

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.17143 of 2008

ORDER:

In this Writ Petition, the order passed by the Deputy Commissioner, Endowments Department in O.A.No.149 of 2006 dated 28.06.2008 is questioned as being arbitrary and illegal. In the order impugned in the Writ Petition, the Deputy Commissioner, Endowments held that the second applicant-temple was a public temple, and the provisions of the repealed Hyderabad Endowment Regulations applied to it; Rule 375 of the Hyderabad Government Religious Endowments Rules specified that, whenever an endowed property was intended for sale, there shall be prior permission from the competent authority; further there was no permission to sell the land; however laudable the purpose may be, such sale would become null and void; the respondent, on the basis of his documents in Exs.B1 to B5, had claimed that he had purchased the property from the then trustee of the temple, who had spent the proceeds for the welfare of the temple constructing shops for the temple; Exs.B1 and B2 were the certified copies of the sale deed wherein it was mentioned that Sri Juvvaji Pullaiah, Secretary and Mutavalli of the temple, had sold away temple land to Smt.Pandiri Pocha for a consideration of Rs.750/-; the self-styled Mutavalli had not obtained prior permission from the competent authority, and had used the proceeds without accounting for it; as the sale itself was void, Smt.Pandiri Pocha would not get a better title and the subsequent purchasers, including the applicant, would not get better title from a void sale; mere long continuation in endowed property, entered through an illegal sale, would not convert the possession of the

applicant from illegal possession to legal or valid possession; as per the explanation to Section 83, and as per Section 46(3), there was an encroachment in respect of the land of an extent of Ac.1.14 guntas situated at Jagityal Town, Karimnagar District belonging to the second applicant-temple; the respondent fell within the expression “encroacher” as defined in the explanation to Section 83(1) of Act 30 of 1987; and he had no manner of right to continue in the application mentioned land belonging to the second applicant-temple. The petitioner herein was directed to remove the encroachment and deliver possession, of the subject land, to the 2nd applicant-temple.

Sri S.Bhooma Goud, Learned Counsel for the petitioner, would submit that the Deputy Commissioner, Endowments lacked jurisdiction to decide these disputes as the Andhra Pradesh Endowments Tribunal was constituted through notification dated 20.08.2009; though a specific plea was raised by the petitioner that the sale of the property was upheld by the Assistant Commissioner, Endowments, by his proceedings dated 30.03.1998, the Deputy Commissioner, Endowments failed to consider the said contention; and, on both these grounds, the order, impugned in the Writ Petition, was liable to be set aside.

On the first question regarding lack of jurisdiction of the Deputy Commissioner, Endowments, this Court, in **Uppala Suryanarayana Murthy v. State of A.P**¹, held that Section 87(5) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 was brought into force with effect from 03.01.2008; the Andhra Pradesh Endowments Tribunal was constituted by way of a notification dated 20.08.2009; the A.P.

¹ 2013 (3) ALT 445

Endowments Tribunal started functioning only from 21.05.2010; between 20.08.2009 upto 21.05.2010 the A.P. Endowments Tribunal could not function as no Presiding Officer had been appointed thereto; thus, till 20.05.2010, it was the Deputy Commissioner, Endowments who had the power to adjudicate disputes; the statute never intended to leave the aggrieved parties remediless, and create a vacuum in the process, immediately on 20.08.2009; this was the purpose and objective sought to be achieved by introducing Section 87(5); otherwise, absurd results would follow; and the Court should always avoid construing any provision of law which would result in absurdity.

While Section 87(5) of the Act was introduced with effect from 03.01.2008, the A.P. Endowments Tribunal was constituted only by way of a notification dated 20.08.2009. The order, impugned in the Writ Petition, was passed on 28.06.2008 by the Deputy Commissioner, Endowments even prior to the constitution of the Tribunal. As no Tribunal had even been constituted by the date the O.A. was disposed of, the Deputy Commissioner, Endowments cannot be said to lack jurisdiction to entertain the dispute.

The second question is regarding the failure on the part of the Deputy Commissioner, Endowments to consider the petitioner's specific contention that the sale effected by Sri Juvvaji Pullaiah to Smt. Pandiri Pocha was upheld by the Assistant Commissioner, Endowments. As has been noted by the Deputy Commissioner, Endowments, in the impugned order, Rule 375(1) of the Hyderabad Government Religious Endowments Rules stipulates that the property of a religious endowment can be sold only by sanction of the member of the Board of Revenue of the Endowments Bench of the

Board of Revenue. The petitioner claims that the sale was approved by the Assistant Commissioner, Endowments. Firstly Rule 375(1) requires prior sanction, and not subsequent approval. In any event, the said Rule requires sanction by the Member of the Board of Revenue of the Endowments Bench of the Board of Revenue, and not the Assistant Commissioner, Endowments. Approval by the Assistant Commissioner, Endowments is, therefore, of no avail.

Viewed from any angle, I find no error in the order of the Deputy Commissioner, Endowments necessitating interference in Writ proceedings under Article 226 of the Constitution of India.

The Writ Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions pending, if any, shall also stand dismissed. No order as to costs.



RAMESH RANGANATHAN, ACJ.

Date:16.06.2017.

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