THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.11846 of 2008

O R D E R:

This writ petition is filed for the following relief:

> "to issue a writ of mandamus declaring the action of the respondents in alienating property at TS No.353, Ward No.6, admeasuring 1328½ square yards with the assessment No.7653 bearing D.No.11-62-146 located at Canal Road, Vijayawada and issuing G.O.Ms.No.642, dated 20.09.2000 as illegal and unconstitutional and consequently declare that the property of the third respondent Mutt cannot be alienated while setting aside G.O.Ms.No.642, dated 20.09.2000, with consequential effect of nullifying the sale deeds transactions executed pursuant to the impugned G.O. and restoring the property to the third respondent Mutt…."

Petitioner is a devotee of respondent No.3-Sri Brahmachari Bavaji Mutt, Canal Road, Vijayawada and the said Mutt owns land admeasuring 1328½ square yards at Canal Road, Vijayawada. He states that through a news item published in Andhra Jyothi Telugu Newspaper on 23.05.2008, he knew that respondent No.1-Government of Andhra Pradesh, Revenue (Endowments-IV) Department *vide* G.O.Ms.No.642, dated 20.09.2000, accorded permission to the Fit Person of respondent No.3 to sell the land to respondent Nos.4 to 7 through private negotiations. He further states that as per Section 80 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act (for short 'the Act'), the property belonging to a charitable institution or endowment shall not be alienated except by following due process, through public auction, and thereby, the respondent authorities have violated the provisions of the Act.

In the counter-affidavit, respondent No.3 asserts that the subject land was originally leased out to one Sri Golla Narayana Rao prior to 1912 and he constructed a rice mill thereon under the name and style as Shobhanadeswara Rice Mill; that subsequently, the lease was extended by respondent No.2-Commissioner of Endowments, State of Andhra Pradesh, Hyderabad in favour of one A.K.D.V.Prasad Rao, Managing Partner of the above said Mill from 01.01.1989 to 31.12.1991 and further, for the period from 01.01.1995 to 31.01.1997; that while the things stood thus, respondent No.3 addressed a letter, dated 15.05.1996, to respondent No.2 with a request to grant extension of lease in favour of Sri Velagapudi Sambasiva Rao and Velagapudi Sriram Prasad, Managing Partners of the Mill and accordingly, on 21.08.1996, respondent No.2 passed modification orders granting lease in favour of the above said persons and thereafter, extended the same from 01.01.1998 to 31.12.2000; that while so, the sitting tenants, respondent Nos.4 to 7, herein filed representation, dated 31.10.1996, with a request to sell the subject land in their favour @ Rs.9,000/- per square yard and on 19.11.1996, the said offer was recommended by the Fit Person to the Assistant Commissioner, who in turn submitted a report to respondent No.2 to constitute a Committee so as to fix reasonable price and accordingly, the Committee was constituted and inspected the subject site and submitted its report to respondent No.2, who in turn issued preliminary notification on 16.10.1999, published in Andhra Prabha Telugu Newspaper on

23.10.1999, for sale of the subject land @ of Rs.13,000/- per square yard in favour of respondent Nos.4 to 7 otherwise than by public auction duly calling for objections and accordingly, the impugned G.O. came to be issued according permission to sell the subject site @ Rs.12,000/- per square yard in favour of respondent Nos.4 to 7, who in turn, paid a sum of Rs.1,65,42,000/- to respondent No.2 and got registered the subject in their favour on 23.12.2000.

Respondent Nos.1 and 2 filed separate counter-affidavits reiterating the facts narrated by respondent No.3 in his counter-affidavit and stating that necessary procedure as mandated under the Act has been followed and the decision was taken by respondent No.1 on account of peculiar circumstances, particularly considering the longstanding possession of respondent No.4 to 7 over the subject property and that the interest of the institution has been protected in selling the subject land as per the market value as ascertained by the Mandal Revenue Officer.

Respondent No.6 also filed a counter-affidavit reiterating the averments mentioned in the counter-affidavit filed by respondent No.3.

