

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1655 of 2011

ORDER:

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This Civil Revision Petition under Section 91 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) by the unsuccessful petitioner is directed against the orders dated 29.09.2008 of the learned District Judge, Krishna at Machilipatnam passed in A.S.no.157 of 2006, whereby, the learned District Judge while dismissing the said appeal suit had confirmed the orders dated 12.09.2006 of the learned Deputy Commissioner, Endowments Department, Kakinada passed in O.A.no.1 of 2006 filed under Section 87 (h) of Act 30 of 1987 to declare that the petitioner is a member of the founder family of Sri Kondalamma Ammavaru Temple situated at Vemavaram village of Krishna District and also Sri Abhaya Anjaneya Swamy Temple, Reddy Palem in Krishna District.

2. I have heard the submissions of the learned senior counsel for the revision petitioner and the learned Government Pleader for Arbitration (Andhra Pradesh) appearing for the respondents. I have perused the material record.

3. To begin with it is necessary to refer to the pleadings of the parties.

3.1 The case of the petitioner in support of his request aforementioned, in brief, is as follows:

In the year 1984, on the road side of Vemavaram village, he had originally installed the idol of Goddess Sri Kondalamma Amma varu with his own funds and used to offer prayers to the Goddess as 'Ilavelupu' (family deity) of the family. Out of faith in the Goddess, he had constructed and developed a temple with his personal funds. In the year 2004-05, he had constructed a Vimana Gopuram and Mukha Mandapam with his personal funds. Behind the main temple of the Goddess, a photo of Kondalamma Ammavarau was also kept to facilitate the devotees to make offerings, namely, animals, pongals etcetera. Thus, there is the main temple of

Ammavaru and also a sub-temple. The petitioner had also constructed Kitchen sheds with 106 ovens on the side of the temple for use of the devotees visiting the temple. He had further purchased an extent of Ac.0.31 cents and another extent of Ac.0.31 cents in R.S.no.23-1B on the side of the temple with his personal funds for use of the temple. He had constructed queue lines in the temple premises and had provided iron gates to the temple. He had also constructed Abhaya Anjaneya Swamy vari Devasthanam in Reddypalem village, Gudlavalleru Mandal with his personal funds and it was attached to Sri Kondalamma Amma Vari Devasthanam. He had constructed archaka's quarters in the subject temple. However, as per the directions of the Assistant Commissioner, vide Proceedings A2/1462/2004, dated 21.12.2005, the petitioner had handed over the said temple/Sri Abhaya Anjaneya Swamy vari Devasthanam to Sri Kondalamma vari temple. Being the managing trustee of the said Ammavari temple, he had taken all possible steps to develop the temple in a remarkable manner. However, due to interference of the local politicians, the Endowment Department had published the institution under the Endowment Act and instructed to handover the management of the temples to the Department. Pursuant to such instructions, the petitioner had voluntarily handed over the management of the temple to the Manager appointed by the Department. The local politicians tried to constitute a Trust Board with the local people who had no faith in the Goddess and the God. Therefore, the petitioner had approached the Assistant Commissioner of Endowments, Vijayawada and had filed an application under Section 15 of the Act 30 of 1987 to recognize the petitioner as a Member of the Founder family of the said temples. The Assistant Commissioner had transmitted the said application to the Inspector of Endowments, Machilipatnam, who is the local officer, to probe into the matter and submit a report. Accordingly, the said Inspector had made enquiries and submitted a report. While so, the Endowment Department had tried to appoint a Trust Board to the subject temple by issuing a notification under Section 15 of Act 30 of 1987 inviting applications from the public for appointment as members. To safeguard the rights of the petitioner, the petitioner filed Writ Petition no.15016 of 2006 before this Court; and, this

Court directed the petitioner to approach the Deputy Commissioner of Endowments, Kakinada under Section 87(h) of Act 30 of 1987. Hence, the petitioner had filed the original application in O.A.no.1 of 2006 before the Deputy Commissioner with all supporting documents and photographs of Sri Kondalamma Ammavari temple in support of his plea that he is a member of the founder family and for recognizing him as such.

