

IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD

FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA
PRADESH

WP.No. 25989 of 1996

Between:

Smt. Tripuraneni Jyostnasri,
Rep. by its G.P.A. Sri Kotha Satyanarayana, and others. ...
Petitioners

And

The Government of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue (Endts-I) Department,
Secretariat, Secretariat Buildings, Saifabad, and others.
...Respondents

W.P. No.6940 of 2009

K. Satyanarayana, S/o.Buchi Kotaiah,
Hindu, Aged about : 75 years,
R/o.Sangam Jagarlamudi Village,
Tenali Mandal, Guntur District (died per L.R.),
and another. ...
Petitioners

And

Government of Andhra Pradesh,
Rep. by its Principal Secretary, Revenue,
(Endowments.IV) Department, Secretariat Buildings,
Hyderabad, and others. ...
Respondents

Date of Judgment pronounced : 06.04.2016

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO

1. Whether Reporters of Local newspapers

: No

May be allowed to see the judgments?

2. Whether the copies of judgment may be
marked : Yes

to Law Reporters/Journals:

3. Whether Lordship wishes to see the fair copy : Yes

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

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< **GIST:**

> HEAD NOTE:

! Counsel for the petitioners : Sri V.S.R. Anjaneyulu
in WP.25989/1996
& WP.6940/2009
^ Counsel for respondents : Government Pleader for
Endowments; &
Sri M. Adinarayana Raju (counsel for
3rd
respondent in WP.No.6940/2009, and
counsel
for 7th respondent in
WP.No.25989/1996).

? Cases referred

1. 2001 (3) ALD 61 (DB)
2. (2008) 2 SCC 350
3. 2007 (4) ALT 72 (D.B)
4. (2011) 5 SCC 142
5. 2000 (5) ALT 366
6. 1999 (5) ALT 230
7. (2003) 2 ALD 750
8. (1985) 4 SCC 393
9. (1997) 9 SCC 149
10. Dolai Maliko v. Krushna Chandra ... AIR 1967 SC 49
11. (1986) 1 SCC 118
12. (1999) 3 SCC 422
13. Rami Setty Siva Sankar Rao v. Government of Andhra Pradesh ... 2008 (1)
ALT 300
14. (1994) 4 SCC 602
15. M.K. Shah Engineers and Contractors v. State of Madhya Pradesh ...
(1999) 2 SCC 594
16. (2000) 8 S.C.C. 395

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

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W.P.M.P. Nos.24761 of 2013 & 42300 of 2014 in
W.P. No.25989 of 1996 and W.P. No.25989 of 1996
&
W.P. No.6940 of 2009

COMMON ORDER :

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As parties to these Writ Petitions are common and
subject matter of both cases is inter-related, these two Writ

petitions are being disposed of together.

2. Sri Sangameswara Swamy Temple and Sri Venugopala Swamy Temple are located in Sangam Jagarlamudi Village, Tenali Mandal, Guntur District.

3. There is no dispute that the Sangameswara Swamy Temple is a Grade II temple and is covered by Section 6(b)(ii) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 **(for short, 'the Act')** and the other temple Sri Venugopala Swamy Temple is covered by Section 6(c) of the Act and its income is less than Rs.50,000/-.

4. On 29.06.1994, respondent No.7 in W.P.No.25989 of 1996, who is also respondent No.3 in W.P. No.6940 of 2009, claiming to be Hereditary Trustee of the above two temples and six other temples in Guntur District, approached the State Government to appoint a single Executive Officer to all the 8 temples claiming that his ancestors were Zamindars of Rachur and they had donated landed properties for maintenance of temples.

5. The Commissioner of Endowments vide letter No.G2/64717/91 dated 01.09.1994 submitted a report to the Government that out of eight temples, four temples were under the management of Hereditary Trustee, that the remaining four temples were under the control of the Executive Officers, that the income of the temples is

more than Rs.5.00 lakhs and requested the Government to delete the eight temples from the groups which were under the charge of Executive Officers and requested to create a new group for these 8 temples of Rachur in Guntur District.

6. Thereafter, vide G.O.Rt.No.1779 Revenue (Endts.I) Department dated 15.11.1994 the Government passed orders creating a new group of eight temples including the above two temples, with headquarters at Rachur and directed appointment of an Executive Officer Grade-I for this group of eight temples.

7. On coming to know of it, petitioner No.1 in W.P.No.25989 of 1996, represented by her G.P.A. holder, petitioner No.2 therein, made a representation on 18.01.1995 to the Commissioner of Endowments objecting to the above order of respondent no.1.

8. By proceedings No.G2/50039/96 dt.09.10.1996, the Commissioner of Endowments passed an order separating the above two temples Sangameswara Swamy Temple and Sri Venugopala Swamy Temple from the other group of six temples.

9. Respondent No.7 in W.P.No.25989 of 1996 again went before the State Government and challenged the decision dt.09.10.1996 of the Commissioner of Endowments.

10. The Government, vide Memo No.4500/Endts-I/95 dt.23.11.1996 set aside the order of the Commissioner and decided that the above two temples should not be separated from the other six temples, which had formed a group and all the eight temples should be treated as one group of temples.

11. The Memo No.4500/Endts-I/95 dt.23.11.1996 as well as G.O.Rt.No.1779 dt.15.11.1994 are being challenged in W.P.No.25989 of 1996 by the three Writ petitioners therein.

