

(1999) 07 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Petition No. 9964 of 1992 and Batch

Hitakarini Samaj, Rajahmundry

APPELLANT

Vs

State of Andhra Pradesh and
others

RESPONDENT

Date of Decision: July 27, 1999

Acts Referred:

- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 - Section 80
- Constitution of India, 1950 - Article 226

Citation: (1999) 5 ALD 324 : (1999) 4 ALT 668 : (1999) 2 APLJ 300

Hon'ble Judges: M.S. Liberhan, C.J; Goda Raghuram, J

Bench: Division Bench

Advocate: Mr. M.V. Suresh, Mr. C.S.K. V. Ramana Murthy, for the Appellant; Government Pleader, Mr. Matta Chandrasekhar Rao, SC for Endowments, Mrs. A. Chaya Devi and Mr. M.S.K. Sastry, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Goda Raghuram, J.

These three writ petitions pertain to the affairs of the Hitakarini Samaj, Rajahmundry and though raising different aspects for consideration, could conveniently be disposed of together and having been heard, are being disposed of by this common judgment.

W.P.No.9964 of 1992:

Hitakarini Samaj, Rajahmundndry, represented by its Secretary filed this writ petition seeking the relief of "a declaration that G.O.Ms.No.642, Revenue (Endowments-IV) Dept., dated 14-7-1993, is illegal, null and void and for directing the respondents - the State of Andhra Pradesh, the Commissioner of Endowments

and the Executive Officer, Endowments Department, in-charge of Hitakarini Samaj, to implement G.O.Ms.No.1133, dated 23-8-1990 and to handover all the institutions belonging to the petitioner Samaj". This relief of challenging G.O. Ms. No.642, dated 14-7-1993, was amended into the writ petition, by way of order dated 16-8-1994 in WPMP No.3819 of 1994.

2. The facts relevant and necessary for considering the issues arising in this writ petition, are as follows in brief:

(a) The Hitakarini Samaj, Rajahmundry, was notified as a Charitable institution by a publication, dated 14-10-1968 issued under the provisions of A.P.Act 17 of 1966 (for short "1966 Act") It was also registered as a Charitable Institution u/s 38 of the 1966 Act in a proceedings dated 4-5-1972.

(b) On an application made by the private management, the State Government in G.O. Ms. No.SSI, dated 21-9-1976 accorded exemption under Sections 15 and 27 of the 1966 Act, to the petitioner's Institution for a period of 3 years enabling the continuance of the private management. On the expiry of the term of exemption, the secretary of the samaj sought exemption for a further period of 3 years. On account of several complaints having been received by the Government from the public against the conduct of the management qua the affairs of the samaj and its attached educational institutions and on account of discovery of irregularities in the management of Institutions as were pointed in an Audit report, the Endowment Department, recommended rejection of the application seeking further exemption. Consequent thereupon, the Commissioner of Endowments issued orders u/s 27 of 1966 Act appointing an Executive Officer to the samaj.

(c) The private management there upon moved the State Government against the orders of the Commissioner above referred to, and obtained stay of the orders appointing the Executive Officer. The Management also filed WP 4501/80 before this Court contending that the provisions of the 1966 Act are not applicable to the samaj since it is a minority institution falling outside the purview of the Act. Simultaneously they also filed an O.A.12/80 before the Deputy Commissioner, Endowments, Kakinada, contending that the samaj is a private institution beyond the purview of the 1966 Act. The O.A. was dismissed by the Deputy Commissioner, Endowments, on 4-9-1981 and the WP No.4501 of 1980 was withdrawn by the petitioner on 2-11-1981.

(d) Thereafter the private management moved the Government again for exemption from the provisions of the Act. The State Government by G.O.Ms.No.1815, dated 10-12-1981 again issued orders exempting the Samaj from the purview of Sections 15 and 27 of the 1966 Act, for a period of 3 years. After issue of the above orders, there was a public outcry alleging mismanagement by the private management and that the purposes for which the institutions were brought into existence by the great social reformer late Sri Kandukuri Veeresalingam Pantulu Garu, are being subverted by the private management. Representations were also made to the

commissioner, Endowments and the Government in this behalf. Consequent upon the allegations, the Assistant Commissioner, Endowments, was asked to enquire and submit a detailed report. In the report, various irregularities were noticed in the management of the Samaj and its allied institutions. Instances of gross mismanagement, misappropriation and wastage of the properties apart from violation of the Rules, were recorded in the report.

