

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.13505 OF 2009

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the 1st respondent-Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, Visakhapatnam, in prohibiting the petitioner-Sri Simha Sailapuri Gayatri Peetham and Virat Guru Mandiram, from using the road on the Eastern side of the Peetham, as illegal and arbitrary.

The case of the petitioner-Peetham is that it is registered under Section 43 of the Endowments Act, classifying the subject institution as a 'Peetham' by the Assistant Commissioner of Endowments, Visakhapatnam by his proceedings dated 21.02.2008. The Petitioner-Peetham was established in the year 1936 and the father of the petitioner filed OA.No.120 of 1979 before the Deputy Commissioner of Endowments, Kakinada, seeking a declaration that the petitioner-Peetham is not a public religious endowment attracting the provisions of the Act. The said OA was dismissed and the same was reversed by the District Judge in the appeal. The matter was further carried before this court in AS.No.667/1987 wherein the order of the District Judge was reversed by restoring the order of the Deputy Commissioner of Endowments in OA.120/1979. Thereafter the matter was further carried in appeal to the Supreme Court and the Supreme Court in Appeal No.7210 of 2000 dismissed the appeal upholding the order of the Deputy Commissioner of Endowments passed in OA.No.120/1979.

Now the grievance of the petitioner in the writ petition is that the 1st respondent-Devasthanam represented by its Executive Officer is preventing the petitioner-Peetham and their disciples including the family members of the Petitioner-Peetham from using the public road which was laid for the benefit of public after acquiring the same in pursuance of the permission granted by the

2nd respondent. Thus the said road laid for the benefit of the public also virtually accrued to the benefit of the petitioner's-Peetham and irrespective of any prohibition the public are using the said road. It is further stated that the 1st respondent has no authority to obstruct the petitioner-Peetham from using the public road and that the 1st respondent cannot prevent the petitioner which is also registered under the provisions of the Act and also comes under the jurisdiction of the 2nd respondent. It is also stated that the Commissioner of Endowments is the corporate sole to all the institutions being registered under the provisions of the Act. Aggrieved by the action of the 1st respondent in threatening to close the entire passages by building a wall on both sides of the Peetham and constantly threatening the Peetadhipathi and his disciples from using the road on the Eastern side which is the only road in Up-hills Simhachalam which is used by one and all.

The 1st respondent filed counter affidavit stating that the petitioner was running a cool drink and fancy shop along with objectionable items and goods by dismantling the existing wall adjacent to the bus-stand at Up-hills which is the main junction covered by road leading to main temple and also connected to other main ways like choultries, Annadanam, for which the entire pilgrimage are waiting at that place to go to their intended places and that if the petitioner business is allowed in the said place it is very difficult to control the rush of the pilgrims in the alleged place as it is main junction and also utilizing for bus stop by the 1st respondent-Devasthanama. It is also stated that as per the judgment of the Supreme Court the petitioner-Peetham is a public temple and is a public religious endowment and as such the petitioner cannot do commercial business in premises of alleged Peetham. Further, it is stated that the properties at Up-hill and also the Peetham as well as the alleged eastern side bus-stand are in the Devasthanam Patta land situated in survey No.248/P of Adivivaram Village and the petitioner has no right in the land.

The 2nd respondent adopted the counter affidavit of the 1st respondent.

Sri M.Vidyasagar, learned counsel for the petitioner, reiterated the

submissions in the writ affidavit and also submits that the 1st respondent-Devasthanam has no authority to initiate action against the petitioner-Peetham, since the petitioner-peetham was also registered under Section 43 of the Act and that it is only the 2nd respondent who can initiate action for any irregularities committed by the petitioner-Peetham.

Sri V.Venugopala Rao, learned counsel for the 1st respondent submits that even as per counter, the 1st respondent never obstructed the petitioner-Peetham from using the subject road. He also submits that since the entire Up-hills belongs to the 1st respondent-Devasthanam, to preserve the sanctity of the temple premises, the 1st respondent wanted to control the commercial activities and that the petitioner cannot encroach or lease out the subject premises for commercial activities. He further submits that the 1st respondent is only trying to prevent the commercial activities being undertaken by the petitioner-Peetham but not taking any disciplinary action against the petitioner.

Learned Government Pleader for Endowments submits that the petitioner's father filed OA.No.120/1979 seeking a declaration that the petitioner-peetham is not a public religious endowment and fought for the same and finally lost the same, as such, the petitioner who is the deponent of the writ affidavit has no *locus standi* to represent the petitioner-peetham. He also relied on the Judgment in WP.No.6388 of 2008.

In this case, though several contentions are raised by the petitioner as well as respondents, the issue highlighted in this writ petition is that the 1st respondent is preventing the petitioner-Peetham from using the subject road. But the same is denied by the 1st respondent stating that they never obstructed the petitioner-Peetham from using the subject road leading to Up-hill. Recording the said contention of the 1st respondent, the writ petition is disposed of. However, it is open for the 1st respondent to take measures for protecting the sanctity of the 1st respondent-Devasthanam and it is also open for the 2nd

respondent to take appropriate action in the matter as per law. 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

21.09.2015

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