12. At the time when the matter was pending before the Government, the respondent No.7 in W.P. No.25989 of 1996 made an application on 27.06.1996 to declare him as founder trustee of the eight temples. By proceedings R.C.No.A4/9154/96 ADM dt.14.09.1996, the respondent No.4 passed orders confirming respondent No.7 as founder trustee of the eight temples on the ground that he was their hereditary trustee.

CONTENTIONS OF PETITIONERS :

13. The petitioners contend that there was a scheme of administration settled in O.S.No.50 of 1895 in the District Court, Machilipatnam, which was later on recognized by the Hindu Religious Endowments Board,

constituted under the then Madras Act II of 1927; that the scheme was later modified in O.S.No.25 of 1928 to which the said Board was a party; and for several generations the families of petitioners 1 and 2 were functioning in management and got hereditary rights in the office having gifted substantial properties. The petitioners contend that the families of petitioners 1 and 2 have dedicated their lives for the better management of these two temples and that petitioner No.3 is a devotee of these two temples visiting the temples daily for worshipping the deities. They also contend that respondent No.7 has nothing to do with Sri Venugopala Swamy Temple while his ancestors were one of the founders of Sri Sangameswara Swamy Temple along with family of petitioner No.1. The principal contention of the petitioners is that Section 29 of the Act as it stood then allowed the Government to constitute not more than three charitable or religious institutions of endowments, each of whose annual income is Rs.50,000/- but did not exceed Rs.1.00 lakh, into a group and to appoint an Executive Officer to manage it and therefore, the Government had no jurisdiction or power to club eight temples into one group.

14. This provision came to be amended by Act 33 of 2007 with effect from 03.01.2008 and by that amendment, the Commissioner was empowered to constitute such number of charitable and Hindu Religious institutions and Endowments as may be necessary into a single group for

the purpose of appointing an Executive Officer or any other employee to such group.

15. The petitioners contend that this provision has no application since the clubbing of eight temples took place in 1996 and it has no retrospective operation.

COUNTER OF RESPONDENT NO.3

16. The Deputy Commissioner of Endowments filed a counter alleging that the petitioners and their family members were only acting as Paripalana Karthas but not as trustees, that they have no hereditary rights to become trustees and they are not founders of the two temples. According to them, a Paripalana Kartha works under the administrative control of the Hereditary Trustee and the petitioners have no right to function independently or act independently in regard to incurring of expenditure for day-to-day administration. It was denied that the families of petitioners 1 and 2 had gifted substantial properties to the deity. It was contended that under Section 154 of the Act, the Government can make any exemption to any rule and can give relaxation, and so notwithstanding the provision in Section 29 providing for clubbing of not more than three religious and charitable institutions as a group, having regard to Section 154, G.O.Rt.No.1779 dated 15.11.1994 was issued. It was stated that on the ground of administrative convenience it was open to the State Government to club any number of temples into a single

group.

COUNTER OF RESPONDENT NO.7

17. The respondent No.7 filed a counter affidavit alleging that the petitioner No.1 is living in the United States of America, that she is being represented by the petitioner No.2 as Power of Attorney holder and that the law does not recognize any Power of Attorney agent of any official purporting to have a managerial right or any functionary right in any temple or endowment. He contended that the petitioner Nos.1 and 2 do not have hereditary rights in the two temples and they never gifted any substantial property to these temples; that the great-great-grandfather of the petitioner No.1 had been recognized as one of the functionaries/paripalana kartha in O.S.No.25 of 1928 but that office had been abolished by the Act along with all other offices. He contended that his great-great-grandfather was the Zamindar of Rachur and he had founded and established these eight temples as one group of temples having common administration, that they were administered by the Zamindari and endowed with properties to maintain these temples, that administration of these temples were subject matter of two scheme suits O.S.No.50 of 1895 and O.S.No.25 of 1928, that they were managed under a common system of trustees headed by his great-great-grandfather and he succeeded them. He contended that he had been

recognized and declared as heir and representative of founder trustees under Section 17 of the Act. He contended that reliance on Section 29 of the Act by the petitioners cannot be countenanced since the eight temples constitute only one endowment under one Board of trustees headed by him and that this was settled in O.S. No.25 of 1928. He also contended that the orders passed by the Government impugned in the writ petition are correct and they have given effect to the decree in O.S.No.25 of 1928. He claimed to be the Chairman of the Board for all the eight group of temples under one common Executive Officer and stated that the monies were being equitably distributed to the need of every temple in accordance with the scheme framed in the above suit.

W.P.M.P. No.42300 of 2014

18. Pending the Writ petition, the petitioner No.2 died on 07.11.2013. The son of the petitioner No.2 by name K.B. Koteswara Rao filed W.P.M.P. No.42300 of 2014 to permit him to come on record as legal representative of the petitioner No.2.

19. This application was opposed by respondent No.7 on the ground that the deceased petitioner No.2 had four children and the applicant herein is not the only legal representative of the deceased, that none of the children are residing in any of the villages where the temples are

located, that they are not taking any interest or participating in the celebrations in the temples, and therefore, this application should be dismissed.

20. On 02.12.2014, this application was allowed observing that the objections raised by the respondent No.7 can be gone into at the time of adjudicating the main Writ petition.

