

Chenchu Rami Reddy and Another

Vs

Government of Andhra Pradesh and Others

Civil Appeals Nos. 1147-48 of 1986

(E. S. Venkataramiah, M. P. Thakkar JJ)

01.04.1986

JUDGMENT

THAKKAR, J. –

1. More often than not detriment to what belongs to 'many', collectively, does not cause pangs to 'any', for no one is personally hurt directly. That is why public officials and public-minded citizens entrusted with the care of 'public property' have to show exemplary vigilance. What is true of 'public property' is equally true of property belonging to religious or charitable institutions or endowments. The facts of the present case involving the sale of lands which have been sanctioned to be sold for about Rs 20 lakhs by private negotiations, instead of by public auction, which the appellants are prepared to purchase for about Rs 80 lakhs, illustrate this point in a telling manner.

Background

2. The legality and validity of a government order according permission to "Bugga Math", Tirupathi, a religious endowment, in exercise of powers under proviso to clause (c) of sub-section (1) of Section 74 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 ("Act") to sell certain lands belonging to the math by private negotiations to respondents 5 to 24, at the price of Rs 62,500 per acre has been questioned by the appellants. The impugned order, insofar as material reads :

Revenue (Endowments-III) Department G.O. Rt. No. 232 Dated : 12.2.1982. Read the following : 1. From the Commissioner, Endowments Department, Lr. No. M3/MA 4/81 dated April 16, 1981. 2. From the Commissioner, Endowments Department, Lr. No. 143/MA 4/81 dated December 1, 1981.##

ORDER

In the circumstances reported by the Commissioner, Endowments Department in the references read above, the government hereby accord permission under proviso to clause (c) of the sub-section (1) of Section 74 of the Andhra Pradesh Charitable and Hindu Religious Endowments Act, 1966 (Act 17 of 1966) for the sale of the lands belonging to Sri Bugga Math, Tirupathi, Chandragiri Taluk, Chittoor dt., in favour of the sitting tenants as detailed by the private negotiations :

#-----	Sl. Name	Sy.No	Extent	Cost per acre	No. Ac.	Cts.	-----	1.
Sri K. Subramanya Reddy	268/1A	1.81	62,500	*	*	*	*	(Rupees Sixty two thousand

five hundred only)20. Smt. K. Alamamma 268/1F 2.00 ----- Total 32.01 -----
------(By order and in the name of the
Governor of Andhra Pradesh.) Shraavan Kumar Second Secretary to Government.##

The appellants, who are willing to purchase the said lands, at a price four times the price offered by respondents 5 to 24, that is to say at Rs 2,50,000 per acre, as against Rs 62,500 per acre offered by the latter, have challenged the impugned order dated February 12, 1982 (GO Rt. No. 232) passed by the Government of Andhra Pradesh inter alia on the ground that it manifests total non-application of mind to the essential pre-conditions embodied in proviso to Section 74(1)(c).

The pre-conditions are :

- (1) That the government must be satisfied that it is in the interest of the institution or endowment to permit the sale of these lands otherwise than by public auction.
- (2) That reasons for reaching this satisfaction must be recorded in the order.

3. The aforesaid two pre-conditions are clearly spelled out by the relevant provision (proviso to Section 74(1)(c)) which may be quoted in extenso :

(c) Every sale of any such immovable property sanctioned by the Commissioner under clause (b) shall be effected by public auction in the prescribed manner subject to the confirmation by the Commissioner within a period prescribed :

Provided that the government may, in the interest of the institution or endowment and for reasons to be recorded therefore in writing, permit the sale of such immovable property, otherwise than by public auction.

The Problem

4. The question has arisen whether the High Court was justified in upholding the impugned order in the face of the fact that ex facie there is no compliance with the pre-conditions engrafted in the relevant provision inasmuch as the order in question, far from recording the satisfaction that it is in the interest of the institution to sell the lands otherwise than by public auction, (which is the normal mode prescribed by the legislature) does not even reveal awareness (1) as regards the necessity for being so satisfied and (2) as regards the mandatory obligation imposed by the statute to record the reasons for forming such an opinion in the order itself.

Whether there is compliance

5. Now what is there to show that the authority which passed the impugned order was even aware of the essential pre-conditions envisioned by the statute ? Nothing. On the other hand, it is clear that if the concerned authority had even stolen a casual glance at the relevant statutory provision it could not have failed to say, what it was bound to say, if it was so satisfied, that the departure from the prescribed mode of selling by public auction was in the interest of the 'math'. Nor could it have failed to record its reasons in support of this conclusion, for, the statute in so many words, casts an obligation on the concerned authority to record such reasons in the order itself.

6. The inference is therefore irresistible that the competent authority had failed to direct its mind to the requirements of law before passing the impugned order. It was argued that the impugned order

reveals that the competent authority had 'read' the two communications (dated April 16, 1981 and December 1, 1981) emanating from the Commissioner of endowments department, and the reasons mentioned therein must be deemed to have been approved by the competent authority. We are not impressed by the submission. The reports do not advert to the pre-conditions enjoined by the statute. The Commissioner cannot and did not tell the State Government 'what' it should do and 'how' it should do it in order to discharge its statutory function of forming the opinion as to whether departure from the normal mode of sale by public auction was called for in the interest of the institution. Or as to what guidelines or tests the competent authority should apply for forming its opinion. There is therefore no substance in this apology offered on behalf of the State Government. This much is more than sufficient to reverse the High Court and to hold that the impugned order deserves to be quashed (1) as it suffers from the vice of non-application of mind to essential matters and (2) as there is no compliance with the relevant statutory provision. But it is not sufficient to do so. Ends of justice demand that we advert to some other facets of the case and issue appropriate directions to protect the interest of the math.