4. The managers of the two temples, who were impleaded as party respondents 2 and 3 to the application of the petitioner had filed counters denying the allegations. In their counters, they had *inter alia* contended as follows:

On enquiries made by the respondents 2 and 3 and the officials of the Endowment Department, it is revealed that the petitioner and his brothers constructed two temples by collecting donations from the public and, therefore, it is false to state that they had donated an extent of Ac.0.89 cents of site, which is situated on the right side of the temple and another Ac.0.62 cents of land, which is situated on the left side of the temple. Therefore, the petitioner is put to strict proof that he had not collected any amounts from the public and that the sites are not acquired with the funds of the temples and out of the donations collected from others. The allegation that the petitioner had installed the idol of Ammavaru and constructed the temple on the road margin is denied. The allegation that the petitioner had spent personal amount on the 2nd and 3rd respondent temples is denied. The temples were constructed only with the funds of the temples. The petitioner is put to strict proof that he has not collected amounts from the public and that he had not acquired the sites with the funds of the temple. The allegation that the petitioner and his brother did not collect amount from the public is false. The 2nd respondent temple is constructed on the road margin of a road under the control of R & B Department. The allegations that the petitioner had spent his personal amount of Rs.15,00,000/- for 2nd respondent temple and Rs.25,00,000/- on 3rd respondent temple is false. The petitioner and his brothers misappropriated huge amounts of the temples and after notices were

issued by the Department in that regard, the petitioner had handed over the temples to the officials of the Department. There was originally a single trustee for the temples. Subsequently, the managers appointed are continued to manage both the temples. Both the temples are under the administrative control of the Managers. The Assistant Commissioner issued notices for constitution of a Trust Board and that thereupon, the petitioner had filed a writ petition before this Court and this Court had directed him to approach the Deputy Commissioner of Endowments by filing an application under Section 87(h) of Act 30 of 1987 is true. The allegations about the purchase of lands under registered sale deeds dated 22.12.1993 and 19.01.1998 and the further allegations about gifting of the same to the temples are false. The petitioner, who has misappropriated the funds of the temples is estopped from claiming any rights. The petitioner cannot claim that he is a member of the founder family of the temples. The petition is bad for non-joinder and mis-joinder of parties.

5. At the time of enquiry before the learned Deputy Commissioner, PWs 1 and 2 were examined and exhibits A1 to A8 were marked. Exhibits B1 to B8 were also marked. The learned Deputy Commissioner having rejected the request of the petitioner dismissed his petition. Therefore, the aggrieved petitioner had filed A.S.no.157 of 2006 on the file of the learned District Judge, Krishna at Machilipatnam. As already noted, the learned District Judge dismissed the said appeal confirming the orders of the Deputy Commissioner of Endowments. Therefore, the petitioner is before this Court.

6. The learned senior counsel appearing for the petitioner while reiterating the case of the petitioner had contended as follows:

The Court below ought not to have dismissed the appeal by relying upon the findings of the Deputy Commissioner and by accepting the observation that the temple was constructed with the funds contributed by the public and that some of the items of lands were purchased with the funds of the temple. The Court below and the learned Deputy Commissioner ought to have considered the fact that the idol of the Ammavaru was installed and that initially the temples were constructed by the petitioner. The Court below

misread the statements made on various aspects by the petitioner and his brother (PW2) during the course of enquiry, particularly, with reference to subsequent improvements made to the temples. The Court below and the learned Deputy Commissioner ought to have seen that the original constructions were made with the exclusive funds of the petitioner and that the improvements were made to the temple subsequently. The Court below and the learned Deputy Commissioner had totally ignored the reports submitted by the responsible officers of the Department to the Assistant Commissioner. Hence, the Court below and the learned Deputy Commissioner ought to have given due weight to such reports of the responsible officers of the Department, which are submitted after making personal enquiries as directed by the Assistant Commissioner. The orders of the Court below and the learned Deputy Commissioner are vitiated for failure to consider the reports of such officers. Therefore, the order of the Court below confirming the order of the learned Deputy Commissioner is unsustainable. The findings of the Deputy Commissioner and the Court below are based on erroneous reasoning. The findings that the temples were constructed in public land and partly with public funds and that therefore, the petitioner cannot be recognized as a member of the founder family or as a hereditary trustee are totally incorrect and such findings are recorded ignoring the fact that the idol of Ammavaru were installed and the temples were constructed with the personal funds of the petitioner and that the improvements to the temples were made later with the collections from the hundis installed in the temple and that the said facts, therefore, do not deprive the petitioner of his right to be recognized as a member of the family of the founder or a hereditary trustee. The provisions of the Act, particularly, Section 17 of the Act clearly declare that a person who has founded the institution or endowment or a member of his family is entitled to be recognized as a hereditary trustee. The petitioner had filed M.P.no.2364 of 2011 in this revision for receiving the letter in Rc.no.A2/3264/2015 dated 27.03.2006 of the Assistant Commissioner addressed to the Commissioner, Endowments and also the report of the Inspector, Endowments Department submitted to the Assistant Commissioner as additional evidence. The said

