

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19-09-2017

Pronounced on : 10-11-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Appeal Suit No. 401 of 2014
and

M.P. No. 1 of 2014
M.P. No. 1 of 2015

N. Sudhakar Reddy ... Appellant/Plaintiff

Versus

Sri Kalahateeswara Swamivari Devasthanam
Represented by its Executive Officer-cum-
Regional Joint Commissioner
Sri Kalahasti
Chittoor District ... Respondent/Defendant

Appeal filed under Section 96 of Civil Procedure Code
against the Judgment and Decree dated 13.03.2014 passed in O.S.
No. 228 of 2007 on the file of IV Additional District Judge,
Ponneri.

For Appellant : Mrs. Hema Sampath, Senior Advocate
for Mr. H. Adikala Arockiaraj

For Respondent : Mr. T.R. Rajagopalan, Senior Advocate
for Mr. N.R. Anantharama Krishnan

JUDGMENT

R. SUBBIAH, J

The Plaintiff in O.S. No. 228 of 2007 on the file of the IV Additional District Judge, Ponneri is the appellant in this appeal. The appellant has filed the said suit in O.S. No. 228 of 2007 seeking for a direction to the respondent/Defendant-Devasthanam to execute the sale deed in his favour in respect of the suit property after receiving the balance sale consideration of Rs.19,49,250/- and in the event of failure on the part of the respondent/Defendant, prayed the Court to execute the sale deed; for granting a consequential permanent injunction restraining the respondent/defendant, their men, agents, representatives or any one from in any manner alienating the suit property or creating any encumbrance till the disposal of the suit and for

costs. The trial Court dismissed the suit, against which the appellant has come forward with this appeal.

2. For easy reference, the parties to this appeal shall be referred to as plaintiff and defendant, as per their litigative status in the suit.

3. The case of the plaintiff is that the suit property - a Palm grove comprised in Survey Nos. 281, 282, 366/1 and 366/3 measuring an extent of 24.25 acres situated in Vallur Village, Ponneri Taluk, Thiruvallur District belonged to the defendant Devasthanam. Though the Defendant Devasthanam is in Chittoor District, the suit property is situated at Ponneri Taluk, Thiruvallur District within the jurisdiction of the State of Tamil Nadu. According to the plaintiff, on 15.02.1996, the defendant Devasthanam conducted a public auction for sale of the suit property. As the bid amount offered at the time of such auction was very low, the defendant Devasthanam decided to sell the suit property by private negotiation. In the private negotiation, the plaintiff gave his consent to purchase the suit property at the rate of Rs.1,01,000/- per Acre. Such an offer made by the plaintiff was also accepted by the defendant and therefore, the plaintiff paid a sum of Rs.5,00,000/- to the defendant towards earnest money on 19.02.1996. On receipt of such payment, the Commissioner of Endowment Department, Hyderabad, on behalf of the defendant Devasthanam, sent a letter dated 25.03.1996 to the Government of Andhra Pradesh to accord permission for sale of the suit property in favour of the plaintiff as required under Section 80 (1) (b) of The Andhra Pradesh Charities and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter called as The Act). Based on such letter, it is claimed that the Government of Andhra Pradesh passed an order in G.O. Ms. No.686, Revenue (endts-III) Department dated 14.06.1997 in exercise of the power conferred under Section 80 (1) (c) of the Act, accorded permission to the defendant to sell the suit property to the plaintiff by way of private negotiation. On the basis of such order passed by the Government of Andhra Pradesh, the Defendant-Devasthanam wrote letters dated 18.08.1997, 22.08.1997 and 06.09.1997 to the Commissioner, Endowment Department seeking permission to sell the suit property in favour of the plaintiff after receipt of the balance sale consideration. However, there was no response forthcoming from the Commissioner of Endowment Department to sell the suit property in favour of the plaintiff and therefore, the plaintiff made several representations to the defendant expressing his readiness and willingness to get the sale deed executed by paying the balance sale consideration of Rs.19,49,250/-.

