THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.25407 OF 1999

ORDER:

The petitioner by way of this writ petition has challenged G.O.Rt.No.1808, Revenue (Endowments.IV) Department, dated 26-11-1999 issued by the first respondent.

2. The third respondent Temple owns an extent of land admeasuring Ac.1.81 cents in R.S.No.691, situated at Venkatapuram village, Eluru Municipal limits, West Godavari District, Andhra Pradesh. The said land was notified for sale by way of tender-cum-auction notice dated 22-05-1998 and the public auction was scheduled to be held on 24-06-1998 in the presence of the Deputy Commissioner of Endowments Department, Kakinada as per the orders of the second respondent in R.Dis.No.M1/60150/95-1, dated 24-12-1998 and R.Dis.No.M1/1297/96-1, dated 13-11-1997. The said notification has been affixed in the Temple premises, Notice Board of Grampanchayat and published in the local news papers. That Forty five (45) participants filed their tenders on 24-06-1998, out of which, the petitioner was declared as highest bidder for Rs.5,55,000/-. Thereafter, the petitioner has been declared as successful bidder for the bid amount of Rs.13,01,000/- per acre. In terms of the auction conditions, the petitioner has deposited 1/3rd of the bid amount i.e., Rs.7,85,000/-. The third respondent after receiving the proceedings dated 22-12-1998 from the second respondent, confirmed the auction and issued letter No.106/98 dated 29-12-1998, directing the petitioner to deposit the balance

amount of Rs.15,69,810/- within 15 days and get the sale deed executed and register. In pursuance thereof, on 1-1-1999, the petitioner has deposited Rs.15,69,810/- under four banker cheques with the third respondent and sale deeds were engrossed on stamp papers worth Rs.2,82,600/- purchased by the petitioner. The Executive Officer of the third respondent Temple has executed the sale deed and papers were presented before the Sub Registrar, Eluru for registration. On the date of presenting the documents i.e., on 1-1-1999 with the Sub Registrar, Eluru, the Executive Officer of the third respondent Temple has also delivered possession of the land to the petitioner, who is the successful bidder-cum-auction purchaser as an obligation in order to complete the transaction as per their contract. With the above action, the entire transaction of the contract between both parties has attained finality.

In the meanwhile, the persons who did not file their tender and did not participate in the auction, having known about the sale confirmation, for the first time interfered and filed frivolous representations on the ground that the said land would fetch more money and when opportunity was given to them later, they backed out. Basing upon the said representations, the second respondent decided unilaterally and cancelled the auction dated 24-06-1998 by order dated 24-7-1998 and restored the auction proceedings by order dated 22-2-1998 by confirming the auction held on 24-6-1998. Once again the 2nd respondent made a unilateral decision and passed orders dated 10-2-1999 in canceling the auction dated 24-6-1998 for no fault of the petitioner. The said action of the second respondent appears to be inconsistent, unreasonable and not supported by any law. The second respondent is not vested with the review powers and his action is without jurisdiction.

In the meanwhile, 4th respondent filed W.P.No.41 of 1999 before this Court and obtained interim orders in W.P.M.P.No.41 of 1999 on 5-1-1999. 4th respondent has complied with the conditional order of furnishing bank guarantee of Rs.30 lakhs as he has indicated that the said land would fetch Rs.30 lakhs as against the sale consideration of Rs.15,69,810/-.

As stated supra, the second respondent had finally passed an order dated 10-2-1999, canceling the sale dated 24-06-1998. Aggrieved thereby, the petitioner filed a revision before the first respondent on 25-2-1999 and obtained interim stay on 8-3-1999. The 4th respondent in W.P.No.11552 of 1999 challenged the interlocutory order dated 8-3-1999 of the first respondent and this Court by a common order dated 9-7-1999 disposed of both W.P.Nos.41 and 11552 of 1999 by giving liberty to the 4th respondent herein to file a revision before the Government questioning the orders of confirmation of sale dated 22-12-1998 of the second respondent. However, in view of the order dated 10-2-1999 of second respondent, the order dated 22-12-1998 no longer survives. The first respondent in order to decide the review of the petitioner filed against the order dated 10-2-1999 of respondent No.2, has fixed the date of hearing on 23-9-1999 at 4.00 P.M., in the chambers of the Minister for Endowments, Secretariat, Hyderabad and has not finalized the matter on the above date of hearing as no arguments were advanced on the said date and thus, it was not decided. But, to the surprise of the petitioner, the Government have passed an order in G.O.Rt.No.1808, Revenue (Endowments.IV) Department, dated 26-11-1999, which is impugned herein.