two documents on a perusal would lay bare that the idol of Sri Kondalamma varu was installed on the road side of Vemavaram village on 12.02.1984 by the petitioner and his brothers and that subsequently, during the year 2004-05, they had constructed a Vimana Gopuram and Mukha Mandapam with their personal funds and that they had also purchased Ac.0.62 cents of land on the left side of the temple and an extent of Ac.0.89 ½ cents on the right side of the temple with the funds from Hundials. The Inspector who made enquiries and submitted the report had also collected copies of the documents and had submitted the same with his report. The report of the Inspector would further disclose that the petitioner had taken steps for improvement of the temple in many ways and had also constructed kitchen sheds with 106 ovens in the site of an extent of Ac.0.62 cents, which is situated to the left side of the temple, and that he had also constructed office building, store room for storing paddy and watchman quarters in the site besides 11 toilets and 25 sheds in the said site of an extent of Ac.0.89 ½ cents situated on the right side of the temple and further provided queue lines and installed iron collapsible gates and that there is a shila phalakam (plaque/plank) fixed to the temple wall showing that the temple was constructed by the petitioner and his brothers who are onion merchants of Gudiwada of Krishna District and that Abhaya Anjaneyaswamy vari temple at Reddypalem, Gudlawalleru Mandal of Krishna District was also constructed with 50% own expenses and with the public donations. The petitioner and his wife performed vigraha Prathista on 26.02.1988 with his own funds. He had also purchased an extent of Ac.0.31 cents of land and had constructed Archaka's Quarters at back side of the temple and also four shops in front of the temple. The Court below ought to have seen that out of the said shops, three shops were leased out and one shop is vacant and is being used as a store room. The said report of the Inspector and the para-wise remarks, which the Assistant Commissioner had submitted to the Commissioner by referring to the contents of the Inspector's report, would establish the case of the petitioner. The Deputy Commissioner and the learned District Judge had totally ignored the contents of the said material documents.

6.1 At the hearing, copies of the (i) registered document no.2030/2000, (ii) sale deed dated 14.12.2000,, (iii) Document no.113/2004 with sale deed dated 08.03.2004; (iv) document bearing no.439/83, and (v) gift deed dated 07.05.1983 are also produced.

7. On the contrary, the learned Government Pleader for Arbitration while asserting the stand of the Managers of the two temples/respondents 2 and 3 herein and also of the Assistant Commissioner/1st respondent herein and while supporting the orders of the Court below and that of the learned Deputy Commissioner had vehemently contended that the evidence of Pws 1 and 2 brought on record is by itself enough to show that the order of the Deputy Commissioner and the order of the learned District Judge, which is impugned in this revision, are both well considered orders and do not warrant any interference. He would further submit that PW1 and his brother were only examined and that no independent witness was examined and that their evidence would show that the temples were constructed in public sites but not in their personal properties and that even the contents of the material documents and of the registered documents would show that acquisition of properties are only with the contributions from the public and hundial collections and that the orders, which are passed after detailed consideration of the facts correctly and the evidence and the legal position obtaining and applicable in proper perspective do not call for any interference in this revision. He would also submit that the concurrent findings of fact supported by valid reasons deserve to be sustained and that there is no patent illegality or infirmity or jurisdictional error in the orders impugned warranting interference.

