

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 39312 of 2013

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondents 1 and 2 in not fixing the market value prevailing in the year 2010, pertaining to the land admeasuring Ac.0.15 cents situated in Sy.No.245/ 2 of Kanuru Village, Penamaluru Mandal, Krishna District, as illegal and arbitrary.

2) The facts in issue are as under:

The petitioner is resident of Kanuru Village, Penamaluru Mandal, Krishna District. He was elected as Ward Member during the period 1995 to 2006 for two terms. A lay out was said to have been laid in the said village, which was approved by Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority. In the said lay out several people constructed houses. Land to an extent of Ac.0.35 cents was ear-marked for public purpose, which was gifted by the land owners to the Gram Panchayat. While things stood thus, the fifth respondent society made an application to the Grampanchayat for allotment of land in the said village, for construction of Sri Sai Geetha Mandir and the Gram Panchayat resolved to allot land vide resolution No.585 dated 11-02-1997 for construction of Gita Mandir. However, the Commissioner, Panchayat Raj rejected the request of the Panchayat for such

permission and later he required the local market value to be ascertained from the Mandal Revenue Officer, to be submitted along with the bye-laws of the society. While so, on 11.06.2007 the District Collector directed the Gram Panchayat to take over the unauthorized and illegal construction in that land, against which the fifth respondent filed an appeal before the Government, which passed an order in Memo dated 01-10-2007 finding that the construction of Sri Sai Gita Mandir was in the land vested in the Gram Panchayat and the Gram Panchayat is not competent to alienate or transfer such property even for charitable purpose unless such transfer of property is approved by the Council of Ministers as required by G.O.Ms. No.215 and G.O.Ms. No.323. When the fifth respondent filed W.P. No.21586 of 2007, it was dismissed for want of legal basis for the claim and the resumption of the property through the order of the District Collector was held to suffer no infirmity. The District Collector also issued a show-cause notice to the then Sarpanch for encouraging the unauthorized construction and the Gram Panchayat took over possession of the temple on 05-11-2007. While things stood thus, the Government issued G.O.Rt.No.1500 dated 05.10.2010 giving permission to the third respondent for alienation of Ac.0.15 cents of common vacant land of Gram Panchayat, Kanur, to the fifth respondent on market value prevailing in the year 1997. Questioning the said order W.P.No.25600 of 2010 came to be filed, which was dismissed and later confirmed by a Division Bench of this Court. The main

grievance of the writ petitioner is that issuance of G.O.Rt.No.1500 in the year 2010 fixing the market value prevailing in the year 1997 is wholly illegal and arbitrary.

3) By an order dated 02.01.2014, while admitting the writ petition this Court passed the following interim order.

“Kanuru Gram Panchayat, the 4th respondent herein shall not execute any conveyance deed in favour of the 5th respondent conveying the right, title and interest over land of an extent of Ac.0.15 cents situated in Sy.No.245/ 2 of Kanuru Village, for which the consideration was fixed by the State Government as per the 1997 valuation instead of ordering for the valuation prevailing at the time of passing orders in 2010.”

4) Respondent No.1 filed counter stating that after careful examination of all relevant facts and material, issued orders in G.O.Rt.No.1500, PR & RD (Pts.III) Department, dated 05.10.2010, alienating land to an extent of Ac.0.15 cents of common vacant land of Gram Panchayat, Kanur along with the Mandir to Sri Sai Geeta Mandir Development Society on payment of market value prevailing in the year 1997, as a special case. Challenging the same, one P.Sidhar Raju and nine others filed W.P.No.25600 of 2010. By an order dated 26.03.2013, the said writ petition was dismissed holding that the said G.O. does not suffer from any factual or legal vice. It is also stated in the counter that the Government, while issuing orders for alienation of the land to the Society, observed that the Gram Panchayat on 11.02.1997 has

resolved to allot land and handed over the land; the Sangham constructed a Mandir and opened to the public worship since 2002, the Collector and Commissioner, Panchayat Raj have also recommended the proposal earlier. The Government after examining the entire matter had issued orders for alienation of the land to the Sangham. It is also stated that in view of the earlier judgment of this Court in W.P.No.25600 of 2010, dated 26.03.2013, the petitioner cannot file another writ petition for same relief.

5) Reiterating the averments made in the affidavit filed in support of the writ petition, learned counsel for the petitioner mainly submits that the action of the authorities in issuing the order, fixing the market value at Rs.1988/- per square yard when the market value was at Rs.17,000/- per square yard is arbitrary and illegal. It is stated that the said temple is in the custody of the Gram Panchayat and that the same may not be handed over to the fifth respondent, till the market value prevailing as on the date of issuance of G.O. is paid.

6) The same is opposed by the learned counsel for the fifth respondent on the ground that the writ petition itself is not maintainable since the petitioner has no locus to question the said order. Merely because he is resident of the said village and worked as Ward Member of the Gram Panchayat, does not by itself entitle him to question the said G.O. Apart from that he submits that the issue raised in the present writ petition is covered by an

earlier order passed by this Court in W.P.No.25600 of 2010, wherein similar plea was taken.