W.P.M.P. No.24761 of 2013

21. Contending that the respondent No.4 had no jurisdiction to confirm the respondent No.7 as founder trustee of these temples vide proceedings R.C.No.A4/9154/96 ADM dt.14.09.1996 and the Deputy Commissioner of Endowments (respondent No.3) alone is competent in that regard and the said proceedings are without jurisdiction and *non est* in law, the legal representative of the petitioner No.2 on behalf of himself and petitioner Nos.1 and 2 filed WPMP.No.24761 of 2013 to amend the prayer in the Writ petition challenging this order of respondent No.4 also.

22. Counter affidavit was filed by respondent No.7 opposing this application and contending that the legal representative of the deceased petitioner No.2 has no *locus standi* to maintain the main Writ petition or this application; that he is not a really interested person and he is not attending the temples in any manner; and he has no interest in the village and he is permanently

residing at Vijayawada. He alleged that the petitioner No.2 had mismanaged the two temples in Sangameswara Village by handing over the jewels and had avoided submitting accounts and did not hand over charge to the Executive Officer in 1995. He alleged that this application is filed with a delay of 18 years and is hit by laches and acquiescence. According to him, the relief sought for in the amendment application is not connected or related to the proceedings impugned in the Writ petition and therefore, if it is allowed, it would cause misjoinder of causes of action. It is also stated that the petitioner has an effective alternative remedy under the Act and the Assistant Commissioner of Endowments (respondent No.4) is the only competent authority to recognize him as a founder trustee in view of a Circular No.J5/5288/1996 dt.25.03.1996. According to him, this circular was valid till the Act was amended by Act 27 of 2002 w.e.f. 26.08.2002. He however stated that appointment of trustees in respect of institutions falling under Section 6 (b) (i) is to be made by the Deputy Commissioner of Endowments (respondent No.3).

W.P.No.6940 of 2009 :

23. Coming to W.P.No.6940 of 2009, it was filed by the petitioner No.2 in W.P.No.25989 of 1996 challenging G.O.Ms.No.396 Revenue (Endts.IV) Department dt.02.03.2009 under which the Government of Andhra

Pradesh, in exercise of its powers under Section 154 of the Act granted exemption to the eight temples (referred to as Rachur Group of temples) from the operation of provisions of Sections 15, 29, 57, 58 and 66 of the Act for five years.

24. But it is not disputed that after 2014 no such exemption was granted. So this Writ petition is infructuous since the cause therein no longer survives for adjudication. But since the subject matter is inter-related to W.P.No.25989 of 1996, for the sake of completeness, it is also being dealt with along with the said Writ petition.

CONTENTIONS OF COUNSEL FOR PETITIONERS

25. Sri V.S.R. Anjaneyulu, counsel for the petitioners in both Writ petitions contended that the petitioners have *locus standi* to maintain the Writ petitions, that Section 29 of the Act as it stood in 1996 did not permit clubbing of eight temples as one group and to appoint an Executive Officer, and that more than three temples could not have been clubbed by the impugned G.O.Rt.No.1779 dt.15.11.1994 and proceedings Memo No.4500/Endts.I/95 dt.23.11.1996 of the respondent no.1. He contended that as per the Division Bench judgment of this Court in **Prathi Subbaiah Chetty v. Government of Andhra Pradesh**^[1] only Deputy Commissioner of Endowments is competent to appoint founder trustees in respect of institutions falling under Section 6 (b) (ii) of the

Act and the order of the respondent No.4 recognizing or confirming the respondent No.7 as founder trustee is without jurisdiction, null and void. He contended that where an order is without jurisdiction, the Doctrine of *coram non judice* would apply, that such a question can be raised at any time in any Forum, the question of consent or waiver or acquiescence does not arise and the amendment application cannot be rejected on the ground of delay. He cited **Chief Engineer, Hydel Project v. Ravinder Nath**^[2] and **G. Simhagiri v. Govt. of A.P. rep. by its Secretary, Transport, Roads and Buildings Dept.**^[3] He also relied upon **Coal India Ltd. v. Ananta Saha**^[4] and contended that if the foundation of an order is taken away, the consequential order also goes and this principle applies to administrative orders. So if the G.O.Rt.No.1779 dt.15.11.1994 and proceedings Memo No.4500/Endts.I/95 dt.23.11.1996 are set aside, R.C.No.A4/9154/96 ADM dt.14.09.1996, being a consequential order also goes automatically. According to him, the Circular No.15/5288/96 dt.25.03.1996 is not valid in respect of temples which come under Section 6(b) (ii) in view of the decision in **Prathi Subbaiah Chetty** (1 supra) and so the order passed by the respondent No.4 recognizing respondent No.7 as founder trustee also goes.

CONTENTIONS OF GOVERNMENT PLEADER FOR

ENDOWMENTS

26. Government Pleader for Endowments supported the impugned orders and adopted the stand taken in the counter affidavit filed by respondent No.3 and respondent no.7.