4. According to the plaintiff, inspite of several representations, he has not received any response from the

defendant, therefore, he caused a legal notice dated 28.10.2006 to the defendant for which a reply dated 13.11.2016 was sent by the defendant stating that the existing lessee, who is in possession of the suit property, has instituted a suit in O.S. No. 268 of 1996 on the file of the District Munsif Court, Ponneri which was decreed against which the defendant has filed A.S. No. 12 of 2005 on the file of Sub Court, Ponneri and therefore, it was replied that only after disposal of the said appeal, the defendant will be in a position to sell the suit property in favour of the plaintiff. According to the plaintiff, the defendant Devasthanam also sent a letter dated 23.06.2006 seeking legal opinion from their panel lawyers and on 25.06.2006, a legal opinion was given stating that the suit property can be sold to the plaintiff. While so, on 28.10.2006, the defendant has sent a letter containing unjustifiable reasons for not executing the sale deed in his favour and called upon the plaintiff to get back the amount of Rs.5,00,000/- deposited by him on 19.02.1996. On receipt of such letter dated 28.10.2006, the plaintiff sent a reply dated 27.01.2007 stating that he has got a right to purchase the suit property by virtue of the deposit of the amount of Rs.5,00,000/- pursuant to the private negotiations that had taken place with the defendant Devasthanam and called upon the defendant to execute the sale deed in his favour. It is also stated that the Appeal preferred by the defendant in A.S. No. 12 of 2005 was allowed by the Sub Court, Ponneri by setting aside the decree and Judgment passed in O.S. No. 268 of 1996 instituted by the existing lessee in the suit property. It is the grievance of the plaintiff that even though he has deposited a major portion of the sale price on 19.02.1996 and the Government of Andhra Pradesh has also accorded permission to the sell the suit property in his favour, the defendant has unceremoniously refused to execute the sale deed in his favour. In such circumstances, the plaintiff has instituted the present suit.

5. Resisting the plaint averments, the defendant has filed written statement contending that the suit filed by the plaintiff is in the nature of a suit for specific performance of the contract and it is not maintainable. The suit as filed by the plaintiff is hit by the provisions of Section 151 of the Act. Further, the suit filed by the plaintiff, based on the Order passed by the Government of Andhra Pradesh in G.O. Ms. No.686, Revenue (Endts.II) Department dated 14.06.1996, is hopelessly barred by limitation besides that the trial court lacked jurisdiction to entertain the suit. The order passed by the Government in G.O. Ms. No.686 dated 14.06.1996 is not in compliance of the statutory compliance inasmuch as it was passed without effecting newspaper publication or publication in the official Gazette inviting objections for sale of the suit property and such an order dated 14.06.1996 passed is against the interest of the temple, which rendered the permission

accorded by the Government to sell the endowment property invalid and unenforceable in law. It was further contended that the plaintiff seeks to enforce the order passed by the Commissioner, Endowments, Andhra Pradesh, Hyderabad and the Government of Andhra Pradesh, Revenue (Endowments) Department besides that the suit property belonged to Sri Kalahasteeswara Swamy Devasthanam, Srikalahasthi, Chittoor District, but they were not made as parties to the suit and therefore the suit is bad for non-joinder of necessary parties. The suit property belonged to Sri Kalahasteeswara Swamy Devasthanam, Srikalahasthi, Chittoor District and it is not the property of the Executive Officer. There is a prohibition on alienation of the Endowment Properties as per Section 80 (1) of the Act. The Government of Andhra Pradesh may accord permission as per the provisions contemplated under the said Act only after following due process such as calling for objections by causing publication in the Government of Andhra Pradesh Gazette and also by making publication in local dailies. In the absence of compliance of such statutory procedure, the alienation sought to be made at the instance of the plaintiff will render the statutory provisions otiose. As the due process required under the said Act has not been complied with in the present case, prior to issuing the Government Order, the claim of the plaintiff cannot be countenanced. It was further contended by the defendant that G.O. Ms. No.686, Revenue (Endots-II) Department dated 14.06.1996, purported to have been passed in exercise of the powers conferred under Clause C of Sub-section 1 of Section 80 of the said Act, has in fact been issued without complying the provisions contained under clause (b) of Sub-section 1 of Section 80, which is mandatory. Therefore, the amount deposited by the plaintiff could only be refunded after obtaining necessary permission from the authorities concerned.

