THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.579 of 2018

Judgment: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 41458 of 2017 dated 27.12.2017.

The appellant herein is the 2nd respondent in the Writ Petition. The 5th respondent herein filed the Writ Petition seeking a mandamus to declare the action of the District Collector, in not fixing the rate of land of an extent of 4.00 acres in Survey No. 120 of Amaravathi Village for payment of the same by the 2nd respondent to the 4th respondent, as illegal and arbitrary; and to consequently direct the District Collector to fix the rate of the land as Rs.28,35,000/- per acre (which amount was fetched in the public auction conducted by the 4th respondent) towards compensation for the lands in Survey No. 120 of Amaravathi Village and, thereafter, direct the 2nd respondent therein to pay the same with interest to the 4th respondent without any delay.

In the order under appeal, the learned Single Judge noted that the 3rd respondent-temple herein originally had Acs.8.36 cents of dry land in Survey No. 120 of Amaravathi Village and Mandal, Guntur district; from out of this extent, 4.00 acres of land was requisitioned by the Secretary of the appellant for construction of a residential school for girls, along with a hostel building; initially, the appellant had, by its letter dated 7.9.2002, consented to pay the land value as proposed by the District Collector to the Endowment Department; officials of the Endowment Department, including the then Commissioner of Endowments, had decided to part with this extent of land for the desired purpose; advance possession, of an extent of 4.00 acres, was handed over by the Executive Officer of the said Devasthanam/temple to the Convenor/Principal of the appellant on 28.11.2002 vide proceedings dated 27.11.2002 of the Deputy Commissioner, Endowments Department, for construction of the said residential school complex; possession of the subject land was delivered even though the market value was not paid to the Devasthanam/ institution; the District Collector had opined that the rate for 4.00 acres of land would be fixed, after conducting open auction for the remaining extent of Acs.4.36 cents of land, as the amount that would be fetched for the said land in the open auction would give a clear picture of the prevailing market value; based on the value of the land, compensation could be determined taking into account features like backside location etc; this proposal was agreed to and an assurance was given, at the time of giving advance possession, that the amount would be paid to the Devasthanam/temple; the balance extent of land of Acs.4.36 cents was later auctioned (in the year 2006) as per the directions of the Commissioner of Endowments/5th respondent in the Writ Petition; at this auction, a price of Rs.28,35,000/- per acre was realized; and, on that basis, the 3rd respondent Devasthanam/temple was entitled to receive Rs.1,13,40,000/- from the appellant from the date of handing over of possession with interest thereon.

The learned Single Judge observed that it was shocking that the endowed property was parted with, without even realizing its value for the benefit of the Devasthanam/temple, despite lapse of one and half decades; since the amount which was legally due and payable to the Devasthanam/temple was not paid despite such long lapse of time, the present Writ Petition had been filed; and it was obvious that all the respondents, particularly the Commissioner, the District Collector, Guntur, the Secretary of the appellant and others were responsible for the loss which occasioned to the Devasthanam on account of non-payment of the amount. The Writ Petition was allowed directing the respondents therein to take steps for fixing the rate of 4.00 acres of the land by taking into consideration the land value at Rs.28,35,000/- per acre and, on such fixation, the appellant was directed to forthwith pay the same to the 3rd respondent Devasthanam/Temple with interest at 24% per annum from the date of taking advance possession ie, 28.11.2002 till the date of payment. The entire exercise was directed to be completed within two months from the date of receipt of a copy of the order. It was also made clear that, on failure to make payment for the land, the subject land shall be re-delivered to the Devasthanam/temple with the constructions thereon without any claim for equities; and, in case, payment was not made, the Commissioner of Endowments, the Secretary of the Appellant and the District Collector, Guntur should take responsibility and take steps for re-delivery of the property. While parting with the case, the learned Single Judge observed that, if the Government and its Officers deal with endowment property in such a manner, it would affect persons of faith who make munificent contributions to the temple.

In the order under appeal, the learned Single Judge has taken the price of the land, which fetched in the public auction held in the year 2006, as the market value, and has directed the appellant to pay interest thereupon at 24% per annum. Even this, the appellant believes to be exorbitant.

Sri P.V. Ramana, learned counsel for the appellant, would submit that the devasthanam land, which fetched Rs.28,35,000/-

per acre, was adjoining the main road; the hostel constructed by the appellant is behind this extent of 4.00 acres of land; and the price fetched in the auction held in the year 2006, for lands adjacent to the road, cannot be fixed as the market value for lands on its backside.

What is, however, not explained is as to how the subject temple could have been deprived of its property for sixteen long years without payment of any compensation whatsoever. While the appellant seeks to place the blame, for not fixing of market value, on the District Collector, the fact remains that the appellant has been illegally and un-authorisedly in possession of temple land, of an extent of 4.00 acres, for the past 16 years ever-since 2002, without paying a single rupee to the 3rd respondent-temple.