(e) Consequent upon the report, the Government issued show-cause notice to the Committee. Thereupon the Committee filed WP No.8676 of 1983 against the show-cause notice and the proposal for cancellation of exemption contained therein and obtained stay in the said writ petition. The writ petition was, however, not pressed and was withdrawn on 4-5-1985 and the period of exemption granted had also expired by November, 1984. The application of the private management for further exemption from 1984 was rejected and the Inspector, Endowments Department, Rajahmundry, was appointed as the Executive Officer and he assumed charge as such on 15-4-1985. The suit filed by the management committee was also dismissed on 30-4-1985.

(f) Thereupon the management filed W.P.Civil No.5388 of 1985 before the Supreme Court again contending that the Samaj is a minority institution and that the provisions of the 1966 Act are not applicable. In the said writ petition a stay was obtained on 3-6-1985 against the appointment of the Executive Officer. The said stay was, however, vacated subsequently since the executive Officer took charge of the samaj prior to the grant of the orders of stay. During this period a number of representations were made from the people of the locality and also from public representatives complaining of irregularities in the management by the private management, including non-payment of salaries to the staff of the educational institutions under their management. These representations urged that it is not desirable to entrust the management to the private persons.

(g) While so under G.O.Rt.No.1133 Revenue (Endowments IV) Department, dated 23-8-1990, orders were issued, considering the representations of the private management proposing withdrawal of the appointment of Executive Officer and restoration of the management to the private committee, on condition that the management committee withdraws the Civil W.P.5388/85 and the connected CMPs, pending before the Supreme Court. The said order also averred that the Commissioner of Endowments may take further necessary action and send proposals for exempting the institution for a specific period from the provisions of Sections 15 and 29 of the A.P.Act 38 of 1987 (A new Act which replaced A.P.Act 17 of 1966).

(h) According to the petitioner, pursuant to the above orders of the Government they withdrew the Civil Writ Petition in the Supreme Court and withdrawal was accorded by the Supreme Court by orders dated 25-3-1991. A consequent application was also made to the Department on 31-7-1991 requesting orders

restoring the management in terms of the proposal contained in G.O.Ms.No.1133, dated 23-8-90.

(i) The petitioner contended that contrary to the proposals in G.O.Ms.No.1133 the Commissioner of Endowments issued proceedings calling upon the private management to repay an amount of Rs.3,40,000/- due from the committee to Annavaram Devasthanam as a condition precedent to processing the proposal for grant of exemption u/s 29 of the 1987 Act and for withdrawing the Executive Officer. It is contended that such a condition, not contained in G.O. Ms.No.1133, is arbitrary and illegal.

(j) However, in G.O.Ms.No.642, Revenue (Endowments-IV) Department, dated 14-7-1993, orders were issued by the Government cancelling the earlier orders issued in G.O.Ms.No.1133, dated 23-8-1990, rejecting the proposal for handing over the management to the private committee and thus declined to grant orders of exemption from the provisions of the 1987 Act. Assailing the said G.O. the present writ petition is filed.

3. The principal contention in the writ petition is that G.O.Ms No.642, Revenue (Endowments IV) Department, dated 14-7-9193 is invalid as it is barred by principles of promissory estoppel and violation of principles of natural justice. Integral to the said contention it is contended that as C.G-Ms-No. 1133 proposed grant of exemption, the cancellation can only be done after giving an opportunity and that since a promise of exemption was made in G.O.Ms.No.1133, dated 23-8-1990, based on which the petitioner withdrew the writ petition in the Supreme Court, the Government is bound by principles of promissory estoppel from resiling from the promise contained therein and the issuance of the impugned G.O is thus invalid and non est.