CONTENTIONS OF COUNSEL FOR RESPONDENT NO.7

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27. Sri M. Adinarayana Raju, counsel for the respondent No.7 supported the stand taken by the Government Pleader for Endowments and reiterated the stand taken by his client in the Counter affidavits filed in the Writ petition as well as in the miscellaneous applications. He contended that WPMP.No.24761 of 2013 seeking amendment of prayer should be dismissed and W.P.M.P.No.42300 of 2014 impleading the legal representative of the petitioner No.2 ought to have been dismissed. According to him, once the petitioner no.2, the GPA holder of petitioner no.1 died, it is as if the petitioner no.1 became a non-entity and she ceased to have *locus* to contest the cases. He contended that none of the petitioners have *locus standi* to maintain these Writ petitions, that the impugned orders are valid in law, that under Section 154 the Government has the power to exempt application of any provision of the Act to any institution and the impugned orders have to be construed as having been passed in exercise of such power. He

relied upon **K.Susheela v. Commissioner of Endowments, Hyderabad**^[5] and contended that the Circular No.15/5288/96 dt.25.03.1996 issued by Commissioner of Endowments to the Assistant Commissioner of Endowments delegating power to the latter to declare a person as member of founder family is valid; that the amendment to Section 29 of the Act brought about by Act 33 of 2007 empowering the Commissioner to constitute as per his discretion any number of charitable and Hindu Religious Institutions and Endowments into a single group for the purpose of appointing an Executive Officer to such group, is retrospective and therefore, the action of the Government in clubbing the eight temples into one group and appointing an Executive Officer for them is valid. He relied upon **S. Palakondarayudu v. Vice-Chairman-cum-Managing Director, APSRTC, Hyderabad**^[6] and contended that if a provision is omitted and substituted by a new one, the new provision would have retrospective operation.

THE POINTS FOR CONSIDERATION :

28. In view of these rival contentions the following points arise for consideration:

(a) Whether petitioners in the above Writ Petition are 'persons interested' and have locus to maintain the Writ Petition ?

(b) Whether on the death of the petitioner no.2 in WP.No.25989 of 1996, the petitioner no.1 therein ceases to have any locus to continue the Writ Petition ?

(c) Whether W.P.M.P.No.42300 of 2014 impleading the legal representative of petitioner no.2 in W.P.No.25989 of 1996 was rightly allowed ?

(d) Whether the action of respondent no.1 in clubbing all the eight temples into a single group is valid in law ?

(e) Whether WPMP.No.24761 of 2013 seeking amendment of the prayer in the Writ Petition challenging proceedings R.C. No.A4/9154/96 ADM dt.14.09.1996 of the Assistant Commissioner of Endowments should be allowed or dismissed ?

(f) If it is to be allowed, whether the Assistant Commissioner of Endowments has jurisdiction to recognize the respondent no.7 as member of the founder family of the subject temples vide proceedings R.C. No.A4/9154/96 ADM dt.14.09.1996 ?

Point (a) :

29. Section 2 (18) of the Act defines the term '*person having interest*'. It states :

“(18) ‘Person having interest’ includes –

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs ;

- (b) *in the case of a charitable institution or endowment or a religious institution other than a math or a religious endowment a person who is entitled to attend at or is in the habit of attending the performance of service, charity or worship connected with the institution or endowment or who is entitled to partake or is in the habit of partaking in the benefit of any charity or the distribution of gifts thereat ;*
- (c) *in the case of a specific endowment a person who is entitled to attend at or is in the habit of attending the performance of the service or charity or who is entitled to partake or is in the habit of partaking in the benefit of the charity.”*

30. To the extent relevant the said provision suggests that a ‘*person having interest*’ includes, in the case of a religious institution such as the subject temples, a person who is entitled to attend at or is in the habit of attending the performance of service or worship connected with the institution.

31. This definition has been interpreted by this Court in **C.Subhash Mudiraj v. Regional Joint Commissioner**^[7] in the following manner:

“The Act gives a broader meaning of the term "person having interest". Further, the Legislature used the word "includes" while defining person interested. It is well settled that when the definition is given with the usage of the word "includes", the Court should give broadest meaning to the term. The ‘person having interest’ in its sweep takes into all persons who are entitled to attend religious institutions or who are in the habit of attending or performing service or worship. Secondly, a person need not always attend the worship, and if by reason of his belonging to the religious denomination or sect or community is entitled

to attend to service, or worship at the temple, he is treated as person having interest.”(emphasis supplied)

32. Similar expression used in the Bombay Public Trusts Act, 1950 as amended in 1953 was interpreted by the Supreme Court in **Shree Gollaleshwar Dev v. Gangawwa Kom Shantayya Math**^[8] in the following terms:

“By the Bombay Public Trusts (Amendment) Act, 1953, the word ‘includes’ was substituted for the word ‘means’. The definition of the words “person having interest” in Section 2(10) was made inclusive to set at rest all doubts and difficulties as to the meaning of these words, which were intended and meant to be used in a generic sense so as to include not only the trustees but also the beneficiaries and other persons interested in the trust. It would therefore appear that the definition of the expression “person having interest” in Section 2(10) is wide enough to include not merely the beneficiaries of a temple, math, wakf etc. but also the trustees. It must therefore follow that Plaintiffs 2 and 3 who undoubtedly are members of the founder’s family i.e. beneficiaries, are entitled to attend at performance of worship or service in the temple and also entitled to partake in the distribution of offerings to the deity and thus answer the description “person having interest” as defined in Section 2(10) of the Act.” (emphasis supplied)

33. In the present case, the petitioners have asserted that ancestors of petitioner nos.1 and 2 had functioned in management and had dedicated their lives for the better management of Sri Sangameswara Swamy Temple and Sri Venugopala Swamy Temple. It is also asserted that the petitioner no.3 is a devotee of these two

temples visiting the temples daily for worshipping the God.

