

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.23364 of 2009

ORDER:

Heard.

2. The present Writ Petition came to be filed, to declare the orders passed by respondent No.3 in proceedings No.B/ 2871/ 2006, dated 24.02.2007, respondent No.2 in R.P.No.14 of 2009, dated 21.05.2009 and respondent No.1 in Memo No.23761/ Endts.II/ A1/ 09, dated 22.07.2009, as illegal, arbitrary and violative of Section 87(1)(h) of the Endowments Act and consequently to set aside the same.

3. The averments in the affidavit filed in support of the writ petition would show that Sri Shivji Mandir situated at Zamisthanpur, Hyderabad, was constructed by Mahant Ramachandra Das with his own funds and from the donations. He was managing the temple apart from performing poojas till his death. It is submitted that said Ramachandra Das registered the said temple under Section 38 of the Endowments (Repealed) Act, 1966 with respondent No.3 vide proceedings No.TAC No.51/ 70, dated 04.02.1970. It is stated that Ramachandra Das has formed an association called as "Shivastan Development Society" and the same was registered under Public Societies Registration Act, 1350F vide Registration No.3979 of 1991, for the purpose of management of the said temple. It is stated that the said Ramachandra Das was the Chairman and the petitioner was the Joint Secretary of the said Society. It is further stated that under the guidance of said Ramachandra Das, the said Society managed and administered the temple till it was taken over by the Endowments Department in the year 2000. In the year 2009, when the petitioner went to the temple for performance of poojas during Svarathri festival, respondent No.4/ Sashikala objected him stating that

respondent No.3-Assistant Commissioner recognized her as founder family member of the temple. Thereafter, the petitioner went to the office of respondent no.3, wherein, on verification, he found respondent No.3 recognized respondent Nos.4 to 7 as founder family members of Shivji temple, Zamisthanpur vide proceedings No.B/ 2871/ 2006, dated 24.02.2007. Challenging the same, the petitioner preferred a revision under Section 92 of the Endowments Act before respondent No.2-Regional Joint Commissioner, vide R.P.No.14 of 2009, which was rejected, directing the petitioner to file a petition under Section 87 (1)(h) of the Act before the Deputy Commissioner. Aggrieved by the same, the petitioner filed a revision petition in Memo No.23761/ Endts.II/ A1/ 09 before respondent No.1, who directed the petitioner to file an appeal under Section 87 of the Endowments Act, before the Deputy Commissioner, Endowments Department, Hyderabad. The action of the respondents in passing the impugned orders, without considering it on merits, is under challenge in the present writ petition.

4. By an order dated 30.10.2009, this Court while issuing rule nisi, granted interim suspension of the order for a period of three weeks. Subsequently, on 16.12.2009, the said interim order was extended by eight more weeks. Thereafter, there was no further extension of interim order.

5. The main ground urged by the learned counsel for the petitioner is that the Assistant Commissioner has no authority to pass an order recognizing respondent Nos.4 to 7 as founder family members of the temple and that it is only the Deputy Commissioner, who is the competent authority. In view of the above circumstances, it is urged that the order passed by the Assistant Commissioner, needs to be set aside.

6. A counter came to be filed disputing the averments made in the affidavit filed in support of the writ petition. One of the main grounds urged by the respondents is that the petitioner has come to the Court with

unclean hands. He submits that the averment in the writ affidavit that the petitioner used to manage the affairs of the temple under the guidance of Sri Ramachandra Das till 2000 is false, since he died in the year 1991 itself. He placed reliance on death certificate of Sri Ramachandra Das which shows that he died in the year 1991. Apart from that, he submits that since the temple falls under category 6(c)(ii) of the Endowments Act, the Assistant Commissioner is the competent authority to pass the impugned order, recognizing the founder family members.

7. It is to be noted that Sri Ramachandra Das died in the year 1991. That being the position, the averment in the affidavit that the petitioner used to manage the affairs of the temple under the guidance of Ramchandra Das till it was taken over by Endowments Department in the year 2000 is probably false. It is the case of the petitioner that the temple falls under Section 6(c)(ii) of A.P.Charitable and Hindu Religious Endowments Act (for short, 'the Act') and as such the Assistant Commissioner alone is competent to pass the order. In order to appreciate the same, it would be appropriate to refer to Section 17 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 2000 which reads as under:

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 such 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, qualified.

(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 (Amendments)

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 (two) 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 atleast 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 the 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 institutions 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, organization, 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.

8. Section 15 deals with appointment of Board of Trustees. Before referring to Section 15, it would be appropriate to have a look at Section 6(c)(i) and (ii), which reads as under:

6. Preparation and publication of list of charitable and religious institutions and endowments on the basis of income: The Commissioner shall prepare separately and publish in the prescribed manner, a list of-

- (a)
- (b)
- (c) (i) the charitable institutions and endowments; or
(ii) the religious institutions and endowments other than
maths not falling under clause (a) or clause (b).

9. A reading of Section 15 of the Act, which deals with appointment of Board of Trustees would show that in case any charitable or religious institution or endowment included in the list published under clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of five persons appointed by him, provided that the Assistant Commissioner may either in the interest of the institution or endowment or for any other sufficient cause or for any reasons to be recorded in writing, appoint a single trustee instead of a Board of Trustees.

10. From a reading of Sections 17, 6(c) and 15 and in view of the admitted case of the petitioner that the members of the petitioner falls under clause 6(c) of the Act, the argument by the learned counsel for the petitioner that Assistant Commissioner is not the competent authority cannot be accepted. Infact, this Court in *C.Subhash Mudiraj Vs. Regional Joint Commissioner, Multi Zone-III, Endowments Department, Hyderabad and another*¹, while dealing with identical circumstances, observed, in para No.15 as under:

“The Supreme Court in *Pannalal Bansilal Pitti v. State of A.P.*, while upholding Section 16 of the Act (by which hereditary trusteeship was abolished) observed that the interest of the

¹ 2003 (2) ALD 750

temple or charitable institution could be well safeguarded by appointing member from founder's family as a trustee and making him the Chairman of the Board of Trustees, A question arose before this Court in W.P.No.20212 of 1999, as to who is competent authority to recognise a person as belonging to founder's family. By order dated 34.2.2001 it was held that the authority competent to appoint Board of Trustees under Section 15 of the Act is competent to recognise a person as belonging to founder's family. The subject temple is registered/ notified as temple falling under Section 6(b)(ii) of the Act. Therefore, as per Section 15(2) of the Act it is only the Deputy Commissioner having jurisdiction who is competent to constitute Board of Trustees consisting five persons appointed by him, The Circular issued by the Commissioner of Endowments in proceedings No.J5/ 5288/ 96 (Acts and Rules) dated 25.3.1996 contains instructions pursuant to judgment in Pannalal Bansilal Pitti v. State of A.P., (supra). According to this, appointing authority to appoint trustees is only competent to recognise member of founder's family after causing thorough enquiry. In this case, enquiry was conducted by Assistant Commissioner, which cannot be called a thorough enquiry."

11. Having regard to the above circumstances, I see no reason to entertain the writ petition and the same is accordingly dismissed. However, it is left open to the petitioner to avail remedy available under law by approaching the tribunal. No costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C. PRAVEEN KUMAR

28.03.2017
vnb