

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION NO.1490 OF 2007

ORDER:

1 . This writ petition is filed challenging the proceedings of the Commissioner of Endowments-2nd respondent in Rc.No.F1/47775/2004-1, dated 25.11.2006 removing the petitioner from the status of Mahant of Sri Udasin Mutt, Hussaini Alam, Hyderabad, and also the proceedings of the 2nd respondent in Rc.No.F1/47775/2004-2, dated 25.11.2006 appointing the 4th respondent as Mahant, and the proceedings, dated 18.12.2006.

2. Brief facts that led to filing of this writ petition are as follows:

(i) Sri Udasin Mutt, Hussaini Alam, Hyderabad was established more than four centuries ago. It is one of the most revered Mutt that propagates religious and spiritual tenets of Udasin and Udasi denomination. One of the aims and objects of the Mutt is to provide food, accommodation to all Udasin Saints, establish camps at various places, make provision i.e., money grants to Saints and their Chelas.

(ii) Baba Sajjan Shah Kamalpathi Tripathi Maharaj was the founder of this denomination. After his attaining nirvana, his disciples established the Samadhi of Baba and continued to perform poojas and rituals to the deities installed by Baba, besides performing poojas to his Samadhi.

(iii) An extent of Ac.640.00 gts of land was granted to Dharam Das Mahant Baba Puran Das for the purpose of performing poojas and other rituals and for following the tradition of Baba Sri Sajjan Shah Kamalpathi Tripathi Maharaj. The said Baba Puran Das nominated his Chela, Mahant Baba Seva Das, who succeeded accordingly. Thereafter, Mahant Baba Gyan Das succeeded as Mahant on the nomination of Baba Seva Das and subsequently, on his attaining nirvana, his Chela Mahant Baba Hardam Das succeeded as Mahant.

(iv) The petitioner-Mahant Baba Sagar Das was the disciple of Mahant Baba Hardam Das. On Baba Hardam Das attaining nirvana, the petitioner was appointed as Mahant of Udasin Mutt by proceedings dated 20.12.1980 issued by the 2nd

respondent according approval as Matadhipathi and since then, he has been discharging duties as Mahant, by following the tradition of Udasin.

(v) While so, on certain false complaints made by persons, who were having intention to dislodge the petitioner as Mahant, Panchayat Akhada Bada Udasin Nirvan, Allahabad appointed one Bindu Maharaj, Mahant of Puranapul Mutt as a temporary Mahant in the place of the petitioner. Aggrieved by the same, the petitioner filed an application dated 15.6.2004 before the Assistant Commissioner, Endowments Department, Hyderabad-3rd respondent for recognizing him as Mahant of Udasin Mutt and the same was rejected by proceedings, dated 5.8.2004 on the ground that the petitioner was not recognized or nominated by the 2nd respondent. In due course of time, the 4th respondent was appointed as a Permanent Mahant. Thereafter, the 3rd respondent by proceedings dated 29.11.2004 informed the 4th respondent that he was not entitled to act as Mahant of Udasin Mutt as he was not recognized as such by the Endowment Department by making it clear that the petitioner was the Mahant of the said Mutt. The 3rd respondent also directed the 4th respondent not to interfere with the administration of the Mutt. As the 4th respondent did not pay any heed to the proceedings of the 3rd respondent, a complaint was made by him to the Station House Officer, Dhood Bowli Police Station, Hussaini Alam to take action against him. At that stage, the Mutt filed W.P.No.21023 of 2005 questioning the inaction of the Commissioner of Police on the complaint lodged by the Commissioner of Endowments. The said writ petition was disposed of directing the S.H.O., Hussaini Alam to register a case against Sri Bindu Das.

(vi) While matter stood thus, the 2nd respondent issued a show cause notice dated 29.7.2006 to the petitioner framing certain charges of mismanagement, misappropriation and illegal sale of land of Mutt, against him. The 2nd respondent failed to furnish the documents required by the petitioner to submit his explanation. On 30.11.2006, the petitioner received proceedings of the 2nd respondent dated 25.11.2006, whereunder he was removed from the position of Mahant of Sri Udasin Mutt. Hence, the petitioner approached this Court.

3. Sri D.V. Sitarama Murty, learned Senior Counsel submitted that the petitioner could not submit his explanation for want of supply of relevant material and that no sufficient opportunity was given to him to defend the charges levelled against him

and that the order passed by the Commissioner does not refer to the findings arrived at on the basis of the material stated to be on record and that the Commissioner has not assigned any reasons in the order impugned herein.

4 . On the other hand, it is submitted by the learned Government Pleader for Endowments that sufficient opportunity had been given to the petitioner enabling him to submit his explanation, but in spite of the same, the petitioner kept quiet on one pretext or the other, without filing any written statement or the counter to the notices issued by the 2nd respondent and consequently, the 2nd respondent proceeded with the enquiry, and by his proceedings dated 25.11.2006 removed the petitioner. It is further submitted that against the order impugned herein, there was an alternative remedy of appeal before the Government and as such, the present writ petition is not maintainable.

5. In reply, it is contended by the learned Senior Counsel for the petitioner that the order of removal of the petitioner was passed in violation of principles of natural justice and hence, the alternative remedy of appeal cannot be a bar to maintain the present writ petition.

6 . Sri M.V.S. Suresh Kumar, Senior Counsel appearing for the 4th respondent submitted that there is no such provision of appeal under the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short, 'the Act') as contended by the petitioner and that against the order of removal of the petitioner, a suit has to be filed under Section 51(4)(a) of the Act, and thereby, the writ petition challenging the order of removal of the petitioner and the consequential proceedings cannot be made maintainable and as such, the same is liable to be dismissed in limine.