Section 80 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as "the Act") relates to alienation of immovable property. Under Sub-section (1) thereof, any sale of immovable property, belonging to or given or endowed for the purpose of any charitable or religious institution or endowment, shall be null and void unless any such transaction is effected with the prior sanction of the Commissioner. Clause (b) of Section 80(1) enables the Commissioner, after publishing in the Andhra Pradesh Gazette, particulars relating to the proposed transaction, inviting objections and suggestions with respect thereto, and considering all objections and suggestions, if any received from the trustee or other person having interest, accord such sanction where he considers that the transaction is (i) prudent and necessary or beneficial to the institution or endowment; (ii) in respect of immovable property which is un-economical for the institution or endowment to own and maintain; and, (iii) the consideration therefor is adequate and proper. Clause (c) of Section 80(1) stipulates that every sale of any such immovable property, sanctioned by the Commissioner under Clause (b), shall be effected by tender-cum-public auction in the prescribed manner subject to the confirmation by the Commissioner within the period prescribed.

It is only if the Commissioner has accorded prior sanction for sale of the subject property, would such sale not be void in terms of Section 80(1)(a) of the Act. Further, Clause (b) of Section 80(1) requires the Commissioner to accord sanction only after publishing, in the Andhra Pradesh Gazette, particulars relating to the proposed transaction, and after inviting objections and suggestions. Admittedly, no such publication has been caused in the Andhra Pradesh Gazette, much less were objections invited and considered. In addition thereto, the Commissioner is required to apply his mind before he accords sanction as to whether the transaction is (i) prudent and necessary or beneficial to the institution or endowment or whether the immovable property is un-economical for the institution or endowment to own and maintain. Clause (ii) of Section 80(1)(b) is, evidently, not attracted since the land adjacent thereto, which also belongs to the subject temple, fetched a sum in excess of Rs.28.35 lakhs in a public auction conducted in the year 2006. Besides examining whether it is prudent and necessary or beneficial to the institution or endowment for sanction to be accorded for the sale of immovable property, the Commissioner is also required to examine whether the consideration therefor is adequate or proper.

After following the aforesaid procedure, and on the Commissioner according sanction for sale of the immovable property, such sale is required to be effected by tender-cum-public auction in the manner prescribed under the Rules, which again is subject to confirmation of the Commissioner. While the provisos confer power on the Government to permit sale of the property, otherwise than by public auction, it is not in dispute that the Government did not exercise any such power before the subject property was handed over to the appellants in the year 2002. The action of the respondents, in handing over possession of temple lands to the appellants, in such a casual manner, is a matter of grave and serious concern. The respondent-officials who, in flagrant violation of the aforesaid provisions of the Act, had handed over possession to the appellant herein without the appellant paying a single rupee as compensation to the 3rd respondent-temple must be held accountable for their illegal acts. Not only has the subject temple been denied the amount which it is entitled to, on its property, for the past 16 years, it has been made to run from pillar to post for payment of the amount. It is only on a devotee of the temple, having filed this Writ Petition, has this Court exercised its jurisdiction to interfere.

While it is evident that the aforesaid procedure under Section 80 of the Act is incapable of compliance now, since possession was handed over to the appellant sixteen years ago in the year 2002, and it would well-nigh be impossible to conduct a public auction of a property delivered to the appellant in 2002 and which is in their possession ever since, the learned Single Judge, in our view, was considerate and had, in fact, shown indulgence to the appellant herein in directing that they pay the price fetched in an auction held in the year 2006 along with interest at 24% per annum. Apart from following the procedure prescribed under Section 80 of the Act, the subject land could only have been acquired in accordance with the provisions of the Land Acquisition Act. Suffice it, therefore, to observe that the order under appeal shall not disable the Government from acquiring the subject land in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (hereinafter referred to as "the 2013 Act"), and in paying compensation, to the subject temple, in terms of the award to be passed under the 2013 Act. We make it clear that, except for this modification, we are not interfering with the order of the learned Single Judge in all other aspects.

In case, the Government chooses not initiate acquisition proceedings, acquire the subject land in accordance with the 2013 Act, and pay the awarded compensation to the subject temple within two months from today, the order of the learned Single Judge shall be complied with in all respects, and the Commissioner of Endowments, the District Collector, Guntur and the Principal Secretary, Social Welfare Department shall be held responsible in case they fail to adhere to the directions issued by the learned Single Judge, and the directions now issued by us. In case, payment to the subject temple is not made within two months from today, either in terms of the order of the learned Single Judge, or on land acquisition proceedings being initiated and an award being passed under the 2013 Act, the State Government shall initiate disciplinary proceedings against the erring officials, without prejudice to the 4th respondent-writ petitioner's right to invoke the contempt jurisdiction of this Court.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

26th June, 2018

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<u>THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN</u>

<u>AND</u>

<u>THE HON'BLE Ms. JUSTICE J. UMA DEVI</u>

<u>W.A. No. 579 of 2018</u>

Date: 26.6.2018

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