraud and as the fraud needs to be proved and established specifically by way of adducing evidence, the first respondent is perfectly justified in asking the petitioner to approach appropriate forum of law for redressal of his grievance. It is also submitted by the learned counsel for the third respondent that so long as the decree granted in O.S.No.7 of 1988 operates, the petitioner herein cannot claim any relief contrary to the said decree. It is further submitted that the third respondent executed sale deed as long back as on 10.11.1992 and the validity of the same cannot be questioned now by the petitioner herein. It is further submitted that the revision filed by the petitioners and others before the State Government is an incompetent revision.

10. In the above backdrop, now the issue that emerges for consideration of this Court is_ “Whether the petitioners are entitled for any relief from this Court under Article 226 of the Constitution of India?”

11. The information available fore this Court manifestly discloses that previously the first petitioner herein and certain others field W.P.No.26716 of 2003 before this Court, questioning the proceedings of the Commissioner of Endowments issued vide Rc.No.173/46239, dated 01.10.1992. The Commissioner of Endowments issued the said proceedings as a sequel to the orders of the Government vide G.O.Ms.No.981 Revenue (Endts.II) Department dated 23.09.1992 whereunder the State Government accepted the proposals sent by the Commissioner for sale of the land in favour of Mr.Srinivasula Naidu. A learned Single Judge of this Court, by way of an order dated 29.12.2003, dismissed the said writ petition and the operative portion of the said

order reads as under:

“A reading of the affidavit would disclose that the property was sold by the Assistant Commissioner on behalf of the Mutt to third respondent. Subsequently, an extent of Acs.6.00 was acquired and compensation was paid. When the land acquired, needless to point out the authorities have to issue notices under the Land Acquisition Act, 1894 (for short, the Act), at the stage of proposal, at the stage of declaration and at the stage of award enquiry under Sections 9, 10 and 11 of the Act. Therefore, whatever be the contents of the affidavit, it is unimaginable to say that petitioners are not aware of the proceedings of the Commissioner permitting Assistant Commissioner to alienate the property. Secondly, after perusing the judgment and decree

dt. 19.4.1977, in O.S.No.245 of 1971, it becomes clear that the trial Court came to the conclusion that the title and right of the property in S.No.205 vests in the Mutt and that the suit for damages cannot be entertained because of Gangi Reddy and two others were inducted as tenants. In that view of the matter, it is always competent for the Commissioner to permit the Mutt authorities to sell the property by way of alienation without resorting to public auction. Thirdly, if this Writ Petition is entertained, it would be futile for by reason of the proceedings issued by the Commissioner in October, 1992, the property was already sold to the third respondent. The petitioners have not properly explained the delay of laches and the Writ Petition is barred by delay and laches. If the Writ Petition is entertained, it would cause prejudice to respondents 2 and 3 and other persons who are claiming through them. The writ petition is wholly misconceived.

The Writ Petition, for the above reasons is dismissed.”

12. As against the above said order passed by the learned Single Judge, first petitioner herein and others filed W.A.No.274 of 2004 and a Division Bench of this Court by way of an order dated 15.09.2004, allowed the said appeal and passed the following order:

“The writ appeal is filed against the order passed by the learned single Judge dismissing the writ petition.

Appellants claiming to be the successor-in-interest of one Gangi Reddy, alleged to be one of the lessees of the land in Sy.No.205 to an extent of Ac.24.25 cents situate at Thimminaidupalem, Chandragiri Taluk, Chittoor District, filed writ petition questioning the action of first respondent in having issued proceedings dated 1-10-1992 pursuant to which,

except the property which was acquired for public purpose, remaining was sold to third respondent, and sought for a direction not to interfere with their alleged possession.

Learned Single Judge dismissed writ petition on the ground that it was highly belated as impugned proceedings were issued in the year 1992 pursuant to which land was sold by second respondent in favour of third respondent.

During the course of submissions, learned counsel for the appellants submitted that appellants may be permitted to withdraw writ petition with liberty reserved to the appellants to seek redressal before appropriate forum in accordance with law. There is no objection from the learned counsel for the respondents in the appellants withdrawing the writ petition.

Writ appeal is allowed. Impugned order is set aside. Appellants' writ petition is dismissed as withdrawn with liberty reserved to the appellants to workout their remedies in accordance with law. No costs."

13. Thereafter, the first petitioner herein along with others filed a revision before the first respondent State Government under Section 93 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. The State Government vide impugned Memo No.36765/Endts.II(A)/2005, dated 18.05.2005, dismissed the said revision. A perusal of the said order of dismissal dated 18.05.2005 passed by the first respondent vividly discloses that the State Government assigned two reasons for dismissal of the revision filed by the petitioner. At the first instance, the State Government considered the aspect of limitation of 90 days for filing the revision and also took into consideration the date of the order passed by the Commissioner i.e., on 01.10.1992 and the filing of the revision before the State Government after more than 12 years. While dealing with the aspect of fraud as alleged by the revision petitioners, the State Government while accepting the legal possession sought to be urged by the revision petitioners that in the matter of fraud the limitation would commence from the date of detection of the fraud, categorically held that the first respondent is not competent to decide whether the transaction was fraudulent. The State Government also found that in the event of the

revision petitioners being able to establish that the fraud was perpetrated in a proper legal forum, the Government would have no difficulty in accepting the plea that the case was not time barred. According to the learned counsel for the third respondent so long as the decree passed in O.S.No.7 of 1988, on the file of the Court of the Principal Subordinate Judge, Tirupathi wherein the first petitioner was arrayed as the plaintiff No.7 subsists, the petitioners herein are not entitled for any claim. A copy of the said compromise decree dated 24.02.1988 is placed on record by the learned counsel for the third respondent. A perusal of the deed of compromise shows that the plaintiffs therein including the first petitioner herein relinquished their claim in the compensation while categorically stating that they were not claiming their rights in the said properties while recognizing title in favour of the defendants 9 and 10. It is now the case of the petitioner that in the guise of filing L.R petition Srinivasula Naidu obtained their signatures and got filed a partition suit vide O.S.No.7/1988 and fraudulently filed a memo of compromise and the same was recorded on 25.02.1988. In the considered opinion of this Court, unless the said transactions are declared as vitiated by fraud, the claim of the petitioners cannot be considered. In fact, obviously taking into account these aspects only the State Government dismissed the revision filed by the first petitioner and others. Since the element of fraud is required to be proved by specifically pleading and by adducing evidence, this Court does not find any valid reason to interfere with the order passed by the first respondent and the first respondent is perfectly justified in asking the petitioners to approach appropriate forum of law for establishing the fraud, if any.

14. For the aforesaid reasons, writ petition is dismissed. As a sequel, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V. SETHA SAI, J

Date:30.6.2016

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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Dated June, 2016

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