7. Before going into the merits of the case, it is pertinent to note that there were no interim orders in this writ petition.

8. A perusal of the entire material on record makes it obvious that the writ petitioner was the Mahant of the Udasin Mutt. It also remained undisputed that in connection with some irregularities, including misappropriation of funds, notices appeared to have been issued. According to the petitioner, no explanation was filed by him for want of supply of documents, whereas it is the case of the respondents that in spite of sufficient opportunity granted to the petitioner, he did not file any explanation.

9. A preliminary ground that was raised before this Court is as to the maintainability of the writ petition. It is submitted by the learned Counsel for the petitioner on one hand that the 2nd respondent passed the order of removal without giving sufficient opportunity to the petitioner and no reasons were assigned in the order of removal and thereby, it amounts violation of principles of natural justice and therefore, the alternative remedy of appeal cannot be a bar to maintain the present writ petition. On the other, it is stated in the reply affidavit of the petitioner that against the order passed by 2nd respondent removing the petitioner, an appeal lies. But the Commissioner of Endowments viz., Sri I.V. Subba Rao, who rejected the request of the petitioner for cancellation of the proceedings impugned, was acting as the then Secretary to Government by virtue of promotion and that the said Secretary to Government is the appellate authority. Therefore, the petitioner could not file the appeal before the Secretary to Government.

10. Irrespective of the question as to whether an appeal or suit lies against the order of removal of the petitioner, the stands taken by the learned Counsel for the petitioner in reply to the submissions of the other side Counsel and in the reply affidavits, appeared to be different and distinct. Even assuming that there was any such remedy of appeal before the Government, the petitioner has not availed such remedy on one pretext or the other. Therefore, the reasons assigned by the learned Counsel for the petitioner in reply to the contentions raised by the learned Government Pleader as well as Sri M.V. Suresh Kumar, are not sustainable.

11. Now, it has to be adjudicated as to whether the present writ petition is maintainable or not in the light of the provisions of Section 51 of the Act and if so, whether an appeal lies or a civil suit lies against the order impugned herein.

Therefore, it is relevant to go through the provisions of the Act.

12. The proceedings under challenge were passed on 25.11.2006. A perusal of the provisions of the Act makes it obvious that an alternative remedy is available under the said provisions. Therefore, it is relevant to go through the provisions of the Act i.e., Section 51 of the Act, which reads as under:

Section 51 Removal of Mathadhipathi

(1) The Commissioner may suo motu or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he

(a) is of unsound mind ;

(b) is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee ;

(c) has ceased to profess the Hindu religion or the tenets of the math ;

(d) has been sentenced for any offence involving moral turpitude, such sentence not having been reversed ;

(e) is guilty of breach of trust, or mis-appropriation in respect of any of the properties of the math ;

(f) commits persistent and willful default in the exercise of his powers or performance of his functions under this Act ;

(g) violate any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like ;

(h) leads an immoral life ; or

(i) fails or ignores to implement the principles set out in clause (17) of Section 2.

(2) The Commissioner shall frame a charge on any of the grounds specified in sub-section (1) against the Mathadhipathi or trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Commissioner may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefor :

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Commissioner against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government.

(3) Pending the passing of an order under sub-section (2) ; the Commissioner may suspend the mathadhipathi or the trustee.

(4) (a) Any mathadhipathi or trustee aggrieved by an order passed by the Commissioner under sub-section (2), may, within ninety days from the date of receipt of such order, institute a suit in the court against such order ;

(b) An appeal shall lie to the High Court within ninety days from the date of a decree or order of the Court in such suit.”

At this juncture, it is also pertinent to note that even as per the amendment to Section 51 of the Act, by the date of adjudicating the issue in this writ petition, an alternative remedy of appeal to the High Court is available under Section 51(4) of the Act.

13. A reading of the provisions of the Act either prior to the amendment or after the amendment, makes it obvious that an alternative remedy is available and as such, the petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

14. Even the contention of the learned Counsel for the petitioner is accepted that the proceedings impugned were passed without giving sufficient opportunity to the petitioner, is accepted, in view of the fact that the 4th respondent is continuing as Mahant since 2006 and in the absence of any interim order, this Court feels that issuance of any direction at this stage to give one opportunity to the petitioner-Ex.Mahant, by restoring him to his anterior position, would lead to multiplicity of proceedings.

15. Further, the material clearly goes to show that prior to passing of the impugned proceedings, one Bindu Maharaj Mahant of Puranapul Mutt was appointed as a temporary Mahant. On that, the petitioner made an application before the Assistant Commissioner on 15.6.2004 for recognizing him as Mahant. But the said application was rejected. The petitioner had neither challenged the appointment of the temporary Mahant nor challenged the rejection order of the Assistant Commissioner. The approach of the petitioner after passing the removal order, without exhausting the remedies available to him at the relevant point of time, is not sustainable.

16. Further, the facts and circumstances of the case and the orders impugned herein

make it obvious that there is a dispute between the petitioner and the Endowment Department as to the entitlement of the petitioner to the position of Mahant. The question as to whether the petitioner is entitled to be in the position of Mahant cannot be decided properly and effectively only on the basis of affidavits and counter-affidavits in a summary proceedings of this nature, filed under Article 226 of the Constitution of India.

17. In view of the reasons stated in the foregoing paragraphs coupled with the provisions of Section 51 of the Act, this Court is of the view that the present writ petition itself is not maintainable and thereby, the same is liable to be dismissed.

18. Accordingly, the Writ Petition is dismissed. No costs. However, the petitioner is at liberty to avail the remedies that are available under law, if he so desires.

Justice Raja Elango

Dated: 1.5.2015

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HONOURABLE SRI JUSTICE RAJA ELANGO

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