3. The learned counsel appearing for the petitioner submits that no opportunity was given to the petitioner before passing the impugned order by the first respondent. Once sale is confirmed, the question of cancellation of sale does not arise. Once a contract has been completed as required under law, the action of the second respondent in canceling the sale deed is unjust, unreasonable, not supported by any law and is unilateral decision and violative of principles of natural justice. A third party one Sri Jagath Kumar who did not participate in the auction has no *locus standi* to file representations or objections in the above matter. Subsequent to the sale confirmation, the second respondent has not cancelled the sale deed on the ground of any fraud, malafide or wrongful act committed by the petitioner or the official respondent. The petitioner has not violated any tender conditions and has not violated the contractual obligations in order to complete the sale deed executed and registered. The action of the second respondent in canceling the sale deed is without jurisdiction.

4 The learned counsel for 4th respondent also contended that the Commissioner has no power to review his own order under Section 94 of A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 and he further contended that the petitioner except making an argument that no opportunity was given to him by respondent No.1 before passing the impugned

order dated 26-11-1999, no valid and cogent arguments were advanced. The learned counsel for 4th respondent placed his reliance to the Enquiries and Appeal Rules 1987 and prayed to dismiss the writ petition.

5. Upon instructions, it is represented on behalf of the official respondents that the records are not traceable and submitted to pass orders on merits.

6. Since the cause of action has arisen in June 1998 and keeping the litigation pending for so many years undecided is also not proper.

7. Once a contract is completed and in the event of any aggrieved party to cancel the sale deed which is already executed, it is the Court of law having competent jurisdiction has to decide its validity. The cancellation order dated 24-7-1998 of the Commissioner of Endowments (respondent No.2) was revoked on 22-12-1998 and further directed to proceed with the execution of the sale deed and this revocation orders were passed after obtaining report from the Deputy Commissioner of Endowments. There was sufficient material in the hands of the second respondent while passing the order for execution of the sale deed on 1-1-1999.

8. The repeated orders of the second respondent passed time and again in this matter are found to be without assigning any cogent reasons. Under the Indian Contract Act, which is a Central Act, having an over riding effect upon the Endowments Act, more particularly when the matter pertains to contractual

obligations between both the parties i.e., between the vendor and the vendee and also when the matter pertains to tender-cum-auction, where both parties have fulfilled their part of obligations and where no fraud played by the parties has been established, the action of the second respondent in canceling the sale deed is unwarranted. The conduct of the 4th respondent cannot be appreciated, where he has not participated in the tender-cum-auction and more so, he is not an effected party. Only after knowing the tender and auction amount, the 4th respondent appears to have either got tempted by the sale of the property or he has been planted by the persons having vested interest. This kind of conduct cannot be encouraged. It is an undisputed fact that petitioner, 45 persons filed tenders and participated in the auction, nothing prevented the 4th respondent from filing tender and participating in the auction.

9. As stated supra, the respondents have not made out a case of fraud in conducting the sale and also they have not raised any objection at the time of conducting sale proceedings. The respondents conveniently causing interference, at a later stage cannot be accepted and they are estopped from raising objections after conducting the sale proceedings. This issue has been decided by this Court in **Jonnavithula Mallikarjuna Prasad Vs. Boosi Jayaraju**[1], wherein, it is held:

> "18. On a perusal of the material papers, it is clear that nowhere in the affidavit filed in support of petition filed under Order 21 Rule 90 CPC., any fraud or material irregularity is pleaded. From a plain reading of Order 21 Rule 90 C.P.C., it is incumbent on the person invoking this provision to establish that there was material irregularity or fraud in publishing or conducting sale.

