

A.P.N.G.O.'S ASSOCIATION

v.

GOVERNMENT OF ANDHRA PRADESH & OTHERS
(Civil Appeal No. 4383 of 2014)

APRIL 3, 2014

[DR. B.S. CHAUHAN AND J. CHELAMESWAR, JJ.]

ANDHRA PRADESH CHARITABLE AND HINDU
RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT,
1987:

*s.80 - Sale of land belonging to Charitable and Religious
Endowment - Writ petition challenging the sale - Dismissed
by single Judge of High Court - Division Bench quashing the
sale - Held: Purpose of making an endowment in favour of a
deity is to generate income for various services required to
be rendered to the deity - It has come on record that the
interest on the sale proceeds will fetch much higher than the
income the land was getting - Therefore, prospect of getting
a higher income is certainly relevant consideration than
possibility of appreciation in value of the asset endowed -
Order of Division Bench of High Court set aside and that of
single Judge restored.*

**The appellant-Association of non-gazetted
Government employees applied to the Executive Officer
of the third-respondent Temple to sell the land in question
to provide houses to its members. After inviting
objections by publication in official gazette in terms of
s.80(1)(b) of the Andhra Pradesh Charitable and Hindu
Religious Institutions and Endowments Act, 1987 (the
Act), the Government issued GOMs No. 911 dated
14.12.2000, purporting to sale of the land in favour of the
appellants. One year thereafter a writ petition was filed**

A challenging the said GOMs No. 911. Subsequently, all the original petitioners withdrew the petition, but another person who had got himself impleaded, filed a Letters Patent appeal against the order of the single Judge dismissing the writ petition. Later, after the registered sale deed had been executed, another writ petition was filed. The Division Bench of the High Court allowed the writ petition and the appeal, set aside the judgment of the single Judge and quashed the G.O.Ms. No. 911.

C Allowing the appeals, the Court

D HELD: 1. In terms of s.80 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, normally the sale of any immovable property belonging to any religious institution, such as, the third respondent can only be effected by tender-cum-public auction in the prescribed manner and subject to the prior sanction of the Commissioner. Such a prior sanction can be given by the Commissioner only if he first makes a publication in the official Gazette of the particulars relating to the proposed transaction and invites objections and suggestions (if any) and on receipt of the objections or suggestions comes to the conclusion:

- F 1. it is un-economical for the institution or endowment to own and maintain such immovable property;
- G 2. such a sale is prudent and necessary or beneficial to the institution or endowment;
3. such a sale is likely to fetch adequate and proper consideration for the property. [Para 5 & 6] [641-A; 642-B-E]

H 1.2 In the instant case, the undisputed facts are that a publication in the official gazette inviting objections and

suggestions for the sale of the proposed property as required u/s 80(1)(b) of the Act was made. None of the writ petitioners before the High Court ever raised any objection or made any suggestion in response to the notification. The State Government in exercise of the authority under the first proviso to s.80 (1) issued G.O.Ms. No.911 permitting the sale of the land in question otherwise than by public auction. [para 16] [644-C-E]

1.3 As per the pleadings, the land in question was getting an income of Rs.1,00,000/- per annum. On the other hand, the Division Bench recorded that in the counter affidavit filed by the Government, it is stated that the consideration to be received after the sale in question would fetch an interest of Rs.6,00,000/- per annum. The single Judge opined that the prospect of increase in the income as a consequence of the sale in question is a relevant consideration having regard to the scheme of s. 80(1)(b) of the Act. [para 17] [644-E-G]

1.4 The approach of the Division Bench of the High Court is not in tune with the language of s. 80. The purpose of making an endowment in favour of a deity is to generate income for the various services required to be rendered to the deity. Therefore, the prospect of getting a higher income is certainly relevant consideration than the possibility of an appreciation in the value of the asset endowed. On the other hand, the entire higher annual income accruing as interest on the sale proceeds of the asset need not be utilised every year only for the services but part of it can always be reinvested in proper asset to beat the inflation. [para 19] [645-C-E]

1.5 In the totality of the circumstances, this Court is of the opinion that the Division Bench erred in interfering with the judgment of the single Judge. Therefore, the judgment under appeal is set aside and that of the single

A Judge restored. The validity of G.O.Ms. No.911 dated 14.12.2000 is upheld. [para 21] [645-G]

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B From the Judgment and Order dated 28.01.2006 of the High Court of A.P. at Hyderabad in WA no. 1035 and WP No. 8063 of 2004.