34. In the counter filed by respondent no.3 it is stated in para 5 that the petitioners and their ancestors were functioning as paripalanakarthas as per judgment in O.S.No.25 of 1928 and were working under the administrative control of hereditary trustees. It is also stated that the hereditary trustees' headquarters were at Rachur and the petitioners were appointed by the hereditary trustees for their administrative convenience before taking over of the temples by the Endowment Department.

35. In the counter filed by respondent no.7 in para no.14 it is stated that the great-great-grandfather of petitioner no.1 was recognized as one of the functionaries / paripalanakartha in 1928 in O.S.No.25 of 1928. It is not disputed that petitioner no.1 is the brother's daughter of petitioner no.2 and that the ancestors of both petitioners were administrators of Sri Venugopala Swamy Temple.

36. In view of the wide definition of the term '*person having interest*' in Section 2 (18) of the Act, it cannot be said that the petitioner nos.1 and 2, whose ancestors were admittedly performing service of administrators to both temples, are persons having no interest in the above two temples and that they do not have *locus* to maintain the Writ Petition. Merely because petitioner no.1 is living

abroad and not in India, it cannot be said that her interest in the two temples ceases. In any event, none of the respondents have questioned the *locus* of the petitioner no.3 as a devotee of the two temples. Therefore, the contention of respondent no.7 that the petitioners have no *locus* to maintain the Writ Petition cannot be countenanced. This point is answered in favour of petitioners and against the respondent no.7.

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Point (b) :

37. It is not disputed that petitioner no.2 had filed the Writ Petition as Power of Attorney Holder of petitioner no.1 who is resident in the United States of America. He died on 07.11.2013. Section 201 of the Contract Act, 1872 states that an agency is terminated if either the principal or the agent dies. But it is settled law that the death of the agent does not obliterate the acts done by the agent on behalf of the principal during the tenure of his subsisting agency. It also does not in any way preclude the principal from continuing the litigation in his or her own capacity. No principle or precedent is cited by counsel for respondent no.7 in support of his contention that on the death of an agent appointed by a principal, such principal is precluded from continuing the litigation.

38. In **Neki v. Satnarain and others**^[9], a proceeding for eviction of a tenant was initiated by the respondent claiming to be General Power of Attorney of

the landlord. The primary authority, the Appellate Authority, the Revisional Authority as well as the Punjab High Court held against the tenant. He then appealed to the Supreme Court. In the meantime, the GPA of the landlord died and the legal representatives were not substituted. The Supreme Court held that since the proceedings were initiated by the GPA on the basis of the power given by the principal, the matter is always to be adjudicated only by or on behalf of the principal and so the appeal did not abate. It held that the death of the agent did not cause any impediment in the way for disposal without his legal representatives being brought on record and given notice.

39. In view of this decision, the contention of the counsel for respondent no.7 that on the death of petitioner no.2, petitioner no.1 cannot continue the case cannot be accepted and it has to be held that petitioner no.2 always acted on behalf of petitioner no.1 and even if his (petitioner no.2's) legal representatives are not brought on record, there is no abatement and petitioner no.1 can continue to pursue the case in her own capacity. This point is therefore held against respondent no.7.

Point (c) :

40. As stated above, petitioner no.2 died on 07.11.2013. One of his sons by name K.B. Koteswara

Rao filed WPMP.No.42300 of 2014 to implead him as the legal representative of the deceased-petitioner no.2. In the affidavit filed in support of the said application, he stated that he is the son of petitioner no.2 and since petitioner no.2's estate was left in his hands on his death, he is entitled to come on record.

41. Counter-affidavit was filed by respondent no.7 to this application stating that there were another son and two daughters of the deceased-petitioner no.2 and Sri K.B. Koteswara Rao is not the only legal representative of the deceased. It is also stated that none of the children of the deceased were residing in any of the villages where the temples are situated and that they are not taking any interest or participating in the celebrations in the temples.

42. By order dt.02.12.2014, this application was allowed stating that the objections raised by respondent no.7 can be gone into at the time of adjudication in the main Writ Petition and that Sri K.B. Koteswara Rao can be permitted to come on record as petitioner no.4 in the Writ Petition to prosecute it.

43. Although counsel for respondent no.7 reiterated the objections raised in the counter-affidavit, I am of the opinion that the said objections are without any merit.

44. It is not necessary that all the legal heirs of a deceased party be brought on record in a *lis* and it is

sufficient if the estate of the deceased is represented through any one of his legal representatives^[10]. Even otherwise, for the same reasons that petitioner no.2 had *locus* to file the Writ Petition, his son Sri K.B. Koteswara Rao would also be entitled to come on record and prosecute the Writ Petition.

45. The law regarding survival of causes of action on the death of a person is set out in Section 306 of the Indian Succession Act, 1925. This provision has been interpreted by the Supreme Court in **Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty**

Nair^[11]. It held :

“6. So far as this country is concerned, which causes of action survive and which abate is laid down in Section 306 of the Indian Succession Act, 1925, which provides as follows:

“306. Demands and rights of action of, or against deceased survive to and against executor or administrator.—All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

Section 306 speaks of an action and not of an appeal. Reading Section 306 along with Rules 1 and 11 of Order 22 of the Code of Civil Procedure, 1908, it is, however, clear that a cause of action for defamation does not survive the death of the appellant.

7. Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff respondent which his legal representative is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent plaintiff.

8. Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.”(emphasis supplied)

46. Since the cause of action in favour of petitioner no.2 is not falling within the excepted categories (defamation, assault and personal injury), there is no doubt that it survives petitioner no.4 and he is entitled to come on record and contest the matter.

47. This point is accordingly answered against respondent no.7.

Point (d) :

48. This is the core issue in the Writ Petition.

49. On a representation dt.29.06.1994 made by respondent no.7, G.O.Rt.No.1779 Revenue (Endts.I) Department dt.15.11.1994 was issued by the 1st respondent, creating a new group of eight temples with headquarters at Rachur and appointed an Executive Officer for the same. When the petitioners came to know of it, they objected by filing a representation dt.18.01.1995 to the Commissioner of Endowments. He issued proceedings G2/50039/96 dt.09.10.1996 separating Sri Sangameswara Swamy Temple and Sri Venugopala Swamy Temple located in Sangam Jagarlamudi from the Rachur group of temples. This decision was reversed by the 1st respondent vide Memo No.4500/Endts.I/95 Revenue (Endts.I) Department dt.23.11.1996 at the instance of respondent no.7 treating his representation as a Revision.

50. There is no dispute that at that relevant point of time, Section 29 of the Act empowered the Government to constitute *not more than three* charitable or religious institutions or endowments each of whose annual income is Rs.50,000/- but did not exceed Rs.1,00,000/- into such groups as may be prescribed and to appoint an Executive Officer for each such group.

51. This provision came to be amended by Act 33 of 2007 w.e.f. 03.01.2008. The amended provision enabled the Commissioner of Endowments to constitute such number of Charitable and Hindu Religious Institutions and Endowments as may be necessary into a single group for the purpose of appointing an Executive Officer or any other employee to such group (3rd proviso to Section 29 substituted by Act 33 of 2007).

52. Therefore, at the time when the respondent no.1 issued G.O.Rt.No.1779 Revenue (Endts.I) Department dt.15.11.1994 and Memo No.4500/Endts.I/95 Revenue (Endts.I) Department dt.23.11.1996, clubbing eight temples including the above two temples into a single group and appointing an Executive Officer for such group, there was no power vested with the respondent no.1 to do so.

53. This action of respondent no.1 was however sought to be supported by the Government Pleader for Endowments and counsel for respondent no.7 by invoking Section 154 of the Act. It states :

“154 Exemptions : - The Government may by notification, exempt from the operation of any of the provisions of this Act or any of the rules made thereunder, --

(a) any charitable institution or endowment the administration of which was or is for the time being vested -

(i) in the Government either directly or through a Committee or Treasurer of Endowments, appointed for the purpose;

- (ii) *in the official Trustee or in the Administrator General ;*
- (b) *any charitable institution or endowment founded for educational purpose or for providing medical relief; or*
- (c) *any institution or endowment which is being well-managed by the founder; or*
- (d) *any institution or endowment; and may likewise vary or cancel such exemption.”*

54. This argument of the respondents cannot be accepted since it is not their case that any notification was issued by respondent no.1 exempting these eight temples from the operation of any of the provisions of the Act including applicability of Section 29 as it stood at that time. In the absence of any such notification, it cannot be said that the respondent no.1 intended to grant any exemption under Section 154. Such exemption therefore cannot be implied or inferred from the above two proceedings issued by respondent no.1.

55. When the statute prescribes a thing to be done in a particular way, it has to be done in that manner and in no other manner. This principle is well settled.

56. In **Babu Verghese v. Bar Council of Kerala** ^[12], the Supreme Court declared :

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

“[W]here a power is given to do a certain thing in a certain way, the thing must be done in that

way or not at all.”

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

57. It is not in dispute that such exemption orders had been granted in respect of Sri Sangameswara Swamy Temple vide G.O.Ms.No.83 dt.27.01.2006 exempting it from the operation of provisions of Section 15 and 29 of the Act for three years at the instance of respondent no.7 and the challenge to the same by a third party in W.P.No.15112 of 2007 was rejected on 29.11.2007^[13]. In fact in W.P.6940 of 2009, petitioners have questioned one such order G.O.Ms.No.396 Revenue (Endts.IV) Department dt.02.03.2009 under which the Government of Andhra Pradesh, in exercise of its powers under Section 154 of the Act granted exemption to the eight temples (referred to as Rachur Group of temples) from the operation of provisions of Sections 15, 29, 57, 58 and 66 of the Act for five years, was questioned.

58. Another contention raised by respondent no.7 was that the amendment to Section 29 of the Act brought

about by Act 33 of 2007 has retrospective effect. The counsel for respondent no.7 relied upon the decision in **S. Palakondarayudu** (6 supra). In the said decision, the Court dealt with the question whether repeal of subsection (3) of Section 166 of the Motor Vehicle Act, 1988 which prescribed the period of limitation for filing claim petition is retrospective in operation and governs pending proceedings including appeal which is a continuation of the proceedings. The Court held that the said provision is only a procedural one dealing with procedure for filing an application for compensation arising out of an accident, that its deletion therefore would have retrospective effect and there are no fetters on the power of the Court to grant relief even if a claim is made beyond six months from the occurrence of an accident.

59. The power of the Government which had been restricted prior to 3.1.2008 (before Sec.29 was amended by Act 33 of 2007) to constitute groups of *not more than three* charitable or religious institutions or endowments into one group was widened by the amendment and the Government was empowered to constitute groups of any number of charitable or religious institutions or endowments by 3rd proviso to Section 29 substituted by the said amendment. By no stretch of imagination the substitution of Section 29 by Act 33 of 2007 can be said to be a procedural one. It is clearly an amendment to substantive law and would have prospective operation.

