(2013) 08 AP CK 0009

Andhra Pradesh High Court

Case No: Appeal Suit No. 2188 of 1998

Bommu Raghurami Reddy and Others		APPELLANT
	Vs	
Special Deputy Collector (Land Acquisition) and Another		RESPONDENT

Date of Decision: Aug. 16, 2013

Citation: (2014) 1 ALD 41 : (2014) 1 ALT 655

Hon'ble Judges: K.C. Bhanu, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: O. Manohar Reddy, for the Appellant;

Final Decision: Allowed

Judgement

Challa Kodanda Ram, J.

This is an appeal filed u/s 96 C.P.C. questioning the judgment and decree dated 17.08.1998 of the Senior Civil Judge, Rajampet in L.A.O.P. No. 2115 of 1988. Undisputed and admitted facts are that the appellants herein are the descendents and legal heirs of one late Bommu Veera Reddy who was the paternal grand father of claimants 1 to 3. Appellant No. 4 is the legal representative of appellant No. 1. The appellants are the claimants 1 to 3 and 5 before the trial court and the respondent No. 4 was the rival claimant staking a claim for the compensation awarded for the acquired land over an extent of Ac. 1.87 cents in Sy. No. 812 of Angamarajupalli Village of B. Mattam Mandal, Kadapa District. The land in Sy. No. 812 admeasuring Ac. 1.87 cents was acquired for the purpose of Telugu Ganga project and on account of rival claimants, the amount was deposited by the Land Acquisition Officer in the civil court and the matter was referred to the civil court to determine the entitlement and apportionment. As on the date of acquisition, a compound wall was constructed "encompassing" the land and there exists certain structures. As per the evidence on record, in the acquired land one

Narayanareddy, Bommu Chinnaveera Reddy were buried and their Samadies were constructed. Some of the other ancestors of the appellants were also came to be buried from time to time and Samadies were being constructed. On account of belief that the deceased late Sri. Narayanareddy was saintly man and greatly revered by people in the locality and area used to pay their respects and over a period of time when the place has acquired some importance and Poojas were being performed in the precincts. In addition that idols of ''Nagadevatha'' were installed under the ''Ragi tree'' and certain times ''Bajana Sessions'' were being conducted and yearly ''Utsavas'' were being conducted. In course of time, the place came to be known as Narayanareddy Swamy Mutt. The entry into the premises was not restricted and all castes and community people were allowed into the premises and pay their respects. There were also certain articles and structures which came into existence on account of donations given by the people who were visiting the Mutt. Appellants claim that they being the legal heirs of late Bommu Veera Reddy who undisputedly and admittedly is the owner of land and the land in premises. Notwithstanding the fact that there being free access to others to pay homage by others the place is still a private estate and a private Mutt and as such they are entitled to receive the compensation awarded in the land acquisition proceedings. On the other hand, the 4th claimant/2nd respondent, the Endowment Department claimed that the Mutt having been endowed in memory of late Narayanareddy Swamy and being allowed to be used as a place of public worship and further being improved on account of public donations the place as acquired the character of a public temple and as per the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987, the right to claim and receive compensation vests with them.

2. The trial court after examining the rival claims and after taking into consideration of the evidence had held that the Endowment Department is entitled to receive the compensation. The appellants being the legal heirs of the original claimants filed the present appeal challenging the judgment and decree dated 17.08.1998 of the Senior Civil Judge, Rajampet in L.A.O.P. No. 2115 of 1988.

3. On behalf of the appellants, R.Ws. 1 to 3 were examined and all of them consistently deposed that over the decades the place is being used to bury their ancestors and elders from time to time and it is only on account of the belief and faith of the locals the place had acquired certain amount of popularity and as the appellants and their ancestors are sentimentally attached to the place, various rituals are being conducted including Poojas with their money and Poojari also is being paid and supported by them. They had also admitted that the yearly ceremonial procession of taking Narayanareddy Swamy Idol in the village and pamphlets are printed for information of general public about the date and time of the events (Aradana Utsavas). The evidence of R.Ws. 1 to 3 were brushed aside by the court below merely on the ground that there was no documentary evidence of the appellants spending their personal money and also there were no accounts being maintained by the appellants with regard to donations and gifts being received at the Mutt. The reasoning of the court below not to believe the evidence of R.Ws. 1 to 3 in our

