

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.23687 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the action of the respondents in appointing the 6th respondent as custodian for administration and management of the petitioner trust, in terms of the memo No.B1/43972/2009-1, dated 31.03.2015 and the consequential proceedings of the 5th respondent in Rc.No.B/1312/2015, dated 24.06.2016 served on the petitioner on 14.07.2016 and thereby interfering with the right of the trustees of the petitioner to administer and manage the affairs of the petitioner trust as arbitrary, illegal and without jurisdiction and direct the respondents to forbear from causing any interference whatsoever to the administration and management of the petitioner trust by its trustees in terms of the contents of the trust deed by which the petitioner has been created/incorporated and to pass such other necessary orders.

Heard the learned senior counsel Sri Vedula Venkata Ramana, appearing for the petitioner, Smt.D.Pramada, learned Government Pleader appearing for respondents 1 to 5 and Sri C.Satish Kumar, learned counsel appearing for 6th respondent.

The contention of the learned counsel for the petitioner is that the second respondent passed the orders dated 31.03.2015 vide memo No.B1/43972/2009-1 dated 31.03.2015 without affording reasonable opportunity to the petitioner to ventilate its grievance. He further submitted that the 5th respondent passed

the consequential order in Rc.No.B/1312/2015, dated 24.06.2016. The predominant contention of the learned counsel for the petitioner is that the petitioner is a private trust.

The contention of the learned Government Pleader is that the petitioner trust is a public charitable trust.

It is not in dispute that O.A.No.129 of 2007 is filed by some third party against the petitioner herein and O.A.No.130 of 2007 is filed by the petitioner herein on the file of the Deputy Commissioner of Endowments Department, Guntur, and the Tribunal disposed of both the matters by passing common order on 16.08.2008 with the following observation:

“I therefore declare that Sri Vidya Vikas Samithi Trust, is not a public charitable trust and the petition schedule properties are not public charitable properties to be governed by the provisions of the Endowments Act 30/87.”

The petitioner herein filed W.P.No.2153 and 2154 of 2009 against the Endowments Department and those writ petitions were allowed by the Division Bench of this Court on 15.12.2014 with the following observation:

“Accordingly we set aside the impugned order. However, we make it clear that in the event the official respondents feel that any lawful action is required to be taken for lawful management and administration of petitioner and Vidya Vikas Samithi Trust, such action may be taken in accordance with law.”

After disposal of the writ petitions by this Court, it appears the second respondent - Commissioner of Endowments issued the first order on 31.03.2015. The 5th respondent – Assistant Commissioner also passed the consequential order on 24.06.2016.

As rightly pointed out by the learned counsel for the petitioner, no opportunity was given to the petitioner to substantiate its stand before the Commissioner of Endowments. Likewise, no opportunity was given by the 5th respondent to the petitioner herein. A perusal of the record clearly reveals that respondents No.2 and 5 herein passed the above said two orders without giving any opportunity to the petitioner. The fact remains that the petitioner has interest in the subject matter of the property. The learned Government Pleader in all fairness submitted that the above two orders were passed in the absence of the petitioner herein. Any order passed in violation of principles of natural justice is *non est* in the eye of law.

The observation made by the Division Bench of this Court that the respondents herein are entitled to pass appropriate order in accordance with law encompasses in it affording a reasonable opportunity to the petitioner herein who is interested in the subject matter of the trust property.

Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the orders of the second respondent dated 31.03.2015 and the consequential order passed by the 5th respondent dated 24.06.2016.

In the result, the writ petition is disposed of setting aside the orders dated 31.03.2015 and 24.06.2016 passed by the second and fifth respondents respectively. However, this order does not preclude the second respondent from passing appropriate orders in accordance with law after giving a reasonable opportunity to the petitioner's trust. It is made clear that the petitioner shall not

meddle with the properties, both movable and immovable properties of the institution in any manner whatsoever till passing of the orders by the second respondent.

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

**T.SUNIL
CHOWDARY, J**

21.07.2016

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Date:21.07.2016

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