

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.16194 of 2015

Dated : 10.06.2015

-

Between:

Paritala Rathamma W/o.Late Ramanaiah,
Aged about 66 yrs, Occu : Housewife,
R/o.Ponduru Village, Tanguturu Mandal,
Prakasam District.

.. Petitioner

And

The Deputy Commissioner of Endowments,
Guntur, Guntur District. & 2 others

.. Respondents

This Court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.16194 of 2015

-

ORDER :

The husband of the petitioner was appointed as a Managing Trustee of Papinenivari kunta, Ponduru Village, Tangutur Mandal, Prakasam District. While so, he died on 16.04.2011.

2. Alleging that the records of the institution are not handed over and unauthorisedly kept with the petitioner, the institution has filed O.A.No.04 of 2014 before the Deputy Commissioner of Endowments, Guntur, under Section 133 of the

A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act 1987'). In the application it is also alleged that after the demise of husband of the petitioner, the petitioner was unauthorisedly acting as Managing Trustee and though the records are in possession of the petitioner, they are not being handed over. The petitioner filed counter affidavit in the said O.A., denying the allegations and specifically contended that the petitioner is not in the custody of documents and records of the institution. While the matter stands thus, this Writ Petition is instituted challenging the initiation of said proceedings.

3. Learned Counsel for the petitioner contends that the petitioner was not the Managing Trustee and therefore, the provisions of Section 133 of the Act, 1987, are not attracted and thus initiation of proceedings and pendency of the proceedings before the Deputy Commissioner of Endowments, is *ex-facie* illegal, without jurisdiction and competence and therefore, the petitioner need not be subjected to the rigors of such proceedings. Learned counsel further contends that Section 133(1) of the Act, 1987 prescribes penal consequences in the event of not complying with the direction for handing over the record, and no penal consequences can be levied on the petitioner for the alleged violations committed by the husband of the petitioner.

4. Learned Government Pleader submits that in terms of the provisions contained in Sub-Section 2 (a) of Section 133 of the Act, 1987 the petitioner is also liable and therefore, the proceedings are validly initiated. Furthermore, it is specifically contended in the O.A., that after the demise of the husband of the petitioner, the petitioner was unauthorisedly acting as Managing Trustee and therefore, the petitioner is liable for handing over all the records and properties of the institution and thus, O.A., is maintainable.

5. To appreciate the contentions of the learned counsel for the petitioner as well as learned Government Pleader, it is necessary to examine the scope of Section 133 of the Act, 1987. The relevant portion of Sub-Section 1 and 2 of Section 133 reads as under :

Section 133. Duty of trustees, etc., to handover charge to successor and procedure for recovery of possession of institution, etc., in case of default:--

(1) Where a person, who--

(a) is or has been a trustee on the ground of succession of an institution or endowment; or

(b) is appointed as trustee, Executive Officer, Officer-holder or servant of such institution or endowment;

or

(c) is appointed to discharge the functions of a trustee of such institution or endowment in accordance with the provisions of this Act, in any scheme in force at the time of commencement of this Act.

ceases to be such hereditary trustee, trustee, Executive Officer, Office-holder or servant or ceases, to discharge the functions of the trustee (hereinafter referred to as the 'ex-office holder'), on account of the expiry of his term of office or by reason of his suspension, removal or dismissal from office, it shall be the duty of such ex office-holder, to handover charge of his office and deliver possession of the records, accounts, properties of the institution or endowment including cash to the person who succeeds him or is appointed in his place (hereinafter called the 'successor') or to the Executive Officer within seven days from the date of service in the prescribed manner of the order directing him to hand over charge of the office to his successor or to the Executive Officer, and if he fails to do so without sufficient cause, he shall be punishable with fine which may extend to one thousand rupees.

(2) (a) where the successor or the Executive Officer is resisted in or prevented from obtaining the possession of the records, accounts or properties of the institution or endowment by such ex-office-holder or by any person claiming or deriving title from him or by any person who is otherwise not entitled to be in such possession, any Magistrate of the First Class having jurisdiction shall, on any application made by the successor or the Executive Officer, by an order after notice to the ex-office-holder direct delivery of the possession of such records, accounts and properties of the institution or endowment, to the successor or to the Executive Officer within the time specified in such order.

(b) Every application made under Clause (a) shall be accompanied by a certified copy of the order of appointment of the successor along with a certificate issued by the Commissioner in such form and after following such procedure as may be prescribed stating that the records, accounts and properties specified therein belong to the institution or endowment.

6. From the reading of the above section it is clear that whoever was a trustee or appointed to discharge the functions of a trustee and is in possession of records of Endowment institution, on ceasing to hold the office, should hand over the records to the successor or to any other officer designated for that purpose. Admittedly, the petitioner's husband was the Managing Trustee till the year 2010 who did not hand over the relevant records in volumes after his tenure was completed. It is specifically alleged that the petitioner was acting as Managing Trustee in an illegal manner even after the demise of her husband and therefore, the records are in the custody of the petitioner. According to Sub-Section 2(a) of the Act, 1987 if there is resistance in preventing from obtaining the possession of the records, accounts or properties of

the institution by such ex-office holder or by any person claiming or deriving title from him or any person who is otherwise not entitled to be in such possession, action can be taken. Thus, prima-facie, provision is wider in scope to initiate proceedings against any person in custody of records and is not confined only to the person who acted as a Managing Trustee. Thus, if a family member is in possession of records, it cannot be said that the provisions of Section 133 of the Act, 1987 are not applicable to a family member like the petitioner whose husband worked as a Managing Trustee and the records were not handed over to the successor or any designated officer after the tenure was over. Therefore, the rigors of provisions of Section 133 cannot be excluded on the premise that the petitioner was not a Managing Trustee. Therefore, it cannot be said that initiation of proceedings are *ex-facie* illegal and without jurisdiction and competence, warranting interference by this Court at this stage, even before final orders are passed. It is made clear that above discussion is for disposal of this writ petition and all issues concerning the case are left open to be urged in appropriate proceedings.

7. With the above observations, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN RAO,J

10th June, 2015

Rds