6. It was further stated in the written statement that the suit property is a palm grove which was licenced in favour of one V. Subramani for collecting the usufructs. The said licensee has filed a suit in O.S. No. 268 of 1996 on the file of District Munsif Court, Ponneri seeking permanent injunction against the defendant from interfering with his possession and enjoyment of the suit property. The suit was decreed in favour of the said V. Subramani against which the defendant has filed A.S. No. 12 of 2005 before the Sub Court, Ponneri. The learned Subordinate Judge, by judgment and decree dated 22.12.2006 allowed the appeal filed by the defendant. As against the same, the plaintiff has filed S.A. No. 175 of 2008 before this Court and it is pending. It was also stated that apart from the litigation pending with respect to the suit property, as mentioned above, there was an order against the alienation of the temple properties issued by the High Court of Andhra Pradesh in the order dated 07.06.2005 passed in WPMP No. 15055 of 2005 in WP No. 11812 of 2005. Therefore, it was contended that the

pending litigations, as mentioned above, is also one of the reasons, due to which, the defendant is unable to execute the sale deed in favour of the plaintiff. As regards the claim of the plaintiff with respect to the legal opinion given by the panel lawyer of the defendant, it was stated that such opinion will not have any statutory force and it cannot be relied on by the plaintiff.

7. In effect, it was contended by the defendant in the written statement that the defendant temple cannot be compelled to alienate the suit property in favour of the plaintiff in violation of the statutory Rules which are in force. The Plaintiff has paid the sum of Rs.5 lakhs on 19.02.1996 on the basis of which the present suit has been filed. However, the said amount paid by the defendant is not in furtherance of any valid contract between the plaintiff and the defendant. The reasons for not executing the sale deed in favour of the plaintiff has been clearly indicated in the reply notice dated 28.10.2006 inter alia the plaintiff was called upon to receive the amount deposited by him. Above all, it was contended that even though the amount was deposited by the plaintiff on 19.02.1996, the suit has been filed by him only during April 2007 and therefore, it was contended that the suit, as filed by the plaintiff, is barred by limitation and therefore the suit has to be dismissed.

8. Before the Trial Court, the plaintiff examined himself as PW1 and marked Exs. A1 to A15 on his side. On behalf of the defendant/temple, Mr. Lokesh Babu, who is working as Senior Assistant in the Temple, was examined as DW1 but no document was marked. The trial Court, upon analysing the oral and documentary evidence has framed as many as 8 issues. After dealing with the issues so framed, the trial Court concluded that the suit was filed by the plaintiff in the nature of a suit for specific performance as if there is a valid and subsisting contract between the two, but there was no such enforceable contract. Even if it is so, such suit ought to have been filed by the plaintiff within 3 years from the date of contract, but the suit filed in the year 2007 is not maintainable. The trial Court, also pointed out the contravention of the statutory provisions contained under the Act and held that the plaintiff has not made out any case for grant of the relief prayed for in the suit. Ultimately, the trial court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff has come forward with this appeal.