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[1] 2015(4) ALD 460

> The only ground urged in the petition under Order 21 Rule 90 C.P.C., is that he is an agricultural coolie and as per Section 60© C.P.C., Court has no right to sell the property belonging to agricultural coolie. Admittedly, this property was attached in the suit under Order 38 Rule 5 C.P.C., i.e., attachment before judgment and the same was made absolute on 13.6.2003. Though attachment was made absolute on 13.6.2003, respondent J.Dr., has not taken any legal recourse challenging the same. He has not raised any objection invoking Section 60© C.P.C., during pendency of suit. Ultimately, the suit was decreed on 14.2.2005 and thereafter, execution proceedings were launched. Though J.Dr., filed separate EA No.258 of 2006 in the execution proceedings under Order 21 Rules 26 and 59 C.P.C., he has not pursued that application and allowed it to be dismissed and made the executing Court to proceed with the sale. When the J.Dr., has not raised objection at the time of attachment or at the time of making the attachment absolute, or at the initial stage of execution proceedings, as rightly pointed out by advocate for revision petitioner, J.Dr., is estopped from making such objection after sale of the property. Further when the ground of saleable interest is not available under Order 21 Rule 90 C.P.C., entertainment of such ground is definitely beyond the powers and jurisdiction vested in the appellate Court. In fact, executing Court i.e., trial Court rightly dismissed the application but the appellate Court without looking into the scope under Order 21 Rule 90 C.P.C., and without looking into the ground available under this provision for setting aside sale traversed beyond the scope of the provision and entertained the ground that was not available under Order 21 Rule 90 C.P.C., and interfered with the finding of the trial Court which was in accordance with the provisions of Order 21 Rule 90 C.P.C."

10. If a plea has not been taken before the auctioning authority at the time of auction on the ground of fraud and irregularity, the proclamation of sale attains finality and objections raised thereafter cannot be entertained as per Order XXI Rule 90 C.P.C., which is decided in **Nerella China Venkata Subba Rao Vs. Gunda Anka Rao and another[2],** wherein, it is held:

> "7. Admittedly, the case on hand does not fall under the second category *viz.*, fraud in publishing or conducting the

[2] 2015 (4) ALD 693

> sale. The only ground available for setting aside the sale is material irregularity. Now, it has to be seen that when the decree holder has not shown the correct description of the property properly or the value is shown far less than the market value or the Sub-Registrar's value, whether it would amount a material irregularity. Sub-rule (3) of Rule 90 of Order XXI CPC., controls sub-rule (1) of Rule 90 CPC. Even if there is a material irregularity, sale cannot be set aside when such a plea has not been taken on or before the date on which the proclamation of sale was drawn up. Admittedly, the petitioner has not taken up these two contentions raised on or before the proclamation of sale was drawn up. Therefore, even assuming for a moment that it amounts to a material irregularity, for that reason sale of the property in auction cannot be set aside unless those grounds have been specifically taken on or before the date on which the proclamation of sale has been drawn up. So, precisely for that reason, the executing Court by invoking Order XXI Rule 90(3) CPC., has dismissed the application and that order needs no interference by this Court as there is no illegality in passing the said Order. The civil revision petition is devoid of merits and the same is liable to be dismissed."

11. Section 93 of A.P., Charitable and Hindu Religious Institutions and Endowments Act 1987, empowers the Government to call for records and pass orders and Section 94 of the said Act empowers the Government to review its order passed under Section 93. The Commissioner is not vested with review powers under Section 94.

12. Respondent No.4 has not approached this Court with clean hands. He has no *locus standi*. He did not participate in the tender-cum-auction and when 45 persons participated in tender-cum-auction, nothing prevented the 4th respondent to participate in tender-cum-auction proceedings. Mere depositing the money saying that the amount would fetch more is of no argument that can be looked into without establishing malafides or fraud played by the vendor or vendee. No relief can be granted to respondent No.4 in the writ petition filed by the petitioner.

13. Respondent No.4 is at liberty to get his bank guarantees settled with official respondents.

14. Once the contractual obligation has been completed by both parties and sale deed is executed, the second respondent has no jurisdiction in the matter to cancel the same and it is the competent Court of law which has jurisdiction to decide the validity.

15. Admittedly, 4th respondent has pleaded in his revision before the Government that he is not interested in the subject lands and his interest is only to see that an amount of Rs.30 lakhs is collected as the lands would fetch an amount of Rs.30 lakhs. It is also recorded in the impugned order of the Government that the petitioner has orally accepted to deposit an amount of Rs.30 lakhs towards sale consideration.

16. The impugned order dated 26-11-1999 has not pointed out the malafides or fraud played by the official respondents in the process of tender-cum-auction proceedings. Hence, it is not for this Court to deal with the same in the absence of any evidence.

17. In the light of the above, there shall be a direction to the petitioner to deposit a total sum of Rs.30 lakhs with the official respondents including the amounts earlier deposited by him in the process of auction and execution of sale deed and upon such deposit, the official respondents shall complete the other required formalities. The entire process shall be completed within a period of three (3) months from the date of receipt of a copy of this order.

18. For the reasons stated above, the writ petition is disposed of setting aside the orders of the 1^{st} respondent in G.O.Rt.No. 1808, Revenue (Endowments.IV) Department, dated 26-11-1999. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD, J

Date: 02-02-2018.

<u>Note:</u>-
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