IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.18777 of 2017

AVC Education Committee
represented by its Secretary
Mayiladuthurai
Mannampandal 609 305
Nagapattinam District ..Petitioner

-vs-

1. The Commissioner
Hindu Religious and Charitable Endowment Board
Nungambakkam
Chennai 600 034

2. The Joint Commissioner
Hindu Religious and Charitable Endowment Board
Mayiladuthurai
Nagapattinam District

3. Dharmapuram Aadheenam Mutt
rep.by its Manager
Dharmapuram
Mayiladuthurai-1
Nagapattinam District .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the first respondent passed in RC.No.29328/2007 R.1 daed 19.5.2017 signed on 24.5.2017 and quash the same and consequently direct the first respondent to consider the representation of the petitioner dated 1.3.2017 pursuant to the application of the third respondent dated 1.4.2001 submitted to the first respondent.

For Petitioner :: Mr.K.M.Vijayan
Senior Counsel for
Mr.S.Dhayaleswaran

For Respondents :: Mr.M.Maharaja
Special Government Pleader
for R1 & 2
Mr.S.Sounthar for R3

ORDER

AVC Education Committee represented by its Secretary, Mayiladuthurai has filed this writ petition, being aggrieved by the impugned order dated 19.5.2017 passed by the Commissioner of Hindu Religious and Charitable Endowments Department, Chennai, the first respondent herein, refusing to grant approval under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act for sale of land measuring an extent of 17.40.05 acres belonging to Dharmapuram Aadheenam Mutt, the third respondent herein in Survey Nos.125/1, 125/2, 125/3, 128 & 129 at Actchutharayapuram Village, Mannampandal, Nagapattinam District, on the ground that there is no specific provision under Section 34 of the Hindu Religious and Charitable Endowments Act to grant ratification or post-approval of any sale, exchange, mortgage, etc.

2. Mr.K.M.Vijayan, learned senior counsel for the petitioner, assailing the impugned order, pleaded that the petitioner is a Trust running AVC College from 1955 along with a free hostel for 30 boys in Mayiladuthurai to serve the students of higher education. It has also grown up in strength all these years as a post graduate autonomous institution and the Government of Tamil Nadu also permitted the petitioner Trust to start a polytechnic college from the academic year 1983-84 according permission for the three year Diploma course with a total intake of 180 students initially and that the All India Council for Technical Education also has granted approval to the AVCC Polytechnic by letter No.43-81/ 93-SRC/1213 dated 13.5.94 to conduct the diploma course subject to fulfillment of certain general/specific conditions from time to time and subsequent extension of approvals have also been granted every year from 1994 to 2013-14 and 2017-18. Since the AVC Engineering College has grown up and required more space, the education committee of the petitioner resolved to purchase additional lands from Dharmapuram Aadheenam Mutt, Mayiladuthurai, the third respondent herein to an extent of 17.40.05 acres comprised in Survey Nos.125/1, 125/2, 125/3, 128 and 129 situated at Actchutharayapuram village, Mannampandal. Accordingly, a sale agreement was also entered into on 12.4.2001 and the sale consideration of Rs.93,47,941/- was also fixed and paid. The Mutt also has accepted the same, as a result the land in question also has been put in the physical possession of the petitioner from 2001.

3. The learned senior counsel further submitted that after taking possession of the aforementioned land, the petitioner applied for building approval and after obtaining building approval, construction was also completed in Survey Nos.128 and 129 at a huge cost of Rs.2.5 crores with all modern facilities and also shifted the AVC Polytechnic college to the new campus.