9. The learned Senior Counsel appearing for the plaintiff would contend that the suit property belonged to the defendant-Devasthanam which was sought to be sold by the defendant in a public auction. Even though the public auction was conducted on many days, there was no bidder forthcoming to purchase the suit

property. Therefore, it was decided by the defendant-Devasthanam to sell the suit property by resorting to private negotiation. During the course of such private negotiation, the plaintiff gave his consent to purchase the suit property at a price of Rs.1,01,000/- per acre which was also accepted by the defendant-Devasthanam. Thus, there was a valid contract entered into by the plaintiff with the defendant to purchase the suit property and such contract is enforceable in nature. When the offer made by the plaintiff was accepted by the defendant Devasthanam, the plaintiff has deposited Rs.5,00,000/- towards advance sale consideration on 19.02.1996. Immediately, the Commissioner, Endowment Department, Hyderabad sent a letter dated 25.03.1996 to the Government of Andhra Pradesh seeking to accord permission to sell the suit property as required under Section 80 (1) (b) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. On the basis of such letter, the Government of Andhra Pradesh has also accorded sanction for selling the suit property to the plaintiff by issuing G.O. Ms. No.686 dated 14.08.1997. However, inspite of the sanction accorded by the Government of Andhra Pradesh, the defendant has not come forward to execute the sale deed in favour of the plaintiff. After making repeated representations followed by a notice dated 28.10.2006 through his lawyer, the defendant has come forward with a reply dated 13.11.2006 stating that they are not in a position to sell the suit property and called upon the plaintiff to come and receive the balance sale consideration by citing the pendency of the suit filed by the existing lessee in the suit property.

10. Before the trial Court, DW1, Senior Assistant working in the defendant Devasthanam deposed that since the suit property could not be sold in the public auction, it was decided to be sold through private negotiation in which the plaintiff has offered to purchase it and also deposited Rs.5,00,000/- on 19.02.1996. Even in the written statement, the defendant did not deny the fact that the plaintiff offered to purchase the suit property for Rs.1,01,000/- per acre in private negotiation and the deposit of Rs.5,00,000/- made by him on 19.02.1996. While so, the trial court erroneously held that there is no valid or subsisting contract between the parties and therefore the relief sought for by the plaintiff in the suit cannot be granted. It was further contended that the Government of Andhra Pradesh has accorded permission to sell the suit property, however, for non-compliance of certain statutory provisions by the Government of Andhra Pradesh or the Defendant-Devasthanam, the plaintiff cannot be penalised. In fact, the learned Senior counsel for the plaintiff invited the attention to the legal opinion, Ex.A8 given by one of the panel lawyers of the defendant, wherein he has opined that there is no bar and the claim made by the plaintiff for sale of the suit property in his favour has statutory force. Even though the opinion subscribed

by the panel lawyer cannot be relied on, as it has no statutory force, yet, it is one of the pieces of evidence relied on by the plaintiff to show the reluctance on the part of the defendant to enforce the contract, while so, the Court below ought not to have brushed aside the same.

11. The learned Senior counsel for the plaintiff invited the attention of this Court to the written statement filed by the defendant in the suit in O.S. No. 268 of 1996 filed by the tenant in the suit property. In the written statement, it was stated that the return from the property was meagre and that it was difficult to manage it at a distance place in a neighbouring State. It was further stated that even in the year 1990, steps were initiated to get sanction from the Government to sell the suit property and the Andhra Pradesh Government also accorded sanction by issuing G.O. Ms. No.1037, Revenue (Endts) Department dated 15.11.1991 to sell the suit property. Even in the said written statement, reference was made to the various dates on which public auction was held but there was no bidders, while so, it was decided to sell the suit property by private negotiation. The defendant also, in the written statement in O.S. No. 268 of 1996, admitted that the plaintiff offered Rs.1,01,000/- per acre to purchase the suit property and also paid a sum of Rs.5,00,000/-. Having made such an admission in the written statement filed by the existing lessee/tenant in the suit property, it is not open to the defendant to contend that there is no subsisting contract with the appellant or such contract is not enforceable. Further, in the written statement filed in the present suit, the defendant has suppressed the issuance of G.O. Ms. No.1037 dated 15.11.1991 according permission to sell the suit property or marked the said G.O. Ms. No.1037 dated 15.11.1991 as a document in the suit.

