

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.17226 of 2015

Between :

Balusu Kesava Rao s/o.Balusu Ramalingeswara Rao,
Aged about 67 years, Occu:Agriculture, r/o.Mandapaka
Village, Tanuku Mandal, West Godavari District.

.... Petitioner

And

The State of Andhra Pradesh, rep.by its Principal
Secretary, Endowment Department, Secretariat
Buildings, Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 06.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : Yes / No
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals :
3. Whether Their Lordship wish to see the fair : Yes / No
copy of the Judgment ? :

HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

Heard learned counsel for the petitioners and learned Government Pleader for Endowments and learned standing counsel for subject temple. With the consent of the learned counsels, this writ petition is disposed of at the admission stage.

2. According to the petitioner, his forefather by name, Balusu Venkaiah constructed Sri Ramalingeswara Swami Temple, Katavaram village, Seethanagaram mandal, East Godavari District in the year 1924-25. The family members of the said B.Venkaiah were the trustees of the said temple. In terms of the declaration given in O.A.No.8 of 1957, the grand father of the petitioner by name, Balusu Kesanna, was declared as hereditary trustee. Petitioner is the son of Balusu Ramalingeswara Rao, who is the 3rd son of hereditary trustee Balusu Kesanna. Another member of the family was declared as member of the founder family. He died on 12.04.2014. After his death, petitioner obtained no objection from the members of founder family and applied on 30.08.2014 to the Deputy Commissioner, Kakinada, requesting him to recognize and declare him as a member of the founder family of the 6th respondent temple. Strangely, the Assistant Commissioner vide his proceedings dated 14.05.2015 directed the petitioner to approach the Endowment Tribunal for declaration that he is a member of the founder family in accordance with Section 87(1)(h) of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'Act, 1987'). On 22.06.2015, letter of the Assistant Commissioner dated 03.06.2015 is served on the petitioner along with copy of the proceedings dated

28.5.2015 of the Deputy Commissioner appointing the Executive Officer of Sri Gandhi Poshamma Ammavari Temple, Gonduru village, Devipatnam Mandal, East Godavari District as single trustee of 6th respondent and directed the petitioner to hand over charge of the temple

3. Aggrieved by the proceedings of the Assistant Commissioner dated 14.05.2015 directing the petitioner to approach the Endowment Tribunal for declaration that he is a member of the founder family, petitioner filed this writ petition. Aggrieved by the orders dated 28.5.2015 appointing the Executive Officer of 7th respondent temple as single trustee of the 6th respondent, the petitioner filed W.P.No.19443 of 2015, which is separately disposed of.

4. Learned counsel for the petitioner contends that when there is no dispute among the members of the founder family regarding declaration as member of founder family for the purpose of provisions of the Act, the question of seeking declaration from the Endowment Tribunal Under section 87 does not arise. Provision in Section 87(1) (h) of the Act is attracted only in case of serious dispute on the claim as a member of the founder family or there is more than one claim. Only in such a case, jurisdiction of the tribunal should be invoked. In support of the said contention, learned counsel placed reliance on the decision of this Court in the case of **A.V.Ranga Rao v. State of Andhra Pradesh**^[1].

5. Learned counsel further contends that it is illegal on the part of the respondents in not declaring him as a founder family member and simultaneously proceedings to appoint Executive Officer of 7th respondent temple as single trustee. In view of the principles laid down by this court in **A.V.Ranga Rao** case, direction of the Assistant Commissioner to invoke jurisdiction of the Tribunal is *ex facie* illegal

and since there is no internal dispute among the family members declaring the petitioner as member of the founder family is only a formality. Without first considering the claim of petitioner, respondents ought not to have resorted to appoint single trustee.

6. Learned standing counsel supports the decision of the respondent authorities in directing the petitioner to approach the Endowment Tribunal to obtain declaration that he is a member of the founder family and merely because members of the founder family expressed no objection cannot be a ground for granting declaration in his favour and the petitioner has to invoke the jurisdiction of Endowment Tribunal for such declaration.

7. As seen from the provision contained in Section 87(1)(h) of the Act in case there is a dispute regarding entitlement of a person for being declared as member of the founder family, such dispute can be resolved only by the Endowment Tribunal. Thus, when there is no dispute regarding entitlement of a person being declared as member of the founder family, there is no necessity to resort to provision contained in Section 87(1)(h) of the Act and the competent authority has to decide the issue and confer status of member of founder family when such claim is not disputed by other family members and he is otherwise entitled for such declaration. In such a case, there is no need to drive him to Endowment Tribunal. I am fortified in my view by the decision of this court in **A.V.Ranga Rao**.

8. Thus, I am of the considered opinion that the proceedings issued on 14.05.2015 directing the petitioner to approach the Endowment Tribunal is erroneous and is liable to be set aside. Consequently, the competent authority is directed to consider the application submitted by the petitioner on 30.08.2014 for granting recognition as a member of the founder family as expeditiously as possible, preferably within 3 weeks from the date of receipt of a copy of this order.

9. Accordingly, the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions if any pending shall stand closed.

JUSTICE P.NAVEEN RAO

Date : 06.08.2015
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HON'BLE SRI JUSTICE P.NAVEEN RAO

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