

Sri Lakshmi Narasimha Swamy Devastanam Vs Government of Telangana

Court: Andhra Pradesh High Court

Date of Decision: July 8, 2014

Acts Referred: Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 " Section 92, 92(1), 93, 93(1), 93(3)

Citation: (2014) 6 ALD 592 : (2014) 6 ALD(Cri) 592

Hon'ble Judges: Ramesh Ranganathan, J

Bench: Single Bench

Advocate: Ravi Kondaveeti, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.

The relief sought for in this writ petition is to declare the action of the respondents, in not finalizing the tenders for

construction of the building in the land donated by Neemkar Brothers, which were received in pursuance of the notification in RC. No.

B5/2001/2008 dated 18.12.2001, and granting stay on the said notification, as illegal and arbitrary. The order under challenge in this writ petition

is the order passed by the Government staying the E-procurement tender dated 11.1.2012, for construction of shops in place of Neemkar

Darsnasala, and informing the Commissioner of Endowments to submit a detailed report as the matter was pending before the Court at Bhongir.

The petitioner is a religious institution. It issued an E-procurement/tender-cum-open auction notice dated 18.12.2011 inviting applications for grant

of three years lease for occupation of open lands/shops belonging to the temple situated on the hill and below the hill at Yadagirigutta, and Shop

No. 13 situated at Bhongir Gunj.

2. Two individuals submitted a representation to the Government stating that they held land admeasuring 1000 Sq. yards in Sy. No. 175 of

Gundlapalli Village; they had raised mulgies thereupon, had it covered with iron sheets, and had given the mulgies on rent; as the occupants had

created trouble by not paying rents, they had got them vacated; one of the tenants along with others, designating themselves as owners, proposed

to sell the land to the petitioner temple; on coming to know of such a proposal, they had filed a civil suit in the Bhongir Court; the Executive Officer

had told them that they had purchased the land; they were not aware under what authority Sri Subhash had given the land to the temple authorities;

when the dispute was pending before the Court, tenders were called for construction of a choultry in 625 Sq. yards; and they were informed that,

if the Court gives a judgment in their favour, then the land would be handed over to them.

3. The suit referred to in the said representation is OS No. 175 of 2009 before the Senior Civil Judge at Bhongir. The Senior Civil Judge, Bhongir,

by order in IA No. 8 of 2012 in OS No. 175 of 2009 dated 6.1.2012, recorded the contents of the affidavit filed by the petitioner temple that the

temple authorities would handover possession of the suit schedule property in case the petitioner succeeded in the suit; and, accordingly, the I.A.

was closed. The petitioner filed PIL No. 144 of 2014 and a Division Bench of this Court, by order dated 9.6.2014, dismissed the said writ

petition as withdrawn and granted liberty to the petitioner to file a fresh writ petition in accordance with law.

4. Sri K. Ravi, learned Counsel for the petitioner, would submit that the endorsement of the Government dated 11.1.2012 is without jurisdiction.

Learned Counsel would draw attention of this Court to Section 93(3) of the Andhra Pradesh Charitable and Hindu Religious Institutions and

Endowments Act, 1987 (for short "the Act") to contend that it is only against an order passed by the Commissioner, that the Government is

entitled to exercise power under Section 93(1) of the Act; the E-procurement notice issued by the petitioner was stayed by the Government; and,

as the E-procurement notice was issued by the petitioner temple and not the Commissioner, Endowments, the impugned order is without

jurisdiction.

5. When the matter came up earlier on 1.7.2014, learned Government Pleader for Endowments sought time to obtain instructions. Today the

learned Government Pleader, on instructions, would submit that, as the matter is still pending before the Government, this Court could direct the

Government to dispose of the petition within a specified time frame. Learned Government Pleader is, however, unable to justify exercise of power

by the Government in staying the tender notice, and would fairly state that the exercise of power is not referable to any of the provisions of the Act.

6. Section 92(1) of the Act enables the Commissioner, either suo motu or on an application, to call for and examine the record of any Deputy

Commissioner or Assistant Commissioner, or of any other officer subordinate to him or of any Executive Officer or any trustee of a charitable or

religious institution or endowment, in respect of any administrative or quasi-judicial decision taken or order passed under the Act. The

Commissioner had the power to interfere with the impugned tender notification issued by the Executive Officer of the petitioner temple, as the

decision to issue the tender notification is an administrative decision. The fact, however, remains that the Commissioner has not exercised any such

power under Section 92(1) of the Act.

7. Section 93(1) of the Act enables the Government, either suo motu or on an application, to call for and examine the record of the Commissioner

or any Deputy Commissioner or any Assistant Commissioner or any other officer subordinate to them, or of any Executive Officer or any trustee of

a charitable or religious institution or endowment, in respect of any administrative or quasi-judicial decision taken or order passed under the Act.

The power under Section 93(1) of the Act is, however, circumscribed by the conditions stipulated in Section 93(3) that no application to the

Government, for the exercise of their power under Section 93, shall be made in respect of any matter unless an application has already been made

in respect of the same matter to the Commissioner under Section 92, and has been disposed of by him. While the Government, undoubtedly, has

the suo motu power to interfere with the order passed by the Executive Officer of the subject temple, what is prohibited under Section 93(3) of the

Act is for an application to be entertained, at the behest of an applicant, unless, in respect of the same matter, the applicant has invoked the

jurisdiction of the Commissioner under Section 92 of the Act, and the said application has been disposed of by the Commissioner.

8. In the present case, the Government has not exercised its suo motu power under Section 93(1) of the Act. The order passed by the

Government, staying the tender notification, is on an application made to it by two individuals, who have approached the Government directly and

have not invoked the jurisdiction of the Commissioner under Section 92(1) of the Act. In view of the bar under Section 93(3) of the Act, the

Government could not have entertained the application at the behest of these two individuals directly, and should have either relegated them to

approach the Commissioner under Section 92(1) of the Act or should have exercised its suo motu power under Section 93(1) of the Act. The

impugned order dated 11.1.2012 is without jurisdiction, and is accordingly set aside.

9. The writ petition is disposed of accordingly. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.