12. According to the learned Senior counsel for the plaintiff, the defendant primarily refused to execute the sale deed in favour of the plaintiff on the ground that due procedures were not followed by the Government of Andhra Pradesh before issuing the Order in G.O. Ms. No.686, Revenue (Endrs-III) Department dated 14.06.1997. First of all, if there is failure on the part of the Government or the Department concerned in not following the due procedures, particularly, the provisions contained under Section 80 (1) of the Act, the plaintiff cannot be penalised. On the other hand, due procedure has been followed at every stage and merely because the provisions under Section 80 (1) of the Act has not been followed before issuing G.O. Ms. No.686 dated 14.06.1997, it will not vitiate the contract entered into by the defendant-Devasthanam with the plaintiff to sell the suit property by private negotiation. Even otherwise, the Commissioner of Endowment Department, Hyderabad has given permission to sell the suit property under Ex.A-13. In any event, the suit property, if sold, will be beneficial for the defendant Devasthanam inasmuch as the price

offered by the plaintiff was the best price besides it was reasonable and therefore it was also accepted by the defendant.

13. The learned Senior Counsel for the plaintiff also invited the attention of this Court to Ex.A-3, Gazette Notification issued by the Principal Secretary to the Government of Andhra Pradesh stating that after considering the proposal sent by the Defendant and in exercise of the power conferred under Section 80 (1) (c) of the Act, permission was accorded to the Executive Officer of the Temple to sell the suit property. In Ex.A-3, complete details of the land, sale price offered by the plaintiff, name of the purchaser i.e., plaintiff etc., have been furnished besides the Commissioner, Endowments Department, Hyderabad was directed to take necessary further action in the matter. While so, it cannot be said that merely because objections have not been sought for before according permission to sell the suit property, the order passed by the Government of Andhra Pradesh is vitiated. In fact, it is an admitted fact that the suit property was put for public auction on several dates but as there was no bidder, it was decided to sell the suit property by private negotiation. In such circumstances, the compliance to the statutory provisions to invite objections prior to according permission to sell the suit property is nothing but an empty formality. However, the trial Court, without considering the above said aspects, dismissed the suit on the ground that there was no subsisting or enforceable contract between the plaintiff and the defendant. The trial Court failed to consider that the suit was filed seeking for a direction to the defendant to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration, which itself would indicate that such prayer has been sought in furtherance to a subsisting contract with the defendant. In such circumstances, the learned Senior counsel for the plaintiff prayed for allowing the appeal by setting aside the decree and judgment passed by the trial Court.

14. Countering the submissions made by the learned Senior counsel for the plaintiff, the learned Senior counsel for the defendant would vehemently contend that the defendant temple is a public religious institution as contemplated under Section 6 (c) (ii) of the Act and administered by the Regional Joint Commissioner and Executive Officer appointed by the Government of Andhra Pradesh, Hyderabad. Admittedly the suit property belonged to the defendant Devasthanam and on the basis of the proposal sent by the Commissioner of Endowments Department to the Government of Andhra Pradesh to sell the suit property to the plaintiff through private negotiation, permission was accorded by the Government by issuing G.O. Ms. No.686, Revenue (Endts-II) Department dated 14.08.1996. However, it was the plaintiff who failed and neglected to pay the balance sale consideration to get the sale deed executed in his favour. The

learned Senior counsel for the defendant would submit that even on 09.06.1997, a telegram was sent to the plaintiff calling upon him to pay the balance sale consideration, but he was not ready and willing to come forward to pay the balance sale consideration and to get the sale deed executed in his favour. Even though the plaintiff has alleged that he had repeatedly approached the defendant-Devasthanam to sell the suit property, he has not substantiated it with any evidence. The fact remains that after depositing the amount of Rs.5,00,000/- on 19.02.1996, the defendant has not turned up to pay the balance sale consideration. Thus, according to the learned Senior counsel for the defendant, the suit filed by the plaintiff is hopelessly barred by limitation and the Trial Court is right in rendering a finding to that effect while dismissing the suit.