8. I have bestowed my attention to the facts and I have given earnest consideration to the submissions. I have carefully perused the material record.

9. Since the case of the petitioner and the contentions of the respondents 2 and 3 are already stated supra, in detail, there is no need to dilate on the factual aspects. However, it is appropriate to note that the petitioner claimed

that he had installed idol of Sri Kondalamma Ammavaru on the side of the road in Vemavaram village and that he had later constructed the temple and installed the photo of Ammavaru behind the temple to enable the devotees to make offerings and that therefore, there is a main temple and also a sub temple of Ammavaru and that he had later, constructed a Vimana Gopuram and Mukhamandapam with his personal funds and had developed the temple and that for use of the devotees visiting the temple, he had constructed kitchen sheds with 106 ovens in the acquired site, which is on the side of the temple, and that he had further purchased an extent of Ac.0.31 cents and another Ac.0.31 cents in R.S.no.23-1B on the side of the temple with his personal funds for use of the temple and that he had constructed watchman's quarters in the adjacent site and queue lines in the temple premises and had provided iron gates to the temple. His case insofar as the 3rd respondent-Sri Abhaya Anjaneya Swamy temple is that he had constructed the said temple with his personal funds and it was attached to Kondalammavari Devasthanam and that he had also constructed archaka's quarters of the said temple and had taken further steps to develop the temples in a remarkable manner. It is his further case that on the instructions to handover the management of the temple to the Department, he had handed over the management of the temples to the Manager appointed to the temples and that in the facts and circumstances, he is a member of the founder family of the said temples and hence, he is entitled to the declaration prayed for.

10. In this backdrop, it is to be first noted that as rightly pointed out by the learned counsel for the petitioner, the Inspector had submitted a report on the instructions of the Assistant Commissioner, wherein there are observations supporting to some extent the case of the petitioner. The relevant observations in the report of the Inspector are as follows: 'The idol of Sri Kondalamma Amma Talli was installed on the road side of Vemavaram village on 12.02.1984 by the petitioner and his brothers. Subsequently, they had constructed the temple 'Vimana Gopuram' and Mandapam in 2004-2005 with their own expenses. They had also purchased Ac.0.62 cents of land on the left side and Ac.0.89 ½ cents on the right side of the 2nd respondent

temple with the funds from the hundials. The petitioner acted as hereditary managing trustee since 1982. During his period, he had taken steps for improvement of the temple in many ways. He had also constructed kitchen sheds and installed nearly 106 ovens in the site of an extent of Ac.0.62 cents, which is situated to the left side of the temple. He had also constructed office building and four store rooms. He had constructed watchman's quarters besides eleven toilets and 25 sheds in the said site of an extent of Ac.0.89 ½ cents situated on the right side of the temple. He had also provided queue lines in the temple and had further provided iron collapsible gates. There is a shilapalakam (plaque) fixed to the temple wall showing that the temple was constructed by the petitioner and his brothers who are onion merchants of Gudiwada of Krishna District. He had also constructed Abhaya Anjaneyaswamy vari temple at Reddypalem, Gudlawalleru Mandal of Krishna District with 50% own expenses and with the public donations. The petitioner and his wife performed vighraha Prathista on 26.02.1988 with his own funds. He had also purchased an extent of Ac.0.31 cents of land and constructed Archaka's Quarters at back side of the temple and had also constructed four shops in front of the temple and that three shops out of them were leased out and that one shop which is vacant was being used as a store room." The Assistant Commissioner's para-wise remarks are based on the contents of the report of the Inspector is not in dispute. Placing reliance on the contents of the said two documents, the learned senior counsel forcefully contended that the undeniable contents in the said documents of the Department are sufficient by any standards to grant the relief to the petitioners. The learned Government Pleader for Arbitration while stating that the contents of the said report of the Inspector and para-wise remarks of the Assistant Commissioner have no probative value had placed reliance on the evidence of PWs 1 and 2 and had urged that the statements made by witnesses on oath, which are having probative value and are reliable, are only germane for consideration.