C B. Adinarayana Rao, G. Ramakrishna Prasad, Syodhan Byrapaneni, Mohd. Wasay Khan, Filza Moonis, Bharat J. Joshi for the Appellant.

D Kavin Gulati, D. Bharat Kumar, Sayoj Mohandas M., Abhijit Sengupta, C.K. Sucharita, V. Sridhar Reddy, A.S. Rao, Vineet Mishra, V.N. Raghupathy, Merusagar Samantaray for the Respondents.

The Judgment of the Court was delivered by

CHELAMESWAR, J. 1. Leave granted.

E 2. Aggrieved by the common judgment dated 28th January 2006 in Writ Petition No.8063 of 2004 and Writ Appeal No.1035 of 2004 of the High Court of Andhra Pradesh at Hyderabad, the third respondent therein preferred the instant appeal.

F 3. By the said judgment, the High Court set aside the judgment dated 3rd March 2004 in Writ Petition No.2563 of 2002 rendered by a learned Single Judge and quashed G.O.Ms. No.911 dated 14.12.2000 issued by the Revenue (Endowments) Department, Government of Andhra Pradesh.

G 4. The appellant is an association of the non-gazetted officers of the Government of Andhra Pradesh. Sometime in the year 1995, the appellant herein requested the Executive Officer of the third respondent Temple to sell an extent of 18 acres of land (Survey No.221/1) to provide houses to its
H members.

5. The Administration of Charitable and Hindu Religious Institutions and Endowments in Andhra Pradesh is regulated by an Act named the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. Section 80 of the Act insofar as is relevant for us reads as under:

"Section 80. Alienation of immovable property: 1(a) Any gift, sale, exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution, endowment shall be null and void unless any such transaction, not being a gift, is effected with the prior sanction of the Commissioner.

(b) The Commissioner, may, after publishing in the Andhra Pradesh Gazette the particulars relating to the proposed transaction and inviting any 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.

(c) 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 a period prescribed:

Provided that the Government may, in the interest of the institution or endowment and for reasons to be recorded therefor in writing, permit the sale of such

A immovable property, otherwise than by public auction.

X X X "

B 6. It can be seen from the above that normally the sale of any immovable property belonging to any religious institution, such as, the third respondent herein can only be effected by tender-cum-public auction in the prescribed manner and subject to the prior sanction of the Commissioner. Such a prior sanction can be given by the Commissioner if only the Commissioner first makes a publication in the Andhra Pradesh
C Gazette, the particulars relating to the proposed transaction and invites objections and suggestions (if any) and on receipt of the objections or suggestions if the Commissioner comes to the conclusion:

- D
1. it is un-economical for the institution or endowment to own and maintain such immovable property;
 2. such a sale is prudent and necessary or beneficial to the institution or endowment;
 3. such a sale is likely to fetch adequate and proper
E consideration for the property.

7. On receipt of the application from the appellant, the Commissioner, Endowments Department (2nd respondent herein) constituted a three-men Committee to inquire and
F report the probable price that may be secured if the land is sold in public auction. The District Collector, Guntur within whose territorial jurisdiction the temple (third respondent) is located addressed a letter dated 26th March 1998 to the Commissioner, Endowments Department (2nd respondent)
G suggesting that the Government be addressed for according permission to sell the land in question to the appellant association at the cost of Rs.3,50,000/- per acre by private negotiations. However, the Commissioner vide letter dated 5th March, 1998 advised the Government and sought the
H permission of the Government to sell the land in question in

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favour of the appellants by private negotiations for a consideration of Rs.4,00,000/- per acre. A

8. Subsequently, the Commissioner invited objections for the proposed sale by publication in the official gazette of Andhra Pradesh on 3rd April 1999 in compliance of the requirement of section 80(1)(b) of the Endowments Act, 1987. B

9. On 14th December 2000, the Government of Andhra Pradesh issued G.O.Ms. No.911 purporting the sale of land in question in favour of the appellants as proposed by the Commissioner. C