opinion is unacceptable as the approach of the trial court is too technical and on account of. The total lack of the normal happenings in small villages. It is not un-common in villages that affluent families support the religious activities and temples in their villages by giving generous donations both in cash and kind, especially when their family name is attached to the institution. It is too much for some one to expect books of accounts and receipts being maintained in small villages as in big temples which are notified and monitored by the Endowment Departments. At this stage, it may not be out of place to mention that R.W. 7, the Deputy Commissioner of Endowment, who at relevant point of time worked as Assistant Commissioner of Endowment, Kadapa had deposed that Narayanareddy Swamy Mutt is a notified place under the Endowment Act, but failed to produce any notification to that effect. Though orally he stated that there were fixed deposits he failed to support the same in cross-examination. The trial court in the face of contradictory statements of R.W. 7 had wrongly put the burden on the appellants and relied on the oral submissions of R.W. 7. As a matter of fact R.W. 6 who was the Executive Officer, Endowments Department though deposed that the Narayanareddy Swamy Mutt is under the Administrative Control of the Mutt and had stated that he has been appointed as an Executive Officer by the Assistant Commissioner of Endowment failed to produce any document to support his assertion though his specific deposition to the effect that he is giving his evidence on the basis of record. Further, in cross-examination he had stated that "I have no information relating to publication of properties of Narayanareddy Swamy Mutt as Endowment properties. I also have no knowledge about the same." He further deposed that "I do not know whether Veera Reddy whose Samadhi is opposite to Narayanareddy Swamy Samadhi who is junior paternal uncle of claimants 1 to 3. It is true that there is also temple built over the Samadhi of Veera Reddy. It is true that the Samadhi of 3rd claimants father is by the side of Veera Reddy"s Samadhi. It is true that all the Samadhies are constructed with stones slabs. It is also true that on March, 10th of 1993, when 3rd claimant"s brother"s grand son died his samadhi was also made near Veera Reedy Samadhi. It is true that on the same day another relation of claimants Samadhi was built at the same place when he died in road accident."

4. He further deposed in the cross-examination "it is true that expenses for feeding poor people and the devotees the expenses for conducting Aaradhana will be born by family of claimants 1 to 3. On the date of Aaradhana in the night there will be Harikatha programme at the expenses of claimants 1 to 3. In the morning Nyvedyam will be given with the expenses of claimants on the next day morning. It is true that in Narayanareddy Swamy Samadhi there is Nitya Deeparadhana by the claimants 1 to 3. It is also true that on Ekadasi days also and other festival days claimants will bear the expenses for conduct Bhajans and feeding the devotees. He further deposed that there is no record to show that endowment department spent any amount for Narayanareddy Swamy Samadhi till now. There is no board of trustee for management of Narayanareddy Swamy Samadhi appointed by endowment department Assistant Commissioner. It is true that till now no notice was given to claimants 1 to 3 stating that they have no right in Narayanareddy

Swamy mutt."

5. The clinching evidence of R.W. 6, the man whose headquarter is in Badvel in a near proximity of the site in dispute was simply brushed aside by the trial court stating " the said admissions made by the R.W. 6 will not advance the case of the claimants 2, 3 and 5. It is not the case of the 4th claimant that Bommu Reddy and his family members are not at all in control of the mutt. It is the contention of the 4th claimant that the said Mutt which was started by them is a public institution and as it became public institution, it is to be managed by the Endowment Department and any compensation amount payable to the public religious institution is payable only to the 4th claimant".

6. On overall appreciation of the evidence, we are of the opinion that the inferences drawn by the trial court that the site which is acquired, popularly known as Narayanareddy Swamy Mutt is a public temple is not born out of record and there is no material to come to such conclusion. It is also important to note that there is no document executed by the ancestors of the appellants endowing the said site in favour of mutt. On the contrary the evidence on record would go to show that the land in question was being used as a private and family burial ground, notwithstanding the fact that the public in general for their own reasons, had developed some faith and were conducting certain rituals and poojas.

7. The learned counsel for the petitioner Sri. O. Manohara Reddy had placed reliance on the judgment of the Supreme Court reported in Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others, whereunder the Supreme Court had laid down the tests to determine whether a temple is a private or public temple. It was held that "if a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is decided on the basis of various circumstances. In those cases the courts have to address themselves to various questions such as:

a. Is the temple built in such imposing manner that it may prima facie appear to be a public temple?

b. Are the members of the public entitled to worship in that temple as of right;

c. Are the temple expenses met from the contributions made by the public?

d. Whether the Sevas and Utsavas conducted in the temple are those usually conducted in public temples?

e. Have the management as well as the devotees been treating that temple as a public temple?

8. He also relied on a judgment of the Supreme Court reported in Hari Bhanu Maharaj of Baroda Vs. Charity Commissioner, Ahmedabad, and submit that the burden to prove that the property is not a private property but the property of a public trust or mutt is on the department, who assets otherwise.

9. On the other hand, the learned counsel for the respondent had relied on the judgment reported in Sappani Mohamed Mohideen and Another Vs. R.V. Sethusubramania Pillai and Others, which essentially was considering the principles of consideration of documents. The said judgment has no relevance to the case on hand for the reason that it is nobody''s case that at any point of time, there was any document or deed endowing the land under acquisition to any organisation leave alone to Narayanareddy Swamy mutt. It may not be out of place to mention that over the period whether the samadhi of Narayanareddy Swamy and other members of the appellants family were constructed came to be known legally as Narayanareddy Swamy Mutt, but that by itself does not vest any right in the mutt which infact never came into existence, to claim any right over the property.

10. The learned counsel for the 2nd respondent had fairly conceded that as a matter of fact there was no notification or registration at any point of time by the department issued notifying the Narayanareddy Swamy Mutt as a religious endowment or as a public or temple.

11. In the light of the discussion above and considering the evidence on record, we have no hesitation to hold that the trial court erred in appreciation of facts and applying the principles of law correctly to the facts of the case and in that view of the matter the impugned order is liable to be set aside. In the result, the Appeal Suit is allowed setting aside the judgment and decree dated 17.08.1998 of the Senior Civil Judge, Rajampet in L.A.O.P. No. 2115 of 1988. No order as to costs. Miscellaneous Petitions, if any pending in this appeal shall stand closed.