THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.28345 OF 2007

ORDER:

This writ petition is filed seeking to issue a writ of Mandamus declaring G.O.Ms.No.1787, dated 5.12.2006 of the 1st respondent, as arbitrary and illegal.

It is the case of the petitioner that he owns a small extent of land in Sy.No.266/2 of Tirupathi Town. The 3rd respondent holds the land extent of Ac.0-37 cents in Sy.No.266/1 and Ac.0-03 cents in Sy.No.266/2 besides the petitioner's land. As the petitioner intends to establish a small scale industry, he made an application to the 2nd respondent on 25.08.1995 for alienating the said property belonging to the 3rd respondent in his favour and he also made another representation on 16.11.1999. The 2nd respondent directed the 3rd respondent to submit a detailed report with regard to the status and also market value of the property. The 3rd respondent sent status report to the 2nd respondent by furnishing the market value of the property. Thereafter, the 2nd respondent *vide* letter dated 31.1.2004 requested the 1st respondent to issue suitable orders with regard to alienation of the said property in favour of the petitioner. The 1st respondent vide proceedings dated 27.2.2004 directed the Executive Officer, Tirumala Tirupathi Devasthanam to inspect the site and furnish report with regard to the said property. The Executive Officer of TTD vide letter dated 16.8.2004 has sent report stating that the property in question is of no use to TTD. Thereafter, the Government has issued G.O.Ms.No.782, dated 5.10.2004 granting permission under Section 80 (1)(c) of Andhra Pradesh Charitable and Hindu

Religious Institutions and Endowments Act, 1987 (for short 'the Act') to sell 2 bits of land viz., admeasuring Ac.0-38 cents in Sy.No.266/1 and Ac. 0-07 cents in Sy.No.266/3-A of Tirupathi Town belonging to the 3rd respondent by private negotiations to persons whose lands are adjacent to the above lands. Thereafter, the land to an extent of 212 square yards in Sy.No.266/3A and 1285 square yards in Sy.No.266/1 was sold in favour of the petitioner at Rs.2,575/- per square yard and sale deeds dated 07.02.2005 and 11.02.2005 were executed. After the above sale transactions, the petitioner was put in possession of the said property. While so, the 1st respondent has issued show cause notice dated 07.04.2005 asking the petitioner to show cause as to why the orders issued in favour of the petitioner vide G.O.Ms.No.782 dated 05.10.2004 should not be cancelled. On 29.04.2005 the petitioner submitted an explanation followed by further representations dated 15.02.2006 and 28.08.2006. Thereafter, 1st respondent issued G.O.Ms.No.1787 dated 05.12.2006 cancelling the earlier orders issued in G.O.Ms.No.782 dated 05.10.2004 on the ground that market value of the above property was more than Rs.10,000/- per square yard in the year 2005 and that the provisions of the Endowments Act under Section 80(1)(B) of the Act were not scrupulously followed and directed the 2nd respondent to refund the amounts to the petitioner and to take further action in the matter. The said proceedings are impugned in the present writ petition.

Respondent No.1 filed counter affidavit denying the allegations made in the writ petition and stated that the 3rd respondent- Mutt is the owner of the land in Sy.No.266/1 & 3 and also Sy.No.266/2. The land in Sy.No.266/1 can be put to commercial use due to the value of its location. The petitioner made representation dated 16.11.1999 to the Commissioner of Endowments Department, Hyderabad, to sell the land in Sy.No.266/3A measuring an extent of Ac.0.07 cents in her favour. Acting on the said representation the Commissioner of Endowments Department, Andhra Pradesh, Hyderabad *vide* Rc.No.M3/58413/99 dated 18.11.1999 requested the Mutt to send report about the status of the land and proposal in the prescribed proforma together with present market rate and Sub Registrar's value, if the proposal is beneficial to the Mutt. Again the Commissioner of Endowments Department vide Rc.No.M2/58413/99 dated 11.09.2003 called for report along with proposal for sale of the land in question. Thereafter, the Mutt submitted report to the Commissioner of Endowments Department, Andhra Pradesh, Hyderabad, along with market value certificate and plan after obtaining market value of the land from the Mandal Revenue Officer and the Sub-Registrar, Tirupati, vide L.Dis.No.B/1549/2003, dated 26.12.2003. After examining report of the Commissioner of Endowments, the Government of Andhra Pradesh issued G.O.Ms.No.782, dated 5.10.2004 accorded permission under Section 80(1)(c) of the Act 30 of 1987 to the Commissioner of Endowments Department to sell two bits of land admeasuring Ac.0.38 cents in Sy.No.266/1 and A.0.07 cents in Sy.No.266/3A under private negotiations. The Commissioner of Endowments Department forwarded the said G.O. and requested the Mutt to take necessary action and report compliance. Consequently, by letter dated 27.12.2004, L.Aruna enclosed