Other facets

7. The following facts have emerged :

- (1) A scheme for managing the math was framed in 1929. Since 1943 there is no mahant and an Executive Officer of the Endowments Department is managing the affairs of the math.
- (2) The lands in question belonging to the math are dry lands admeasuring 32.01 areas.
- (3) The lands were given on lease to original respondent 8 (A. Munaswamy : now deceased : represented by his legal representatives) in 1964.
- (4) The lands are in occupation of respondents 5 to 7 and 9 to 24. Their legal capacity and legal right, if any, to be in possession of the land, has yet to be established.
- (5) Respondent 8 who claims to be a sitting tenant obtained a decree from the Court of District Munsiff, Tirupati, in OS 361/76 restraining the manager from auctioning the lease-hold rights before evicting him from the land.
- (6) The income derived by the math from these lands is Rs 1225 per annum as at present.
- (7) The proposal to sell the lands to respondents 5 to 24 at Rs 60,000 per acre would have fetched Rs 19,20,000 and yielded an annual income of approximately Rs 1,90,000 (at 10% p.a.) from the sale proceeds.
- (8) The Commissioner, Endowment, has accorded sanction to the proposed transaction of sale at Rs 62,500 per acre on his forming the opinion that the transaction is (i) necessary or beneficial to the institution (ii) consistent with the objects of the institution and (iii) that consideration therefor is reasonable and proper in the context of Section 79(1) of the Act.

That it would be beneficial to the institution or the endowment to sell the land cannot be gainsaid provided the price is a reasonable and fair price, since in place of annual income of Rs 1225 the institution would be earning an annual income of Rs 1,90,000 or more which can be put to use for the benefit of the community in a manner consistent with the objects of the math. More so, as for more than 40 years there is no "mahant" and the institution is being managed by a government official. Still more so, as respondent 8 has dragged the institution to a court of law as a result of which the "sword of Damocles" of the uncertainties of litigation remains hanging and the purchaser would be purchasing not only the land but a litigation. Being fully aware of this aspect and the need to protect the institution, this Court had passed an order in the following terms when the special leave petition came up for hearing on September 2, 1985 :

Issue notice.

Learned counsel of the petitioners, states that the petitioners are willing to buy the land in question at the rate of Rs 2,50,000 per acre and would deposit in this Court a sum of Rs 10 lacs within three months from today and another Rs 10 lacs within three months thereafter as earnest money with the condition that the amount of Rs 20 lacs so deposited would be forfeited if the petitioners failed to purchase the land at the rate of Rs 2,50,000 per acre. All further proceedings including execution of sale deed are stayed. This case be listed for hearing in the first week of March, 1986.

8. In compliance with this order the appellants have deposited the sum of Rs 20,00,000 (Rupees Twenty lakhs) in due course subject to the condition that the said amount of Rs 20,00,000 will be liable to be forfeited if they back out of the firm offer to purchase the land at the rate of Rs 2,50,000 per acre which will fetch a total sale price of approximately Rs 80,00,000 (Rupees Eighty lakhs) and an annual income of Rs 8 lakhs. The appellants have reaffirmed this firm offer at the time of the hearing of this appeal. If the Commissioner, Endowments, considered Rs 10 lakhs and odd as a fair and reasonable sale price he cannot but consider Rs 80 lakhs likewise for it will fetch a yield of about Rs 8 lakhs as against a yield of about Rs 2 lakhs in respect of the transaction already approved by him. But then someone else may offer a still higher price at a public auction (which is the mode prescribed by the legislature).

9. We, therefore, direct that the lands in question may be sold by public auction in the following manner :

(1) Sale must be on the basis of "as-is-where-is-whatever-is" subject to the rights, if any, of any of the respondents and of the other occupants, if any, in regard to the claim for alleged tenancy, sub-tenancy, possession or of any other nature.

(2) Wide publicity should be given to the date, time and place of public auction to ensure that maximum number of intending purchasers attend the auction in order to offer their bids.

(3) The terms and conditions must inter alia provide for deposit of at least 15% of the sale price in cash within a week (or two weeks) which will be liable to be forfeited if the transaction is not completed.

(4) Special notice shall be given to the appellants and the concerned respondents herein.

(5) The appellants' offer made in this Court for purchase at the rate of Rs 2,50,000 per acre on the condition specified in clause (1) herein will be treated as the minimum bid of the appellants and the sum of Rs 20,00,000 deposited in this Court (which will be transmitted to the Commissioner, Endowment in due course), shall be treated as the deposit made by them in pursuance to clause (3) herein.

(6) The other terms and conditions may be such as are usually incorporated in such public auctions by the Commissioner who shall specify them along with the above mentioned terms in the public notice.

10. We cannot conclude without observing that property of such institutions or endowments must be jealously protected. It must be protected, for, a large segment of the community has beneficial interest in it (that is the *raison d'être* of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction ? Why then permit sale by private negotiations which will not be visible to the public eye and may even give rise to public suspicion unless there are special reasons to justify doing so ? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment. With these words of caution we close the matter.

11. Appeal is allowed, order of the High Court is set aside, order in the aforementioned terms be and is passed.

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