11. Therefore, the short question is as to whether, in the facts and circumstances of the case and in the light of the evidence brought on record,

the petitioner is entitled or not to the relief claimed. It is also to be examined incidentally the weight to be attached to the contents of the above said report of the Inspector and the contents of the para-wise remarks of the Assistant Commissioner.

12. Before proceeding further, it is necessary to refer to the statements and admissions in the evidence of PWs 1 and 2, which are extracted in the orders of the Deputy Commissioner.

PW1 in his deposition had stated to the following effect:

I and my brother Raj Gopal are income tax assesses from 1999 onwards. I have not spent Rs.15,00,000/- at one time as mentioned in my chief examination affidavit. I have spent monies from time to time; There is no documentary proof to show that I had spent Rs.15,00,000/-. The averment in my chief examination affidavit that I and my brother V.S.R.Mohan Rao settled at Maharashtra State in view of the business is correct. There is no documentary proof to show that we had constructed the 2nd respondent temple in the year 1984. The site in which the 2nd respondent temple is situated does not belong to us. I do not know whether the said site belongs to R & B Department. All the planks/plaques fixed to the temple wall/premises are got fixed by me. The two temples are different temples and are situated at different places. In January 2006, the 3rd respondent temple was adopted to the 2nd respondent temple. It is true that I and PW2 signed in Hundials Registers at the time of opening of Hundi. It is true that the 2nd respondent temple gets 26 to 30 lakhs rupees per year by way of hundi collections. We maintained accounts from 1984 to 1988 and used to submit to T.Satyanarayana and Koteswara Rao, who are residents of other village Kowthavaram. It is true that we should submit the accounts to Endowment Department from 1984 till the date we handed over the temple to the

Department. It is not mentioned in exhibits A1 and A2 that the properties are purchased with my own monies. There is no documentary proof that I had amounts referred to exhibits A1 and A2 on the respective dates. It is mentioned in the sale deed that as a trustee of the temple, I had purchased the schedule site thereunder out of the income derived from the hundials. It is true that accounts for the year 2001-02 disclose that the expenditure on repairs etcetera was incurred from the income derived from the hundis. It is true that site on which the 2nd respondent temple was constructed does not belong to the petitioner. The site on which the 3rd respondent temple was constructed also does not belong to us. (Emphasis supplied)

PW2, in his chief affidavit had reiterated the same averments which are stated in the chief affidavit of his brother. However, in his cross-examination, he had deposed to the following effect:

The signature on the affidavit filed along with the petition for appointment as hereditary trustee does not belong to me. The signature on the chief examination affidavit does not belong to me. My chief examination affidavit was drafted by my brother. I do not know the contents mentioned in the said affidavit. It is true that in my affidavit I have stated that I am a permanent resident of Maharashtra State. It is true that several times, hundies are opened by Endowment officials in 2nd respondent temple and I was present at those times and signed as a witness. On behalf of PW1, I used to manage both the temples. We have not opened bank accounts for the temples while they were under our management. There are no documents to show that the sites on which the temples were constructed belong to our family. It is true that the temples are situated on the road margin. I cannot deny the suggestion that the sites on which the temples are constructed belong to Roads & Buildings Department. The planks/plaques on the walls of the temples

are got fixed by me and my brothers. My income tax assessments do not contain the expenditure incurred by me for the temples. It is true that for seeking declaration as a member of the founder family it is necessary to show that the site on which the temple is constructed belongs to the founder family and that the temple should be constructed with the own funds of the founder without utilizing the public money or donations. It is true that PW1 purchased the sites with the income derived from hundis. It is true that at the time of installation of hundies, the hundies used to fetch not less than Rs.10,00,000/- per year. (Wintess again states that they never realized Rs.10,00,000/- per year). Though I managed the temples, I cannot say how much money was realized from the hundies during the financial year 2004-05. Till the Department had taken over the temples we never submitted accounts to the Endowment Department.”
(Emphasis supplied)

13. The Court below and the learned Deputy Commissioner of Endowments having analyzed the entire evidence of PWs 1 and 2 and having referred to the important admissions and also the procedure for making the appointment of members and their term contained in the enactment and having adverted to the meaning of the word “founder” had recorded concurrent findings against the petitioner herein and had rejected his request. In the well considered view of this Court, the admissions made on oath in the depositions of PWs 1 and 2, which are relevant, outweigh the contents in the report of the Inspector and in the para-wise remarks of the Assistant Commissioner, the observations therein being made on enquiries and on information gathered on hearsay basis. At this stage, it is necessary to refer to the relevant provision of law.