60. In **Hitendra Vishnu Thakur v. State of Maharashtra**^[14], the Supreme Court summed up the principles relating to amendments to statutes, whether they are prospective or retrospective, in the following terms :

“26. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”
(emphasis supplied)

61. Therefore, this contention of respondents in support of the orders passed by respondent no.1 is also

without any merit.

62. For the aforesaid reasons, both G.O.Rt.No.1779 Revenue (Endts.I) Department dt.15.11.1994 and Memo No.4500/Endts.I/95 Revenue (Endts.I) Department dt.23.11.1996 issued by respondent no.1 clubbing eight temples including the above two temples into a single group and appointing an Executive Officer for such group is contrary to Section 29 of the Act as it stood then and is without jurisdiction. Therefore, these two proceedings of respondent no.1 are set aside.

Points (e) and (f) :

63. It is not in dispute that vide proceedings Rc.No.A4/9154/96 Adm. dt.14.09.1996, the Assistant Commissioner of Endowments (respondent no.4) confirmed respondent no.7 as hereditary trustee to the Rachur group of eight temples as member from founder's family and recognized him as founder trustee. This fact was not disclosed in the counter-affidavit filed by respondent no.3. Though respondent no.7 did refer to the fact that he was recognized and declared as the heir and representation of founder trustee under Section 17 of the Act, there was no reference/disclosure by him of the above proceeding. It is clear that the above proceeding was deliberately suppressed by respondents.

64. On coming to know about it during the pendency of the Writ Petition, WPMP.No.24761 of 2013 was filed by

the petitioners seeking amendment of the prayer in the Writ Petition on 02.07.2013 also challenging this proceeding.

65. Although the respondents sought to contend that this application should be rejected on the ground of laches, I am not inclined to accept the said plea because to do so would be to allow the respondents to take advantage of their own wrong [\[15\]](#) in suppressing it from the petitioners.

66. That apart, the said relief is connected intrinsically with the relief originally claimed in the Writ Petition to set aside G.O.Rt.No.1779 Revenue (Endts.I) Department dt.15.11.1994 and Memo No.4500/Endts.I/95 Revenue (Endts.I) Department dt.23.11.1996 issued by respondent no.1 clubbing eight temples including the above two temples into a single group and appointing an Executive Officer for such group.

67. Therefore, I am of the opinion that WPMP.N.o.24761 of 2013 deserves to be allowed and is accordingly allowed.

68. I have already held under Point (d) that the petitioners are entitled to relief of setting aside of G.O.Rt.No.1779 Revenue (Endts.I) Department dt.15.11.1994 and Memo No.4500/Endts.I/95 Revenue (Endts.I) Department dt.23.11.1996 issued by respondent

no.1. Once that relief is granted to the petitioners, the proceedings dt.14.09.1996 of the respondent no.4 recognizing the respondent No.7 as member of the founder's family or as founder trustee automatically go, since under that order respondent no.4 sought to appoint respondent no.7 as member of founder's family and recognized him as founder trustee for *all eight* temples.

69. This is on the principle that if initial action is not in consonance with law, the subsequent proceedings would not sanctify it. This principle is referred to in Latin as *sublato fundamento cadit opus* i.e., in case a foundation is removed, the super structure falls.

70. In **Coal India Limited** (4 supra), this principle was reiterated referring to the decision in **Badrinath v. Government of Tamilnadu** ^[16] and it was declared that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi judicial proceeding is equally application to administrative orders.

71. Also, it is not disputed by the respondents that Sri Sangameswara Swamy Temple would fall within Section 6 (b) (ii) of the Act.

72. A Division Bench of this Court in **Prathi Subbaiah Chetty** (1 supra) has categorically held

that respondent no.4 has no jurisdiction to appoint founder trustee in respect of institutions falling under Section 6 (b) (i) of the Act, and that it is only the Dy. Commissioner of Endowments who can do so. In **C.Subhash Mudiraj** (7 supra), a learned Single Judge of this Court held that if a temple is registered/notified as one falling under Section 6 (b) (ii) of the Act, as per Section 15 (2), only the Deputy Commissioner of Endowments who have jurisdiction to constitute Board of Trustees consisting of five persons.

73. Although the learned Government Pleader for Endowments and learned counsel for respondent No.7 placed a reliance on a Circular No.J5/5288/96 dt.25.03.1996 of the Commissioner, Endowments, and contended that under the said Circular power was delegated to the Assistant Commissioner of Endowments to conduct an enquiry in respect of the claims of the founder Trustee or Member of the Founders family, this argument cannot be accepted. The said Circular merely refers to the decision of the Supreme Court in W.P.No.713/87 delivered on 17.01.1996 upholding the validity of Sections 15 to 17, 29 (5) and 144 of the Act and states that by virtue of the said Judgment, hereditary trusteeship stood abolished as per Section 16 of the Act and to inform hereditary trustees of this fact. It also states that all the existing hereditary trustees need not automatically be considered as founders or members of

the founders family until and unless their claim is established as per the recitals of the entries. This Circular cannot be understood to confer any power on the Assistant Commissioner of Endowments to pass orders recognizing persons as members of founders family.