After the sale agreement dated 12.4.2001, the third respondent-Mutt had sent the application dated 18.4.2001 under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (hereinafter called as "the H.R.& C.E Act") to the Commissioner of the H.R.& C.E Department, the first respondent herein seeking approval. In the said application, it was also specifically mentioned that the sale amount would be deposited in long term deposit as sale proceeds of land in the bond and the interest income therefrom would be utilized for both pooja purposes and mutt expenses. The Joint Commissioner of H.R. & C.E. Department, the second respondent herein had also asked for the guideline value and the market value of the land in the year 2002 and again by another letter dated 2.11.2007. In response to the same, the third respondent-Mutt also replied on 6.2.2008 enclosing the communication dated 17.12.2007 of the Joint Registrar-II, Mayiladuthurai showing the guideline value of the land in respect of Survey Nos.125/1, 125/2, 125/3, 127/1, 128, 129/1, 129/2, 129/3, 129/5 and 129/10 for the period 2007-08. Since the petitioner also, in their letter dated 24.4.2008 sent to the Joint Commissioner, informed that the entire sale consideration was paid in respect of the aforementioned land measuring 17.40.05 acres, the second respondent also undertook an inspection on the property on 30.12.2009 along with the Assistant Divisional Engineer in the presence of the Superintendent of the Mutt and the members of the petitioner and made a report on 9.6.2011 narrating all the circumstances of the sale between the petitioner and the third respondent. Only then, a recommendation has been made by the second respondent to the first respondent for regularisation of the sale by fixing either the guideline value or the prevailing market value whichever is more by adding 150% and determined the sale value. On receipt of the said communication from the second respondent, the first respondent, taking note of the factor that the petitioner and the third respondent have not only entered into the sale agreement without obtaining proper approval from the first respondent, the sale consideration also passed from the petitioner to the third respondent and moreover, the petitioner also, after taking physical possession of the land, had constructed the building, declined to accept the request of the petitioner for grant of approval, citing a reason that in the absence of a specific provision under Section 34 of the H.R. & C.E. Act as to the ratification or post approval of any sale, exchange, mortgage etc., the relief sought for cannot be granted.

4. The learned senior counsel for the petitioner, assailing the reasoning given by the first respondent, submitted that when there was no registered sale in respect of the land covered in Survey Nos.125/1, 125/2, 125/3, 128 and 129 to an extent of 17.40.05 acres, the first respondent ought not to have refused the request made by the third respondent for grant of approval

under Section 34, citing a reason that the sale was already over. Secondly, finding fault with the reasoning given by the Commissioner, it was further contended that when there is an elaborate reasoning given by the Joint Commissioner of H.R. & C.E. Department that the sale of land by the third respondent in favour of the petitioner helps the students admitted in the petitioner Polytechnic College who are coming from the rural areas and ultimately the students are going to be benefitted by using the land belonging to the third respondent proposed to be sold in favour of the petitioner, declining the approval under Section 34 of the H.R. & C.E. Act, is neither going to advance the interest of the Mutt nor the request made by the third respondent for grant of approval under Section 34 from the first respondent.

5. The counter affidavit filed by the Dharmapuram Adheenam Mutt supporting the case of the petitioner, has been explained by the learned counsel for the third respondent stating that when the third respondent-Mutt was approached by the petitioner in the year 2000 for purchase of lands belonging to the Mutt for the use of educational institutions run by them offering to purchase 7.93 acres lying adjacent to the land comprised in Survey Nos.125/1, 125/2 and 125/3 at the rate of Rs.12/- per square feet, the same was accepted by the third respondent, because the total sale consideration worked out to Rs.90,97,947/-. Even the value for trees was also fixed at Rs.2,50,000/- and the total sale consideration came to Rs.93,47,941/-. Subsequently, the petitioner also deposited with the third respondent the remaining amount of Rs.37,10,401/- on 12.4.2001 and took possession of the total extent of 17.40.05 acres. As the sale consideration of Rs.93,47,941/- was received by the third respondent-Mutt and invested in a bank, the third respondent submitted necessary form for sanction under Section 34 of the H.R. & C.E. Act. As the sale proceeds offered by the petitioner was very attractive at that point of time, the possession of the land in question was also delivered to the petitioner. After the proposal seeking sanction under Section 34 of the H.R. & C.E. Act was sent to the first respondent as early as in the year 2001 and no orders were passed for seven years, the petitioner has put up the construction. Again referring to the application dated 1.4.2001 forwarded by the third respondent to the first respondent, the learned counsel for the third respondent submitted that the reasons for sale of property have been given clearly stating that since the land is not yielding any sufficient income, the third respondent has taken a decision to sell the property to an extent of 17.40.05 acres to the petitioner. But the first respondent has rejected the said request made by the third respondent.