4. The factual narrative above as established from the pleadings clearly discloses grave allegations and a sordid record of mismanagement and irregularities by the private management committee in the conduct of affairs of a public charitable institution. That it is a public charitable institution falling within the purview of the Endowment Act is clear from the various proceedings already narrated. The dismissal of O.A.No.12/80 on 4-9-1981 by the Deputy Commissioner of Endowments, Kakinada; the withdrawal of W.P.No.4501/81 by the orders dated 2-11-1981, the various applications of the writ petitioner for exemption from the provisions of the Endowments Act, which were granted by the Government, would all conclusively establish that the petitioner himself concedes the applicability of the provisions of the Endowment Act to the institutions in question and recognises the status of the institution as a public charitable institution falling within the provisions of the Endowments Act. Orders passed by the quasi-judicial officers under the Act and the withdrawal of various writ petitions filed by the petitioner, would disentitle the petitioner to agitate the question of non-applicability of the provisions of the Endowments Act to the petitioner-institutions. Be that as it may, the contents of

G.O.Ms.No.M33, dated 23-8-1990, are merely in the nature of proposals calling upon the Commissioner of Endowments to send proposals for grant of exemption. The Commissioner of Endowments, who is a statutory functionary operating under the Legislative Dicta of the provisions of the Act is ordained to exercise his powers in accordance with the text and structure of the Act in order to advance the purposes of the Legislation, in particular such of those provisions which are meant to preserve, protect and regulate the properties and management of a public charitable institution. No promise of the Government could subvert this Legislative position nor disable the Commissioner of Endowments nor even the Government itself from performing its Legitimate role in obedience to the commands of the Legislation. The gross mismanagement of the affairs of the institution by the private management is amply recorded and to grant exemption from the provisions of the Act and restore the management of the public charitable institutions into such hands would be a gross subversion of public policy and of public interest. The principles of promissory estoppel do not ensure in such situations. This position is well settled and it is not necessary to reiterate the vast catena of authorities on this aspect. Sufficient to state that the recent decision of the Supreme Court in [State of Rajasthan and Another Vs. M/s Mahaveer Oil Industries and Others](#), reaffirms this settled principle circumscribing the application of the doctrine of promissory estoppel.

5. Supervening and preponderating public interest ordains that no exemption be granted to the private management from the operation of the provisions of the Endowments Act. The doctrine of promissory estoppel cannot thus be validly invoked.

6. The other contention regarding the violation of principles of natural justice would also not avail the petitioner in obtaining the relief. It is equally a settled principle of law that an executive order will not be invalidated where it would result in the activation of an order which would be reductive of public mischief, in particular in exercise of discretionary jurisdiction under Article 226 of the Constitution of India - vide [Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others](#). In our view the provisions of G.O. Ms. No.1133, dated 23-8-1990 are only in the nature of proposals which do not confer any vested right to exemption in favour of the petitioner. An exemption can only be granted by exercising a discretion in accordance with the law and within the parameters of the text and legislative philosophy of the Endowments Act, which clearly, as we have noticed above, do not warrant issuance of any such exemption, in public interest.

7. For the reasons stated above there are no merits in the writ petition, which fails and is accordingly dismissed, but in the circumstances of the case without costs.

W. P. No. 10009 of 1992

The Hitakarini Samaj, Rajahmundry, represented by one Sri R. Subba Rao, styling himself as its Secretary, has filed this writ petition. The petitioner contends a) Among the properties of the Samaj land measuring Ac.2.99 cts., in Sy.No.411 was mixed up in Rajahmundry town.

(b) Respondents 1 to 3 who are the State of Andhra Pradesh, the Commissioner of Endowments and the Executive Officer appointed to look after the affairs of the samaj, intended to sell the said property and in pursuance of the said objective paper publication was issued inviting tenders for the purchase of the said land. The objections of some of the members of the samaj were ignored and the property was ultimately sold to the 4th respondent and others as per sale deed No.2646/92, dated 18-3-1992.

(c) The said transfer by way of sale is illegal, without jurisdiction and opposed to the provisions of the Endowments Act.