Learned counsel for the petitioner while reiterating the averments mentioned in the writ affidavit contends that there are no reasons recorded by respondent No.2 with respect to alienation of the subject land. He further contends that the impugned G.O. issued in favour of respondent Nos.4 to 7 itself discloses that there is a running rice mill in the subject property, from which it is clear that it is a commercial property and thus, the respondents could not have sold property except by public auction and the present market value is Rs.1,00,000/- per square yard, but it was sold for paltry sum of Rs.50,000/- per square yard and that the property was sold to the individuals but not to the firm. He places reliance on the judgment of the Hon'ble Supreme Court in **Chenchu Rami Reddy & Another vs. Government Of Andhra Pradesh & Others**[1].

Having regard to the respective submissions, the question which falls for consideration in this writ petition is whether the sale of subject land by respondent No.3 in favour of respondent Nos.4 to 7 pursuant to the impugned G.O., is illegal and liable to be interfered with.

At the outset, it may be noted that in the judgment referred to supra, which is relied on by the learned counsel for the petitioner, the Hon'ble Supreme Court in unequivocal terms held that selling of a property of an institution, either endowment or charitable, through public auction is a rule and selling the property other than public auction is an exception and summarized the principles which are required to be followed therefor. In view of the same, the assertion of the learned counsel for the petitioner that the procedure contemplated under Section 80 of the Act has not been followed with respect to sale of the subject land is found

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[1] 1986 AIR 1158

to be incorrect, as asserted by the respondents in their counter-affidavits, and has not been rebutted by the petitioners by way of reply-affidavit. It may also be noted that respondent No.3 considered the request made by respondent Nos.4 to 7 to sell the subject land in their favour as they are the lessees of it and as per the recommendations by the Committee approving the proposals for private sale. Before such sale, objections were called for by respondent No.3 by issuing a public notice in Andhra Prabha Telugu Newspaper on 23.10.1999 and one D.Lakshman Reddy, Vijayawada, filed his objections, and he in fact, filed W.P.No.25665 of 2000, which in turn was withdrawn by him subsequently and this Court passed orders to that effect, and it is stated in the counter-affidavit of respondent No.3 that the said D.Lakshman Reddy was called for enquiry before the Commissioner and he failed to make any better offer. In the circumstances, it cannot be said that sale of the subject land other than through public auction was done secretly. It may be noted that the present writ petition came to be filed after 8 years of issuance of the G.O. and execution of the sale deeds in favour of respondent Nos.4 to 7. It is not the case of the petitioner that he is willing to offer substantially a higher price than that was offered respondent Nos.4 to 7. Though the petitioner had stated in the writ affidavit that the market value of the subject land would be around Rs.50,000/- per square yard at the relevant point of time, there was no material produced by him in support of the same. Though the Mandal Revenue Officer reported the market value of the subject land @ Rs.6,000/- to Rs.8,000/- per square yard, respondent No.1 after considering the recommendations made by the Committee with regard to the same, and in the interest of the institution, had accorded permission for sale of the subject land @ Rs.12,000 per square yard. In the given circumstances, it is permissible for the competent authority to sell the property of the institution i.e. endowment/charitable otherwise than by public auction, as contemplated under the first proviso to 80 (1) (c).

So far as the contention of the learned counsel for the petitioner that there are no reasons recorded by respondent No.2 in the impugned G.O., with respect to permitted sale of the subject land through private sale/negotiations, at the outset, it may be noted that except stating that the sale has been effected through private negotiations, no specific grounds were raised in the writ affidavit. However, there is no specific denial in the counter-affidavits with regard to the same and it is evident from the order of respondent Nos.1 and 2 that they considered the report of respondent No.3, dated 09.06.1997, explaining the difficulties they may have to encounter in vacating the said tenants. Though the G.O. does not spell out these reasons, the specific plea of the respondents that the recommendations of the Committee were considered by respondent No.1 stands unrebutted.

In those circumstances, it cannot be said that the petitioner had established the case in his favour, as such, the question is answered in favour of the respondents and against the petitioner.

The writ petition is accordingly dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:24.09.2018

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