6. The learned Special Government Pleader for the respondents 1 & 2, supporting the reasons given in the impugned

order, restating the same, argued that since the third respondent-Mutt had sent a proposal on 1.4.2001 to the Commissioner of H.R. & C.E. Department seeking sanction under Section 34 of the H.R. & C.E. Act, without waiting for the procedures to be adhered to on the said application, the action taken by the third respondent-Mutt unilaterally to sell the property to the petitioner by receiving the sale consideration after entering into an agreement of sale on 12.4.2001, cannot be accepted. Adding further, he has submitted that the first respondent, taking note of the factor that even before granting approval as contemplated under Section 34 of the H.R. & C.E. Act, when the third respondent has handed over the physical possession of the land in question to the petitioner, which is a total violation of the provisions of Section 34 of the H.R. & C.E. Act, disagreeing with the grounds for sale which are not convincing, refused to accept the request made by the third respondent for sale of the land in favour of the petitioner.

7. I also find merits on the submissions made by the learned Special Government Pleader for the respondents 1 & 2. The reason assigned by the Commissioner of H.R. & C.E. Department shows that when any land belonging to the Mutt is going to be alienated by way of sale, exchange, mortgage, etc., prior approval under Section 34 of the H.R. & C.E. Act is mandatory. In the present case, the affidavit filed in support of the writ petition, clearly supports the reason assigned by the Commissioner. Paragraph-7 of the affidavit also clearly shows that in the letter dated 24.4.2008 sent to the Joint Commissioner of H.R. & C.E. Department, the petitioner has stated that the entire sale consideration was paid in respect of the land in question to an extent of 17.40.05 acres and the third respondent had sent the application under Section 34 of the H.R. & C.E. Act to the first respondent. That shows that the petitioner had paid the entire sale consideration even before the third respondent made any application seeking approval for sale of the land belonging to the third respondent-Mutt under Section 34 of the H.R. & C.E. Act before the first respondent. Secondly, on surrender of physical possession of the land by the third respondent, the petitioner has also put up construction and completed the same. Therefore, the first respondent-Commissioner has rightly declined the request of the third respondent for sale of the land in question to the petitioner, citing a convincing reason that when the sale had taken place viz., (i) passing of the sale consideration from the petitioner to the third respondent; (ii) construction has been made by the petitioner and (iii) the building also has been used by the petitioner for educational purposes, the alleged request for grant of approval for the sale of land is nothing, but only the grant of ratification or post approval of the sale that had already taken place. In other words, when the third respondent has not sent any application or request or representation to the

Commissioner of H.R. & C.E. Department before entering into the sale agreement dated 12.4.2001 and merely, after receiving the sale consideration, surrendered the physical possession of the land in question to the petitioner, the first respondent has rightly refused permission by the impugned order, which cannot be found fault with. Therefore, the writ petition fails and it is dismissed. Consequently, W.M.P.No.20298 of 2017 is also dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner
   Hindu Religious and Charitable Endowment Board
   Nungambakkam
   Chennai 600 034

2. The Joint Commissioner
   Hindu Religious and Charitable Endowment Board
   Mayiladuthurai
   Nagapattinam District

+1 CC to Mr.S.Sounthar, Advocate sr 88893.
+1 CC to Govt. Pleader sr 89817

SP(04/01/2019)