Section 17 of the Act 30 of 1987 reads as under:

Section 17 Procedure for making appointments of trustees and their term

(1) In making the appointment of trustees under Section 15, the

Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall have due regard to the religious denomination or any section thereof to which the institution belongs or the endowment is made and the wishes of the founder:

Provided that one of the trustees shall be from the family of the founder, if qualified as prescribed shall be appointed as one of the Trustee.

Explanation I: "Founder" means a person who has founded an institution or Endowment and recognized as such by the authority competent to appoint Trustees under Section 15.

Explanation II: "Member of the family of the founder" means children, grand children and so in agnatic line of succession for the time being in force and declared or recognized as such by the relevant appointing authority.

Explanation III: Those persons who founded temples by collecting donations partly or fully from the public as well as those who founded them on public lands shall not be recognized as founder trustees by any means".

(2) Every trustee appointed under Section 15 shall hold office for a term of two years from the date of taking oath of office and secrecy. Provided that every trustee who completed a term of office of one year at the commencement of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2000 shall cease to hold office forthwith and every trustee whose term of office exists after such commencement shall continue to hold office for a period of two years from the date of taking oath of office and secrecy.

Explanation:- Where the oath of office and secrecy are administered on different dates, the period of three years shall be reckoned from the earlier of those dates for the purpose of this sub-section.

(3) The procedure for calling for application for appointment of trustees, verification of antecedents and other matters shall be such as may be prescribed.

(4) No person shall be a trustee in more than one Board of Trustees.

(5) In every Board of Trustees, there shall be at least one woman member and one member belonging to the Scheduled Castes or the Scheduled Tribes whose population is larger in the concerned village and one member belonging to Backward Classes.

Provided that it shall not be necessary to appoint-

(a) a woman member where any person appointed to represent the Scheduled Castes or the Scheduled Tribes or the Backward Classes is a woman;

(b) a member of the Scheduled Castes or the Scheduled Tribes where any woman member appointed belongs to the Scheduled Castes or the Scheduled Tribes;

(c) a member of the Backward Classes where any woman member appointed belongs to the Backward Classes.

(6) All properties belonging to a charitable or religious institution or endowment, which on the date of commencement of this Act, are in the possession or under the superintendence of the Government, Zilla Praja Parishad, Municipality or other local authority or any company, society, organisation, institution or other person or any committee, superintendent or manager appointed by the Government, shall, on the date on which a Board of Trustees is or is deemed to have been constituted or trustee is or is deemed to have been appointed under this section, stand transferred to such Board of Trustees or trustee thereof, as the case may be, and all assets vesting in the Government, local authority or person aforesaid and all liabilities subsisting against such Government, local authority or person on the said date shall, devolve on the institution or endowment, as the case may be.”

Explanation (3) supra of the above said provision makes it manifest that the persons, who founded temples by collecting donations partly or fully from the public as well as those persons, who founded them on public lands, shall not be recognized as founder trustees by any means. In the case on hand, the evidence brought on record sufficiently shows that the sites on which the two temples are constructed do not belong to the petitioner or his family and that during the management of the temples by the petitioner and his brother, they had received huge hundial collections from the hundies installed in the temples and that they had utilized the same for acquiring the properties and also developing the temples. Further, the learned Deputy Commissioner having found that since the petitioner and his brother mismanaged the huge hundial collections and funds of the temples had held that the petitioner is disqualified from seeking any relief. Having thus examined the facts and the contentions on one hand and the evidence brought on record with applicable legal position on the other and also in juxtaposition, this Court finds that the

order of the Deputy Commissioner as confirmed by the Court below is just and fair and that in the facts and circumstances of the case, the revision is devoid of merit and is liable to be dismissed.

14. Accordingly, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

11th July, 2016
RAR