15. The learned Senior Counsel for the defendant invited the attention of this Court to Section 80 (1) (a) of the Act, which prohibits alienation of the immovable property which belonged to a religious institution by means of gift, sale, exchange or mortgage without the prior sanction of the Commissioner. Sub-section (b) of Section 80 (1) deals with the procedures required to be followed by the Commissioner to cause gazette publication in the Andhra Pradesh Gazette relating to the proposed transaction and to invite any objection or suggestion with respect thereto and after considering all objections and suggestions, if any, sanction can be accorded for the transaction proposed therein. According to the learned Senior counsel for the defendant, in the present case, the procedures contemplated under Section 80 (1) (b) of the said Act has not been followed while according sanction or permission to the defendant Devasthanam to sell the suit property to the plaintiff. Therefore, when there is a violation of the mandatory provisions contemplated under the above said Act, the contract, if any, with the plaintiff would become void and it cannot be enforced under law.

16. In this context, the learned Senior counsel for the defendant placed reliance on the decision of the Honourable Supreme Court in the case of (Chenchu Ranni Reddy and another vs. The Government of Andhra Pradesh and others) reported in AIR 1986 Supreme Court 1158 (1) wherein it was held that as there is a violation of statutory procedure to sell the property belonging to a religious institution, direction was issued to sell the property by public auction. It was further directed that every care must be taken and all the procedures have to be followed before attempting to alienate the public or religious property.

17. The learned Senior counsel for the defendant also relied on the decision of the Honourable Supreme Court in the case of (R. Venugopala Naidu and others vs. Venkatarayalu Naidu

Charities and others) reported in AIR 1990 Supreme Court 444. In the said case, the Honourable Supreme Court, following the decision rendered in Chenchu Ranni Reddy and another mentioned supra, has held that properties which belonged to religious and charitable endowments or institution must be jealously protected because large segment of the community has beneficial interest therein.

18. The learned Senior counsel for the defendant further relied on the decision of the Honourable Supreme Court in the case of (Committee of Management of Pachayappa's Trust vs. Official Trustee of Madras and another) reported in (1994) (1) Supreme Court Cases 475 to drive home the point that as far as sale of public property, when the intention is to get the best price, such sale ought to take place publicly. The vendor is not bound to accept the highest or any other offer, but the public at least gets the satisfaction that the Government has put all the cards on the table. It was further contended by the learned Senior counsel for the defendant that the primary duty of the Court is to safeguard the interest of the Trust and Public Properties keeping in mind the larger interest of the beneficiaries of such properties owned by Public or religious institutions. In any event, according to the learned Senior counsel for the defendant, the plaintiff failed to pay the balance sale consideration within a reasonable time to get the sale deed executed in his favour and the delay in filing the suit would vitiate the contract he had entered into with the defendant Devasthanam. In such circumstances, the learned Senior counsel for the defendant prayed for dismissal of the suit.

19. Keeping the above submissions of the learned Senior counsel appearing for both sides, the following questions emerges for consideration in this appeal and they are:-

(i) Whether the plaintiff is entitled for the suit relief to direct the Defendant Devasthanam to execute the sale deed in his favour in respect of the suit property after receiving the balance sale consideration?

(ii) Whether there is delay on the part of the plaintiff/appellant in filing the suit?

20. The points which arise for consideration in this appeal, as mentioned above, are inter-connected and a decision made in any one of the points will have a bearing on the other. Therefore, we deal with both the issues together.

21. As we have dealt with the facts of the case of the plaintiff and defendant in detail, we refrain from narrating the same any further. However, certain facts, which are germane and necessary and which are admitted by both sides are required to

be reiterated. The suit property - palm grove, belonged to the defendant-Devasthanam. The defendant Devasthanam resorted to sell the suit property by public auction and such auction was conducted on several dates, but no one has come forward to purchase it. Therefore, it was decided to sell the suit property by private negotiation. During the private negotiation, the offer made by the plaintiff to purchase the suit property for Rs.1,01,000/- per acre was accepted by the Defendant Devasthanam and the plaintiff also deposited a sum of Rs.5,00,000/- on 19.02.1996. The plaintiff has to pay the remaining sale consideration and get the sale deed executed in his favour. Admittedly, the Government of Andhra Pradesh has also accorded permission for alienating the suit property in favour of the plaintiff.