7) In order to appreciate the same, it would be useful to refer to the contents of the G.O.

“G.O.No.1500

Dated: 05.10.2010.

1. From the District Collector, Krishna District, Roc.No.1706/ 2002/ Pts.3, dated 11.06.2007.
2. Appeal petition from the Secretary, Sri Sai Geetha Abhivruddhi Sangham, Kamayyathopu, Kanur Village, Penamaluru Mandal, Krishna District, dated 17.03.2010, submitted through Hon'ble M.L.A., Vijayawada Central, Krishna District.

Order:

In the circumstances stated by the District Collector (PW1), Krishna District, vide his proceedings 1st read above and the appeal made by Sri Sai Geetha Mandir Development Society through Hon'ble MLA, Vijayawada Central, Krishna District, vide reference 2nd read above and also keeping in view the peoples' sentiments attached to the issue, Government after careful examination, decide and hereby accord permission to the District Collector (PW), Krishna District, for alienation of the Ac.0.15 cents of common vacant land of Gram Panchayat, Kanur along with the Mandir to Sri Sai Geetha Mandir Development Society of Kanuru Village on payment of market value prevailing in the year 1997, as a special case, in terms of G.O.Ms.No.215, Panchayat Raj & Rural Development (Pts.III) Department, dated 25.06.2001 read with G.O.Ms.No.323, Panchayat Raj & Rural Development (Pts.III) Department, dated 23.10.2001.

The District Collector, Krishna District, shall take necessary action, accordingly.”

8) A reading of the impugned G.O. show that keeping in view the peoples' sentiments attached to the issue, the Government after careful examination decided and accorded permission to the District Collector, for alienation of Ac.0.15 cents of common

vacant land of Gram Panchayat Kanuru, along with Mandir to Sri Sai Geetha Mandir Development Society, on payment of market value prevailing in the year 1997, as a special case.

9) The counter filed by the fourth respondent-Panchayat Secretary would show that the fifth respondent requested the fourth respondent for allotment of Ac.0.15 cents for construction of Sai Geetha Mandir. In pursuance of the said request, the fourth respondent Gram Panchayat has passed resolution No.585, dated 11.02.1997 and accordingly requested the Commissioner of Gram Panchayat and Rural Development to accord necessary permission. While the process of according permission for alienation of the said land was under consideration, a temple came to be constructed by the fifth respondent in the year 2002 and the worshipping of the god in the said temple was taken up immediately thereafter.

10) A perusal of the material placed on record show that lot of correspondence took place between the Gram Panchayat, Commissioner and Panchayat Officials with regard to alienation of the land in favour of the fifth respondent. Though the learned counsel for the petitioner tried to submit that the issue in the earlier writ petition was only with regard to alienation of the land and not with regard to the valuation of the said land, but it is to be noted that G.O.Rt.No.1500 which is subject matter of challenge in the present writ petition was also considered by this Court in earlier round of litigation ie. in W.P.No.25600 of 2010. It

would be appropriate to extract the relevant portion of the said judgment which deals with the issue on hand, which is as under:

“While a person or institution is of great reputation or not maybe dependent on reflections of popular perceptions or individual assessment, the very writ affidavit is proof positive that it was the 4th respondent who constructed Sri Sai Gita Mandir and no allegation was made in the writ-affidavit about any deficiencies or defects in the maintenance of Sri Sai Gita Mandir by the 4th respondent from 2001 till the intervention by the Collector in 2007 or even later. The proceedings of the Council of Ministers dated 20-09-2010 show that this item figured as item No.17 of the Agenda to the Cabinet approving the alienation on payment of market value prevailing in 1997. The Cabinet cannot be accused of being influenced by extraneous considerations in passing such a resolution and therefore, G.O.Ms. No.1500, which is the subject matter of the writ petition, cannot be considered to be in violation of G.O.Ms. No.215 and G.O.Ms. No.323.”

11) It is to be noted that the said writ petition came to be filed seeking issuance of writ of mandamus or direction declaring the proceedings of the first respondent issued in G.O.Rt.No.1500 dated 5.10.2010, as illegal, arbitrary and without jurisdiction. Infact the said G.O.Rt. which is subject matter of challenge in the present writ petition was also questioned in the earlier writ petition. Though the learned counsel for the petitioner tried to distinguish the plea taken in the earlier writ petition and in the present writ petition stating that earlier writ petition was with

regard to alienation of the land and the present writ petition is with regard to fixation of the market value, but the prayer in the earlier writ petition and the contents of the order made therein does not anywhere indicate that the request made herein is different from the request made therein. After considering the submissions made, not only with regard to alienation of the land but also with regard to fixation of the market value of the year 1997, a learned Single Judge of this Court dismissed the said writ petition on 26.03.2013. Challenging the same, Writ Appeal No.1605 of 2013 came to be filed, which is pending adjudication and no interim order is passed. It appears to be a case where having failed to get an order in the writ appeal, another writ petition came to be filed on 31.12.2013 seeking an identical relief.

12) In view of the circumstances, this Court is of the view that the writ petition is liable to be dismissed and the same is accordingly dismissed. No order as to costs.

13) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

18.04.2017
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