Bankers cheque No.430585 dated 27.12.2004 for Rs.5,45,900/- and requested the Mutt to register sale deed in her favour. Meanwhile, the Mutt received a telegram from Sri Matta Purushotham Reddy, advocate, informing that W.P.No.25152 of 2004 was filed by his client- C.Chandra Mohan Reddy questioning the sale of the land in favour of L.Aruna and that having knowledge about the same, L.Aruna addressed letter to the Mutt requesting to execute sale deed in her favour by enclosing pay orders for Rs.33,08,575/- towards sale consideration. The Mutt, on 13.01.2005, addressed a letter to the Branch Manager, Canara Bank, Tirupati, to invest the pay orders in fixed deposit for a term of five years in the joint account of Administrative Officer, S.S.H.Mutt and the Commissioner, Endowments Department, Hyderabad. Learned Standing Counsel for Endowments addressed a letter dated 04.02.2005 to the Mutt informing about filing of W.P.No.25152 of 2004 and W.P.No.546 of 2005 questioning the sale of the land in question and opined that in view of G.O.Ms.No.782 and in the light of interim orders of this Court, nothing prevents the Mutt authorities to proceed with registration of the piece of land covered by the said G.O., but, such further actions are subject to the outcome of the above writ petitions. He enclosed copies of interim orders passed in W.P.M.P.No.474 of 2005 in W.P.No.546 of 2005 and W.P.M.P.No.32870 of 2004 in W.P.No.25152 of 2004.

Subsequent to the passing of the orders of this Court, L.Aruna addressed letter dated 02.02.2005 to the Mutt requesting to execute registered sale deed in her favour, since no stay orders were passed in the writ petition. Therefore, incorporating the term to the effect that the sale was made subject to the result of W.P.No.546 of 2005 and W.P.No.25252 of 2004, the Mutt executed registered sale deed in favour of L.Aruna on 07.02.2005. The Commissioner of Endowments vide Rc.No.M2/58413/99 dated 15.02.2005 informed the Mutt that the Government is reviewing its orders passed in G.O.Ms.No.782 dated 05.10.2004 and directed not to take any further action in pursuance of said G.O. The Mutt requested the Sub-Registrar, Tirupati, to cancel the said sale deed vide Rc.No.B4/1878/2003 dated 15.02.2005.

The Government of Andhra Pradesh issued G.O.Ms.No.215 deciding to re-examine and review the orders issued in G.O.Ms.No.782 dated 05.10.2004 under Section 93 of Act 30 of 1987 and kept all other actions in abeyance. Thereafter, the Government by memo dated 17.02.2005 directed the Commissioner of Endowments, the District Collector and Joint Collector to inspect the lands in question and submit report on the issues raised in G.O.Ms.No.215. Thereafter, it addressed letter in Rc.No.B4/1878/2003 dated 19.03.2005 to L.Aruna directing her to receive Rs.5,45,900/- deposited by her earlier and making it clear that the said amount will not carry any interest if she fails to receive the money.

In pursuance of the said G.O.Ms.No.215 to provide opportunity of hearing, the Government issued Memo No.1096/Endts-II(1)/2005-1, dated 07.04.2005 and directed the Mutt to serve the notice on L.Aruna to give her an opportunity of reply. The Mutt served the said notice on 27.04.2005 and obtained acknowledgement from said L.Aruna. After providing opportunity to L.Aruna, the Government issued G.O.Ms.No.1787 dated

05.12.2006 duly cancelling the sale of land in her favour and directed the Commissioner of Endowments to return the amount with interest accrued thereon to her. The Commissioner of Endowments addressed letter in Rc.No.43099 of 2008, dated 16.10.2008 to the Mutt and requested to submit remarks and clarify whether the amount paid by L.Aruna and others was returned or not. Acting on the said letter, the Mutt addressed letter in Rc.No.B4/2160/2003 dated 03.01.2009 to the Commissioner informing that the amount paid by L.Aruna was kept in fixed deposit in joint account of the Commissioner and the Administrative Officer of the Mutt and requested to accord permission to withdraw the FDR amounts and pay the same to L.Aruna. The provisions under Section 80 of Act 30 of 1987 were not followed and the same is contrary to law.