22. At the outset, it has to be noted that even according to the Defendant Devasthanam, initially, action was resorted to, to sell the suit property, by public auction. Such public auction, even according to the defendant, was conducted on several dates, however, there was no bidder to purchase the suit property in such public auction. Therefore, attempt was made to sell the suit property by private negotiation in which plaintiff offered a sum of Rs.1,01,000/- per acre which was also accepted and the proposal to sell the suit property was also approved by the Government of Andhra Pradesh. However, it is contended on behalf of the defendant that there are some procedural flaws while according such permission by the Government of Andhra Pradesh in not complying with Section 80 of The Act inasmuch as suggestions or objections has not been invited with respect to the proposed transaction. By citing such procedural violation, the defendant would contend that the contract entered into by the defendant Devasthanam with the plaintiff is vitiated. In order to buttress this submission, the learned Senior counsel for the defendant relied on several decisions, some of which are referred to supra. In all the decisions relied on by the learned Senior counsel for the defendant, it was reiterated by the Honourable Supreme Court that while dealing with alienation of the properties belonging to religious and charitable endowments, care must be taken to ensure that larger interest of the beneficiaries of such properties owned by Public or religious institutions has to be protected. It was also held that Government must be satisfied that it is in the interest of the religious institution or endowment the alienation of the property can be permitted otherwise than by public auction. There cannot be any quarrel with respect to the dictum laid down by the Honourable Supreme Court in the above referred cases. However, the ratio laid down by the Honourable Supreme Court cannot be made applicable to the present case for the simple reason that the defendant Devasthanam earlier attempted to sell the suit property by public auction. Such auction was conducted on several days only to see that there is no bidder or purchaser

to purchase the suit property. After exhausting the option to sell the suit property by public auction, resort was made to sell it by private negotiation. As mentioned above, it is not as though the suit property was attempted to be sold through private negotiation without resorting to sell it in a transparent manner through public auction. In fact, public auction was conducted on several days and after exhausting the mode of selling the suit property by public auction, resort was made to sell it by private negotiation. Furthermore, the non-compliance of the statutory provisions contained in Section 80 of The Act cannot be put against the plaintiff and to contend that the contract itself has become vitiated and it is unenforceable. In the Judgments relied on by the learned Senior counsel for the respondent/defendant, challenge to private negotiation of sale was made by third parties. That is not so in this case. Having issued the Government Order to sell the suit property by private negotiation to the plaintiff, the defendant is estopped from taking the defence in the civil suit that the plaintiff is not entitled to the relief sought for. Therefore, we are not in agreement with the submissions of the learned Senior counsel for the defendant that non-compliance of the statutory provisions contained in Section 80 of The Act would vitiate the permission accorded by the Government of Andhra Pradesh to sell the suit property in favour of the plaintiff through private negotiation.

23. At the same time, it has to be examined as to whether the plaintiff was ready and willing to fulfil his obligations to pay the balance sale consideration within a reasonable time. In other words, it has to be examined as to whether the plaintiff has asserted his right to purchase the suit property by paying the balance sale consideration. Admittedly, the plaintiff paid a sum of Rs.5,00,000/- towards advance sale price and it was also acknowledged by the defendant Devasthanam on 19.02.1996. Even in the letters, marked as Exs. A1 and A2, both dated 19.02.1996, the plaintiff undertook to pay the balance sale consideration within 15 days from the date of hearing from the defendant regarding the approval for selling the suit property in his favour. Thereafter, on 14.08.1996, the Government of Andhra Pradesh passed the order in G.O. Ms. No.686, Revenue (Endts.II) Department dated 14.08.1996 according approval for sale of the suit property in favour of the plaintiff. The order passed by the Government in G.O. Ms. No.686 dated 14.08.1996 was marked as Ex.A3 before the trial Court. On perusal of Ex.A3, it is seen that a copy of the order was also marked to the plaintiff herein for his information. Thereafter, the defendant Devasthanam had sent Ex.A4, telegram dated 19.06.1997 calling upon the plaintiff to pay the balance sale consideration and to get the sale deed executed in his favour. However, it is not known as to why the plaintiff did not contact the defendant Devasthanam either to pay the balance sale consideration or to