(d) The property worth more than Rs.25 lakhs was sold for a very low sum and that the sale was a result of collusion and for gaining illegal benefit, (e) The prescribed procedure was not followed.

8. Founded on the above allegations, the petitioner sought a declaration that the transfer of land measuring Ac.2.99 cts., in Sy.No.411 in Rajahmundry town by sale deed No.2646/92, dated 18-3-1992, executed by the 3rd respondent in favour of the 4th respondent and others is illegal and for a consequential order directing the respondents to resume the said property and hand it over to the petitioner.

9. Counter affidavits have been filed by the official respondents, one on behalf of respondents 1 and 2 and another on behalf of 3rd respondent. Taken together the averments in the above said affidavits are to the effect--

(a) that the writ petition is not maintainable as on the date of its institution it is governed by the Hindu Religious and Charitable Endowments Act and under the management of an Executive Officer appointed under the provisions of the said Act, who alone is authorised to institute proceedings on behalf of the institution.

(b) that the private management in the year 1968 has leased out an extent of 2029 sq.yds, comprised in the land in question to an individual for a period of ten years on an monthly rent of Rs.100/- to continue in tenancy for two further terms of ten years each on a monthly rent of Rs.150/- and Rs.200/- respectively, that the said lease agreement entitles the tenant to erect structures, plant and machinery in the said land and also provide an exclusive option to the lessee to purchase the premises on the same terms and at the same price as any bona fide offer for the premises received by the samaj, is acceptable to the lessee.

(c) that the tenant sold away the equipment in the site to one Sri M.Veera Raghava Reddy by an agreement dated 9-4-1976 and that the private management committee also agreed to assign the lease hold rights to Sri M.V. Raghava Reddy,

Managing Partner of Sri Raghu Industries, who is paying the current monthly rent of Rs.200/- and that the lease is due to expire on 30-9-1998.

(d) that the private committee under another agreement leased out another 500 Sq.Ys, to the eastern side of Sri Raghu Industries, to one Sri K.Veerabhadra Rao, for a period of 5 years on a monthly rent of Rs.150/- and that the said lessee subleased the said extent of land to Sri Raghu Industries. It is also stated that on measurement the extent of land, however, was found to be not 500 sq.yds, but 942 sq.yds.

(e) that the Managing Partner of Sri Raghu Industries by his letter dated 23-11-1989 requested the Samaj to sell away the site under his lease hold rights at the rate of Rs.250/- per Sq.Yd., that latter he also gave consent to purchase the site of 942 Sq.Yds. at the rate of Rs.400/- per Sq.Yd.

(f) that the basic value of the site is Rs.233/- per Sq.Yd.,

(g) that the State Government in G.O. Rt. No. 1110 Rev.(Endts.IV) Department, dated 20-8-1990, accorded permission for sale of the land admeasuring 3,164 Sq.Yds., in favour of M/s Raghu Industries, Rajahmundry, the sitting tenant at the rate of Rs.400/-per Sq.Yd., otherwise than by public auction and that the Commissioner of Endowments, in accordance with the procedure laid down u/s 80 of the Endowments Act (Act 38/87) issued a notice dated 15-11-90 calling for objections and suggestions in respect of the said proposal and further that the Secretary of the erstwhile committee requested the Commissioner, Endowments, to differ the matter for the present to enable availability of a better price for the institution.

(h) that the Commissioner of Endowments, directed that the issue will be placed before a committee of 3 officials nominated by the Government in G.O. Rt. No. 1062 Revenue (Endowments.IV) Department, dated 18-7-1991, consisting of the Joint Collector, E.G.District, Deputy Commissioner, Endowments Department, Kakinada and District Women Welfare Officer (Women & Child Welfare Department), E.G. District.

(i) that the matter was considered by the Official Committee on 7-12-1991 and a resolution was passed to the effect that the sale value of Rs. 12,65,600/- should be realised in lump sum in addition to the interest thereof collected from the date of issuance of the G.O., that the said proposal of the Committee is stated to have been approved by the Commissioner, Endowments on 29-2-1992.