The third respondent-Mutt filed a counter affidavit stating that as the two pieces of land admeasuring Ac.0.07 cents in survey No.266/3A and Ac.0.38 cents in survey No.266/1 of Tirupathi Village belonging to the Mutt were not convenient for separate construction under existing building rules, the then authorities thought it fit to alienate the same to the neighbouring land owners. As such, the land admeasuring Ac.0.07 cents was divided into three parts, out of which land admeasuring 212 Sq. Yards was sold in favour of the petitioner herein, 67.78 sq.yards in favour of D.Ramprasad and 64 sq.yards in favour of one D.Sudhakar respectively. Similarly another land admeasuring Ac.0.38 cents was also decided to be alienated to the petitioner and accordingly proposals were sent by the then Mutt authorities, in turn the proposals were processed to the office of the second respondent.

Pursuant thereto, the 1st respondent issued G.O.Ms.No.782 dated 05.10.2004 according permission for alienation. After receiving the sale consideration, the Administrative Officer had executed a registered sale deed dated 07.02.2005 in favour of the petitioner in respect of the land admeasuring 1258 sq.yards (Ac.038 cents) in survey No.266/1 of Tirupati Village. Thereafter, the first respondent initiated proceedings under Section 93 of the Act and issued show cause notice to the petitioner. After thorough enquiry, it was found that there was procedural lapse on the part of the CED in not issuing a notice as provided under Section 80 (1) (b) of the Act before recommending for sale of the land to the Government and the then prevailing market value was not adopted while fixing the rate for sale of the land. Under Section 93 of the Act, the Government is empowered to take up proceedings and there is no irregularity and illegality in cancelling the earlier G.O., by the Government by exercising powers vested in it.

Heard and perused the entire material on record.

Sri K.Raghuveer Reddy, learned counsel appearing for the petitioner, would contend that the third respondent-Mutt executed registered sale deed in favour of the petitioner on 07.02.2005 on payment of sale consideration of Rs.33,08,575/- by pay orders to the third respondent. The registered sale deed was executed by the third respondent as per the orders of the Government issued in G.O.Ms.No.782 dated 05.10.2004 wherein the Government accorded permission under Section 80 (1) (c) of the Act to the Commissioner of Endowments Department, to sell two bits of land admeasuring Ac.0.38 cents in survey No.366/1 and Ac.0.07 cents in survey No.266/3A under private negotiations as per the provisions of Section 80 of the Act, to benefit the third respondent-Mutt. Learned counsel would further contend that the Government issued G.O.Ms.No.1787 dated 05.12.2006 cancelling the sale of land in favour of the petitioner under purported exercise of power under Section 93 of the Act on the ground that the procedure prescribed under Section 80 (1) (b) of the Act was not followed and the sale is vitiated due to fraud. But, the evidence on record reveals otherwise. Further, taking note of filing of the writ petitions in WP Nos.25152 of 2004 and 546 of 2005 filed by one Chandra Mohan Reddy questioning the sale of the land in favour of the petitioner, the sale deeds were executed subject to the result of the writ petition, but however said writ petitions were ultimately ended in dismissal. He would further contend that the Government has no power under Section 93 of the Act to review the Government Order in G.O.Ms.No.782 dated 05.10.2004 passed under Section 83 (1) (c) of the Act and pass cancellation orders in G.O.Ms.No.1787 dated 05.12.2006. In support of his contention, he relied on ***Sankuri Yadaiah vs. Government of Andhra Pradesh rep. by its Principal Secretary, Govt. Revenue (Endowments.II) Department, Hyderabad***[1] wherein this Court held that the power of review of the Government under Section 94 of the Act is only against the order passed by it in exercise of power of revision under Section 93 of the Act and not against any order passed under the Act. In the case on hand, the Government exercised the power under Section 80 (1) (c) of the Act and following due procedure prescribed under the Act. He would further contend that since the lands are not convenient for any

[1] 2007 (6) ALT 804

independent construction, permission was accorded for alienation to the adjacent land owners instead of public auction. As such, G.O.Ms.No.787 dated 05.10.2004 issued according permission for alienation could not be cancelled by illegal exercise of power and without jurisdiction under Section 93 of the Act. After having issued G.O.Ms.No.782 dated 05.10.2004 in favour of the petitioner and after receiving the report from concerned authorities stating that the subject plots are not fetching any income to the Mutt and even the said plots are not convenient for any separate construction under existing building regulations, thus the authorities thought it fit to alienate the same to the neighbours.