74. This Circular was considered by the Division Bench in **Prathi Subbaiah Chetty** (1 supra) and the Bench observed that Sections 15 and 17 of the Act as it stood then make it clear that it is only the Deputy Commissioner who is empowered to make appointment in respect of Section 6 (b) (i) institutions. The Bench held that only after such appointment is made of a founder Trustee, the Assistant Commissioner will make an entry with regard to the name of the founder as contemplated under Section 43 (4) (b) of the Act; that the Circular has to be interpreted in consonance with the Rules framed vide G.O.Ms.No.258 Revenue (Endowments-I) dt.31.03.1998; that the Assistant Commissioner will only notify the vacancy of Trustees and then the Deputy Commissioner or the Commissioner would appoint the Trustee including the founder Trustee by making enquiry if there are rival claims; and only then will the Assistant Commissioner make entries in the Register to be maintained under Section 43 (4) (b) of the Act. It declared the appointment of a founder trustee by Assistant Commissioner as invalid and set it aside. In **C.Subhash Mudiraj** (7 supra), also the same Circular

was considered and it was held that the Assistant Commissioner was not the competent person to appoint or recognize founder Trustees in respect of temples falling under Sec.6 (b) (ii).

75. Although learned counsel for respondent No.7 sought to rely upon decision of a learned Single Judge in **K.Susheela** (5 supra), a reading of the said judgment does not support the contention of respondents that the Assistant Commissioner of Endowments was empowered under this Circular to appoint founder Trustees in respect of religious institutions falling under Section 6 (b) (ii) of the Act. In fact the learned Single Judge in that case held that the Circular is only meant for guidance of the authorities under the Act and there is no delegation by the Commissioner of any of his powers to the Assistant Commissioner of Endowments. In any event the Division Bench judgment in **Prathi Subbaiah Chetty** (1 supra) having held that the said Circular did not empower the Assistant Commissioner of Endowments to appoint founder Trustees, it has to be held that respondent No.4 had no jurisdiction to appoint or recognize respondent No.7 as member from founder's family or as founder Trustee under the proceedings Rc.No.A4/9154/96 dt.14.09.1996.

76. In **Chief Engineer, Hydel Project and others** (2 supra), the Supreme Court stated that if an original

decree itself is without jurisdiction and is hit by the doctrine *coram non judice*, it cannot be upheld on the ground that such objection was not taken at the initial, first appellate or second appellate stage.

77. This principle is equally applicable to the proceedings Rc.No.A4/9154/96 dt.14.09.1996 of the respondent No.4 recognizing respondent No.7 as founder Trustee and since it is totally without jurisdiction, the fact that there is some delay in challenging it by way of an amendment petition (WPMP.No.24761 of 2013), is no ground to allow it to remain.

re: W.P.No.6940 of 2009

78. Coming to W.P.No.6940 of 2009, I am of the opinion that the cause in the said Writ Petition does not survive for adjudication since it is admitted by both sides that after 2009, no exemption has been granted at the instance of respondent No.7 to the subject temples from the application of the provisions of the Act. Therefore, it is dismissed as infructuous.

THE RESULT :

79. In the result, WPMP.No.24761 of 2013 in WP.No.25989 of 1996 is allowed; WPMP.No.42300 of 2014 in WP.No.25989 of 1996 is held to have been rightly allowed on 02-12-2014; WP.No.25989 of 1996 is allowed; G.O.Rt.No.1779 Revenue (ENDTS.I) Department dt.15.11.1994, Memo No.4500/Endts.I/95 dt.23.11.1996

of respondent No.1 and Rc.No.A4/9154/96 Adm. dt.14.09.1996 of respondent No.4 are set aside as contrary to the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, without jurisdiction and null and void; and the actions of respondent No.1 in clubbing Sri Sangameswara Temple and Sri Venugopala Swamy Temple at Sangam Jagarlamudi with other six temples and forming them into one group and appointing an Executive Officer for them and also recognizing respondent No.7 as founder Trustee for them are declared null and void. The respondent No.7 shall pay costs of Rs.5,000/- (Rupees Five Thousand only) to petitioners. W.P.No.6940 of 2009 is dismissed without costs.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06.04.2016

Note :

LR Copy to be marked : YES

B/o.

Mva/Ndr/*

[\[1\]](#) 2001 (3) ALD 61 (DB)

[\[2\]](#) (2008) 2 SCC 350

[\[3\]](#) 2007 (4) ALT 72 (D.B)

[\[4\]](#) (2011) 5 SCC 142

[\[5\]](#) 2000 (5) ALT 366

[\[6\]](#) 1999 (5) ALT 230

[\[7\]](#) (2003)2 ALD 750

[\[8\]](#) (1985) 4 SCC 393

[\[9\]](#) (1997) 9 SCC 149

[\[10\]](#) **Dolai Maliko v. Krushna Chandra ...** AIR 1967 SC 49

[\[11\]](#) (1986) 1 SCC 118

[\[12\]](#) (1999) 3 SCC 422

[\[13\]](#) **Rami Setty Siva Sankar Rao v. Government of Andhra Pradesh ...** 2008 (1)
ALT 300

[\[14\]](#) (1994) 4 SCC 602

[\[15\]](#) **M.K. Shah Engineers and Contractors v. State of Madhya Pradesh ...** (1999)
2 SCC 594

[\[16\]](#) (2000) 8 S.C.C. 395