(j) that accordingly an amount of Rs.12,65,600/- was collected towards the sale proceeds in addition to an amount of Rs.1,75,200/- towards the stipulated interest and the property was registered in favour of M/s. Raghu Industries, on 18-2-1992. It is further stated that the aforesaid amount was deposited in the shape of FDR in the name of the Samaj in Andhra Bank, Danavaipet Branch, Rajahmundry.

10. In the counter-affidavits it is further averred that the writ petitioner cannot be heard to contend that the sale is arbitrary, particularly when it is the private

committee's decision which has brought about this imbroglio. The terms of the lease including the right accrued in the tenant by the said terms to purchase the property have necessitated the action of the official respondents in disposing of the property at far above the market value together with the benefit of calculating interest. It is also averred that as against an annual rent of Rs.4200/- which was being realised from the tenant, on account of the sale an amount of Rs. 14,40,800/- was realised which on deposit in the Bank fetches an annual interest of Rs.1,30,980/- and that in the circumstances the sale is bona fide, made in the demonstrable interest of the institution, in accordance with the procedure ordained by the Endowment Act and as the best possible alternative in the circumstances narrated above. It is also contended that the writ petition, apart from being not maintainable for the reasons already stated, has been instituted with a mala fide intention of subverting the interest of the charitable institution.

11. The 4th respondent-Purchaser, in his counter-affidavit reiterates the contentions in the counter-affidavit of respondents 1 to 3 and contends that he purchased the property pursuant to a detailed scrutiny and determination of the value by the Committee constituted by the Government for the said purpose and at a price far above the market value prevailing on the date of the transaction. He also contends that apart from the sale consideration, he paid an amount of Rs.1,75,200/- towards interest from the date of the Government's permission to sell the property, viz., dated 20-8-1990, despite the fact the property was registered only on 18-3-1992. In summation the 4th respondent contends that the sale is bona fide in accordance with the provisions of the Act and is not liable to be invalidated by this Court.

12. Sri M.S.K.Sastry, learned senior Counsel for the writ petitioner places reliance on decision of the Supreme Court in [Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others](#), , and a judgment of the Division Bench of this Court dated 4-10-1996 in W. A.No. 1 of 1996, for contending that the action of the official respondents in disposing of the endowment's property otherwise than by public auction has been deprecated and that the property ought to have been sold only by way of public auction and having been sold otherwise than by the said method, the sale is invalid.

13. The principle is well settled that public property intended to be sold for the purpose of generating revenue ought normally to be sold by public auction so as to avoid the evils of mal-administration and to achieve the best possible price involved in the competitive bidding, which can only be achieved by sale in public auction.

14. The facts of the case on hand, in our view, warrant a departure from the said principle. On account of the lease granted by the private management of the Samaj (under the aegis of the writ petitioner himself) the tenant has been in possession of the property on payment of very meagre rent, Rs.4200/- p.a., as on the date of the sale proposals. Under the terms of the lease he was also entitled to exercise the first option to purchase the property if proposed to be sold by the lessor. There were an

established industry and structures on the land in question which were in possession of the lessee for over 30 years. Large number of workmen were employed in the said industry. A conspectus of this fact situation rendered the process of evicting the lessee and obtaining clear possession of the property by the institution, remote, tartuous and time consuming. The charitable institution thus had either to continue with the tenancy at a nominal rent or to dispose of the property for getting reasonable good return which if invested would fetch a far better annual return. In these circumstances, the State Government and the Commissioner of Endowments decided to dispose of the property to the sitting tenant otherwise than by public auction. The price for the sale was arrived at on a procedurally rational method by constituting a Committee for the said purpose. The Committee determined the price at Rs.400/- per sq.yd., which was above the basic value of the land during the period as stated in the counter-affidavit. The Government could also manage to persuade the 4th respondent to pay interest from the date the Government permitted the sale of the property till the actual date of the sale. An amount of Rs. 12,65,600/- plus an amount of Rs.1,75,200/- coming to a total amount of Rs. 14,40,800/- was obtained which, when invested in the Bank, fetches an annual interest of Rs. 1,30,980/- as against the annual rent of Rs.4,200/- being paid by the lessee.