Per contra, the learned Government Pleader appearing for respondents 1 and 2 while reiterating the averments of the counter, would contend that the land was alienated to the petitioner without following the provisions of Section 80 of the Act. As the land in question has more commercial value, if it could have been sold in public auction, it would have fetch more money, which is beneficial to the Mutt. No notification under Section 80 (1)(b) of the Act is issued calling for objections for selling the land as required under law. As per the report of the Commissioner of Endowments Department, Hyderabad, the local prevailing market value is more than what is paid by the petitioner. The alienation was taken place by misrepresenting and the sale is vitiated due to fraud. He would contend that the government-first respondent has power under Section 93 of the Act to review the earlier order issued in G.O.Ms.No.782 dated 05.10.2004. After providing opportunity to the petitioner, the Government issued G.O.Ms.No.1787 dated 05.12.2006 duly cancelling the sale of land in favour of the petitioner and also directed the Commissioner of Endowments to return the amount with interest accrued thereon to the petitioner. Hence, there is no illegality or irregularity in passing the impugned G.O. and hence the writ petition is liable to be dismissed.

In the facts and circumstances of the case, in considered view of this Court, it is found that after due recommendations of the Chief Commissioner of Endowments, after receiving report from the Executive Officer, Tirumala Tirupati Devastanam, stating that the property in question is of no use to the Mutt, the Government has issued G.O.Ms.No.782 dated 05.10.2004 granting permission under Section 80 (1) (c) of the Act to sell two bits of land to petitioner and two others, whose lands were adjacent to the said plots, by fixing the sale consideration, based on the reports received from the authorities concerned. It is very clear from the material on record that the main ground for such alienation was that said two bits of land was not convenient for making any independent construction by the Mutt and it is of no use if the land is kept vacant. Hence, it was decided to sell the lands to the adjacent land owners i.e. petitioner and others and accordingly the land was alienated.

However, it appears that the Government issued the impugned G.O.Ms.No.1787 dated 05.12.2006 cancelling the sale made in favour of the petitioner and others by exercising power under Section 93 of the Act on the ground that the sale was made by misrepresentation. But, as seen from the entire material on record, it could safely be concluded that there is no fraud played by the petitioner for getting the sale deed executed in her favour and in fact the sale consideration was also fixed by the

Government in the earlier based on the reports submitted by the authorities concerned and no role can be attributed to the petitioner in fixation of the sale consideration.

As regards the contention urged by the learned Government Pleader that if the subject plots were sold in public auction, the Mutt could have derived more income, it is to be noted that the very basis for making proposal for alienation of the subject plots is that they were not fetching any income to the Mutt and those plots are not suitable for independent construction as the plot an extent of Ac.0.07 cents and land admeasuring Ac.0.38 cents are located in the midst of the private land and there is every likelihood of encroachment of the land and only for the said reason, the plots were proposed to be alienated to the adjacent land owners and accordingly were alienated. Hence, the argument advanced by the learned Government Pleader could not be countenanced.

Further, in view of the decision reported in ***Sankuri Yadaiah (1 supra)***, the power of review of Government under Section 94 of the Act is available only against an order passed by it in exercise of power of revision under Section 93 of the Act and not against any other order passed under the Act. In the case on hand, the Government exercised power for cancellation of order passed under Section 80 (1) (c) of the Act on the ground that the sale is in violation of provisions of Section 80 (1) (b) of the Act and not in the best interest of the third respondent-Mutt and in purported exercise of power under Section 93 of the Act, the Government cancelled the sale deed.

In view of the above discussion and the ratio laid down by this Court in ***Sankuri Yadaiah (1 supra)***, this Court is of the considered view that the Government is not empowered to issue the impugned G.O. and as such the same is liable to be set aside.

Accordingly, the Writ Petition is allowed by setting aside the G.O.Ms.No.1787 dated 05.12.2006.

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

(M.GANGA RAO, J)

2nd May, 2018
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