

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.30194 of 2010 and 26972 OF 2015

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COMMON ORDER:

WP.No.26972 of 2015:

This petition is filed for a writ of *Mandamus* declaring the notification issued by the 1st respondent i.e. Commissioner of Endowments, Andhra Pradesh, Hyderabad vide Rc.No.B1/16201/2015-13, dated 06.08.2015 in Form-I read with Rule 4(1) under Section 15 of the Endowments Act, calling for applications for constituting a Board of Trustees to Sri Agastheeswara Swamy Temple, Thondawada Village, Chandragiri Mandal, Chittoor District, bearing Sl.No.3 in Annexure, as illegal and arbitrary.

WP.No.30194 of 2010

This petition is filed for a writ of *Mandamus* declaring the action of the Deputy Commissioner of Endowments-1st respondent in issuing proceedings dated 29.10.2010, appointing the 2nd respondent as Single Trustee to Sri Agastheswara Swamy Temple, Thondawada Village, Chandragiri Mandal, Chittoor District, as illegal and arbitrary.

Since the subject matter of the above writ petitions is one and the same, this Court heard the writ petitions together and passed common order.

The case of the petitioner is that he is a member of the founder's family of Sri Agastheswara Swamy Temple at Thondawada Village of Chandragiri Mandal, Chittoor District having been declared as a member of the founder's family by the proceedings of the Deputy Commissioner of Endowments in OA.No.47/2007, dated 28.08.2008. It is also stated that the subject

temple was renovated by the petitioner since he happened to be hereditary trustee and also member who is in line of succession to the hereditary trustee. The subject temple is classified under Sec.6 of the A.P.Charitable and Hindu Religious Institution & Endowments Act, 1987 (*for short 'the Act'*) and consequent to the income derived by the temple crossing Rs.2 lakhs, the Commissioner of Endowments is the competent authority to constitute a Board of Trustees under amended Act, 33 of 2007. The case of the petitioner is that when an Executive Officer was appointed to the said temple on 22.10.2008, the petitioner carried the matter in appeal before the Government and the Government by order dated 20.03.2009, granted stay of appointment of the Executive Officer by which petitioner's management was sought to be disturbed by the said order. While the stay of appointment of Executive Office was still in force and the revision is yet to be decided finally, the 2nd respondent issued proceedings vide Rc.No.B4/3525/2008/Admn., dated 29.10.2010, under Section 15(2) of the Act, for appointment of single Trustee to the subject temple and the same was challenged by the petitioner in WP.No.30194 of 2010 and this Court by order dated 03.12.2010 in WP.MP.No.38455 of 2010 suspended the same subject to certain conditions. While the same is in force, now present impugned notification dated 06.08.2015 is issued calling applications for constituting Board of Trustees to the subject temple. Aggrieved by the same, present writ petition is filed.

Heard learned counsel for the petitioner Sri M.Vidya Sagar who submits that when stay of appointment of Executive Officer is in operation pending main revision before the Government, the 2nd respondent issued proceedings dated 29.10.2010 appointing a single trustee to the subject temple which is challenged in

WP.No.30194 of 2010 wherein this Court granted interim suspension and the same is subsisting. In the above circumstances, the impugned order could not have been issued by the 1st respondent. He also submits that only commissioner is empowered to issue present notification in respect of the subject temple as it exceeds income of Rs.2 lakhs not otherwise and that the impugned proceedings does not indicate that the income derived by the temple has exceeded Rs.2 lakhs, as such the impugned notification is bad.

On the other hand the learned Assistant Government Pleader for Endowments submits that since there are allegations against the petitioner, the 1st respondent issued notification for constituting the Board of Trustees to the subject temple under Section 15 read with 17 of the Act and the same cannot be faulted. He also submits that the petitioner cannot have any grievance for constitution of the Trust Board.

In this case it is to be seen that the petitioner has not placed any material showing that the income of the temple is in any way less than Rs.2 lakhs and petitioner himself in the affidavit states that the Commissioner has taken a decision to issue the present notification as the income of the subject temple exceeded Rs.2 lakhs. Only in the absence of constitution of Trust Board, petitioner can function as per the Act and petitioner is continuing by virtue of interim suspension orders granted by this Court in WP.No.30194 of 2010 which was filed challenging the appointment of single trustee. Now, though the petitioner is continuing in the management of the temple, he cannot have any grievance and no provision of law is brought to my notice to show that the Commissioner cannot constitute a Trust Board. Since he is declared as founder member as per the proceedings issued by the

Deputy commissioner of Endowments in OA.No.47 of 2007 dated 28.08.2008, his case for appointment as Trustee as well as Chairman is to be considered in accordance with the provisions of Section 15 and 20 of the Act respectively. In view of the same, I do not see any reason to interdict the impugned notification for constitution of Trust Board.

Since the petitioner is continuing from the year 2010 and now a decision is taken by the Commissioner to constitute a Trust Board, now question of again appointing the Single Trust does not arise. As such, the cause in WP.No.30194 of 2010 does not survive for adjudication. But, since it is admitted in the counter filed in WP.No.30194 of 2010 that petitioner was recognized as founder member, his case can be considered for appointment as Trustee.

In view of the above, WP.No.26972 of 2015 is disposed of directing the respondents to go ahead with the constitution of Trust Board as per the impugned notification and also since it is admitted in the counter affidavit of WP.No.30194 of 2010 that the petitioner was recognized as founder member, the petitioner's case can also be considered for appointment of Trustee & Chairman in pursuance to the impugned notification in accordance with law. Till then, the petitioner shall be continued as per Section 15 of the Act.

Accordingly, the writ petitions are disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

07.09.2015

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