10. One year thereafter i.e. on 22nd June 2002, a writ petition no. 2563 of 2002 came to be filed challenging the G.O.Ms. No.911 by 17 persons claiming to be protected tenants of the land in question under the A.P. (Andhra Area) Tenancy and Agricultural Lands Act, 1956. Such a claim was seriously disputed by the official respondents. D

11. Be that as it may, 16 of the 17 petitioners eventually prayed that they may be permitted to withdraw the writ petition and the same was permitted to be withdrawn on 26th June 2002 vis-à-vis all the petitioners except petitioner no.9. E

12. It appears from the judgment of the learned Single Judge that the said 9th petitioner also subsequently filed an application being W.P.M.P. No.21030 of 2003 seeking permission from the Court to withdraw the writ petition. However, at that stage, one Dr. S. Parthasarathy filed an impleadment petition which was allowed by order dated 10th September, 2003. A learned Judge of the Andhra Pradesh High Court by an elaborate order dated 3rd March 2004 dismissed the writ petition. The newly added petitioner Dr. S. Parthasarathy carried the matter in Letters Patent Appeal No.1034 of 2004. F G

13. In the meanwhile, on 22nd March, 2004 a registered sale deed came to be executed in favour of the appellants H

A herein transferring the property in question. A month thereafter on 24th April 2004, another Writ Petition No.8063 of 2004 came to be filed by somebody who is resident of Hyderabad claiming to be interested in the temple.

B 14. Both the abovementioned Writ Petition and the Letters Patent Appeal came to be disposed of by the judgment under appeal herein.

C 15. By the judgment under appeal, the judgment of the learned Single Judge in Writ Petition No.2563 of 2002 was set aside and also G.O.Ms. No.911 was quashed.

D 16. The undisputed facts are that a publication in the official gazette inviting objections and suggestions for the sale of the proposed property as required under section 80(1)(b) was made. Admittedly, none of the writ petitioners before the High Court ever raised any objection or made any suggestion in response to the notification. The Government of Andhra Pradesh in exercise of the authority under the first proviso of section 80(1) issued G.O.Ms. No.911 permitting the sale of the land in question otherwise than by public auction.

E 17. As per the pleadings, the land in question was getting an income of Rs.1,00,000/- per annum. On the other hand, the Division Bench recorded that in the counter affidavit filed by the Government, it is stated that the consideration to be received after the sale in question would fetch an interest of Rs.6,00,000/-
F per annum. The learned Single Judge opined that the prospect of increase in the income as a consequence of the sale in question is a relevant consideration having regard to the scheme of section 80(b). The Division Bench thought otherwise on the ground:

G "that the value of land in any part of the State is appreciating day by day, whereas the value of money is depreciating. Therefore, in our view, even if it was true that the institution was receiving only rupees one lakh by way
H of rent and it could receive rupees six lakhs by way of

interest after selling the property, even then, the institution is not in benefit, because the appreciation of the value of land and depreciation of value of money was not taken into consideration." A

18. Coming to the valuation of the land, it can be seen from the letter of the concerned District Collector (Guntur) dated 14th June 2000 addressed to the Government that the market value of the land in the vicinity of the land in question varies from Rs.1,00,000/- to Rs.1,50,000/- depending upon the fertility, texture and location. B

19. We are of the opinion that the approach of the Division Bench is not in tune with the language of Section 80. The purpose of making an endowment in favour of a deity is to generate income for the various services required to be rendered to the deity. Therefore, the prospect of getting a higher income is certainly relevant consideration than the possibility of an appreciation in the value of the asset endowed. On the other hand, the entire higher annual income accruing as interest on the sale proceeds of the asset need not be utilised every year only for the services but part of it can always be reinvested in proper asset to beat the inflation. C D E

20. Apart from that, the learned single Judge recorded a finding that all the original writ petitioners withdrew the writ petitions and rightly observed that there are no bona fides on the part of the petitioners who pursued the litigation subsequent to the withdrawal of the writ petition by the original petitioners. F

21. In the totality of the circumstances mentioned above, we are of the opinion that the Division Bench erred in interfering with the judgment of the learned Single Judge. We, therefore, set aside the judgment under appeal, restore the judgment of the learned Single Judge and uphold the validity of G.O.Ms. No.911 dated 14.12.2000. Appeal is allowed. There will be no order as to costs. G