seek for some more time, if need be, to pay the balance sale consideration. Absolutely, there is nothing on record to show that after paying the sum of Rs.5,00,000/- on 19.02.1996, the plaintiff had ever contacted the defendant Devasthanam or expressed his intention to pay the balance sale consideration within a reasonable time. It is also not the case of the plaintiff that he had tendered the balance sale consideration but it was refused by the defendant. Even from the documents filed by the plaintiff before the trial Court, after depositing the sum of Rs.5,00,000/- on 19.02.1996, for the first time, after ten years, the plaintiff sent a letter dated 20.06.2006, Ex.A6 to the defendant expressing his intention to pay the balance sale consideration and to get the sale deed executed in his favour. In Ex.A6, the plaintiff had referred to several letters, said to have been written by him to the defendant, in which he had requested the defendant Devasthanam to execute the sale deed in his favour. However, for the reasons best known, none of those letters were marked before the trial court as exhibits. Therefore, it can safely be concluded that the defendant did not approach the defendant Devasthanam within a reasonable time to pay the balance sale consideration and he failed to assert his right to get the sale deed executed in his favour. The plaintiff had slept over his right to get the sale deed executed in his favour by paying the balance sale consideration, within a reasonable time. Thus, there is an inordinate delay on the part of the plaintiff to pay the balance sale consideration. Even in Ex.A6, letter dated 26.06.2006 the plaintiff referred to the pending case in A.S. No. 12 of 2005 filed by the defendant Devasthanam against the Judgment and Decree passed in the suit filed by Subramani, the lessee in the suit property and attempted to project as though due to the pendency of the civil proceedings, he could not approach the defendant. We are of the opinion that the pendency of the civil proceedings between the temple and the said lessee has nothing to do with the plaintiff to approach the defendant to enforce his right. Even assuming that those litigations were a bar for executing the lease deed in favour of the plaintiff by the defendant Devasthanam, the plaintiff ought to have taken some steps to assert his right either by approaching the defendant Devasthanam within a reasonable time or to implead himself as a party to the suit filed by the lessee or the appeal filed by the defendant Devasthanam. In the absence of such efforts taken by the plaintiff, we are of the opinion that there is an inordinate delay, in filing the suit. Even in the written statement filed by the defendant Devasthanam in the suit, it was specifically contended that the suit, as filed by the plaintiff, is hopelessly barred by limitation. The trial court also, after elaborate discussion on this point, has pointed out the delay in filing the suit and rightly held that the suit filed by the plaintiff is hopelessly barred by limitation and consequently the plaintiff is not entitled to the relief prayed for in the

suit. We do not see any reason to interfere with such a finding given by the trial Court. Accordingly, we answer both the points which arise for consideration in this appeal against the plaintiff.

24. For all the reasons aforesaid, we confirm the Judgment and Decree dated 13.03.2014 passed in O.S. No. 228 of 2007 on the file of IV Additional District Judge, Ponneri. Consequently the appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The IV Additional District Judge
Ponneri
Thiruvallur District

copy to

The Section Officer
VR Section
High Court Madras

+1 cc to Mr.Adaikala Arockiaraj Advocate sr 80829
+1 cc to Mr.N.R.Anantha Ramakrishnan Advocate sr 8002

A.S. No. 401 of 2014

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