15. In the totality of the circumstances of the case, we are satisfied that the sale impugned in the writ petition, by the respondents 1 to 3 in favour of the 4th respondent does not suffer from any infirmity warranting invalidation in exercise of discretionary jurisdiction under Article 226 of the Constitution. Apart from the above we are clearly of the view that the writ petition instituted in the name of Hitakarini Samaj by one Sri R.Subbarao, styling himself as the Secretary is certainly not maintainable. The admitted and demonstrated fact is that as on the date of the institution of the said suit and even thereafter the Hitakarini Samaj, a public charitable institution, governed by the provisions of the Endowments Act is under the management of an Executive Officer, appointed under the provisions of the said Act, who alone is authorised to institute proceedings in the name of the public charitable institution. We are also clearly of the view having regard to the totality of the pleadings in this writ petition and on a conspectus of the other two writ petitions disposed of by this judgment, that the motive of Sri R. Subbarao in instituting the present proceedings are not bona fide to say the least. Sri Subbarao is actuated by a selfish motive of obtaining control of the management of the properties of the public charitable institution and to deal with the same according to his personal whims. There is no public interest underlying the initiation of the present writ petition.

16. In the circumstances stated above, there are no merits in the writ petition and it is accordingly rejected and for the reasons referred to with costs quantified at Rs.5,000/- to be paid by Sri R. Subbarao to the Andhra Pradesh State Legal Services Authority, Hyderabad, within a period of three months.

WP No. 11660 of 1992:

A journalist of Rajahmundry has filed this writ petition assailing the validity of G.O. Rt. No. 1133 Revenue (Endowments-IV) Department, dated 23-8-1990. The petitioner avers that he is a permanent resident of Rajahmundry, follower of teachings of late Sri Kandukuri Veeresalingam Pantulu Garu, deeply associated with social, educational and cultural activities and Editor of a Telugu daily published from the town and that his forefathers were closely associated with the social reformer who brought into existence and endowed his vast personal properties in favour of the Trust known as Rajahmundry Hitakarini Samaj.

17. In the writ petition he has chronicled the aims and objects for the achievement of which the Samaj was founded and the manner in which the private Management has over the years subverted the objectives for which the Trust was founded. Details of various litigations initiated by the private management to subvert the attempts of the Endowments Department to manage the properties in accordance with the provisions of 1966 and 1987 Acts, have also been set out. Specific details have been pleaded to show that the properties of the Samaj were mismanaged, wasted and mis-utilised by the private management. The petitioner also pleaded that the Samaj cannot, in terms of the trust deed and the objectives of the endowment, be termed as either a minority institution or a private trust falling outside the purview and reach of the Endowments Act. This writ petition has been filed aggrieved by the proposals of the Government in the impugned G.O. In the contention of the writ petitioner the impugned proposals for handing over the institution to the private management by exempting the Samaj from the provisions of the Endowment Act, would be in violation and subversion of the provisions of the Act, public policy and public interest and would also run contrary to the objectives of the late Social reformer, which animated the founding of this institution. The petitioner also pleaded that the plea of the private management seeking exemption is founded on bad faith and motives of personal aggrandizement and in the circumstances no exemption could be granted as proposed in the impugned G.O.

18. In view of the fact that the proposals contained in G.O.Rt.No.1 133, Revenue (Endowments.IV) Department., dated 23-8-1990, have been superseded by G.O.Ms.No.642, Revenue (Endowments.IV), dated 14-7-93 and for the further reason that the later orders of the Government dated 14-7-1993 have been upheld by us in WP No.9964 of 1992, the case urged in this writ petition does not survive for consideration. The 4th respondent in this writ petition has filed a counter-affidavit questioning the locus standi of the writ petitioner to maintain this writ petition. Since, in our view, as stated above, the writ petition has become infructuous, a pronouncement on the locus standi of the writ petitioner is not called for.

19. The writ petition is accordingly dismissed as infructuous. No order as to costs.