

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.11056 of 2009

ORDER:

In the present writ petition, challenge is to the order passed by the Assistant Commissioner, Endowments Department, Kadapa, third respondent herein, vide Proceedings Rc.No.A1/3357/2000, dated 24.08.2004 as confirmed by the Regional Joint Commissioner, Endowments, Multi Zone-II, Tirupati, Chittoor District/second respondent herein vide order dated 09.08.2005 in R.P.No.18 of 2004 as confirmed further by the State Government/respondent No.1 vide Memo. No.54233/Endts.II (1)/2000, dated 05.12.2006 as confirmed further by the first respondent/State Government vide Memo No.13958/Endts.II(1)/07.

2. Heard Sri M.Vidyasagar, learned counsel for the petitioner and the learned Government Pleader for Endowments for the respondents.

3. According to the petitioner, he hails from a family of founders of the subject institution i.e., Sri Ramagiri Baba Ashramam situated at Kadapa village of Kadapa District and the subject institution is classified as Section 6 (c) institution under the Endowments Act. The Assistant Commissioner of Endowments, Kadapa vide order in D.Dis.No.3585/99, dated 09.02.2000 recognised the petitioner herein and appointed him as founder trustee of the subject institution. Thereafter, by virtue of an order issued vide proceedings Rc.No.A1/3357/2000 dated 24.08.2004, the Assistant Commissioner of Endowments ordered removal of petitioner from the founder trusteeship of the subject institution purportedly in exercise of the powers conferred under Section 28 (1) of the Endowments Act 30 of 1987. Assailing the validity of the said order, petitioner herein filed revision petition No.18 of 2004 before the Regional Joint Commissioner, Tirupathi/second respondent herein. The

second respondent herein vide order dated 09.08.2005 dismissed the said revision and subsequently on a further revision filed by the petitioner herein, the State Government vide Memo dated 05.12.2006 confirmed the said orders passed by the respondents 2 and 3. The review application filed by the petitioner under Section 94 of the Endowments Act also ended in dismissal vide Memo dated 03.04.2009 issued by the State Government.

4. This writ petition challenges the validity and the legal sustainability of the said orders passed by the primary, revisional and reviewing authorities. This Court admitted the writ petition on 08.06.2009.

5. Counter affidavits deposed by the respondents 3 and 4 have been filed, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

6. It is contended by the learned counsel for the petitioner that the questioned orders are highly illegal, contrary to law and violative of Article 14 of the Constitution and opposed to the very spirit and object of the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. It is further submitted that the impugned order of removal passed by the third respondent/Assistant Commissioner is totally one without jurisdiction. It is further contended that only after holding elaborate enquiry earlier the proceedings were issued on 09.03.2000, recognizing the petitioner herein as Member of the founder family and the impugned action tantamounts to reviewing the said order and that the Assistant Commissioner has no such power under the Act. It is further contended that the criminal prosecution launched against the petitioner herein by the fourth respondent ended in acquittal. It is further submitted that the authorities ought not to have resorted to the impugned action during the pendency of O.A.No.92 of 2000.

7. On the contrary, it is submitted by the learned Government Pleader, appearing for the respondents 1 to 3 that there is no illegality nor there exists any procedural infirmity in the impugned action, as such, the impugned orders are not amenable for judicial review under Article 226 of the Constitution of India. It is further contended by the learned Government Pleader that only after duly taking into consideration the entire material available on record, the respondent authorities passed the orders under challenge, as such, no interference of this Court is warranted under Article 226 of the Constitution of India.

8. In the above background, now the issue that boils down for consideration of this Court is_ “Whether the questioned orders are sustainable and tenable and whether the same warrant any interference of this Court under Article 226 of the Constitution of India?

9. The first and foremost contention advanced by the learned counsel for the petitioner is that the impugned order of termination of the petitioner from the trusteeship is totally one without jurisdiction. On the other hand, it is the submission of the learned Government Pleader that the impugned orders do not suffer from any illegality nor there is any procedural infirmity in the impugned action. It is not in dispute that in accordance with the provisions of the Endowments Act and as per the instructions issued by the Commissioner of Endowments, the Assistant Commissioner of Endowments took up the process of consideration of the case of the petitioner for recognition as member of the founder family for appointment as trustee and after holding enquiry as per the procedure in vogue recognized the petitioner as member of the founder family and appointed him as the trustee vide proceedings D.Dis.No.3585/99-B1 dated 09.02.2000. Thereafter, obviously on the complaint made by the fourth respondent, the Assistant Commissioner

issued a charge-sheet stating that the petitioner mis-represented the facts and made the respondent authorities to pass orders recognizing him as member of founder family apart from saying that the petitioner has mis-managed the affairs of the endowments. By way of the impugned order, as correctly pointed out by the learned counsel for the petitioner, the Assistant Commissioner of Endowments obviously reviewed the order passed in the year 2000. It is a settled and well established principle of law that an act which cannot be done directly cannot be permitted to be done indirectly also. As per the provisions of Section 94 of the Endowments Act, only the Government has the power of review, but not other authorities. Therefore, in the considered opinion of this Court, the impugned order passed by the Assistant Commissioner suffers from inherent lack of jurisdiction.

10. As regards the other allegations made in the charge-sheet, it is significant to note that though the petitioner submitted explanation, the Assistant Commissioner did not consider the same in a proper perspective and did not record any reasons, much less, valid reasons for discarding the justification sought to be shown in the explanation of the petitioner herein.

11. Another important aspect which needs mention is that the unofficial respondents herein launched criminal prosecution against the petitioner vide CC.No.245 of 2001 on the file of the Court of the II Additional Magistrate of First Class, Kadapa and the same also ended in dismissal vide judgment dated 09.07.2007. In fact, the Assistant Commissioner who passed the impugned order was also examined as PW.4 in the said criminal case. The learned Judge by way of the said judgment dated 09.07.2007 clearly acquitted the petitioner herein while categorically holding that the complainant failed to prove that the accused/petitioner herein produced the forged document before PW.4 and with the help of the forged document he

caused damage to the Ramagiri Baba Ashram through Marati Mandali and the complainant also failed to prove that the petitioner acquired some properties in his favour. It is also pertinent to note that the fourth respondent also filed O.A.No.92 of 2000 questioning the recognition of the petitioner as member of the founder family and his appointment as a trustee as a consequence of the same and admittedly the same is also pending on the file of the Endowments Tribunal. Though the pendency of the said original application was also brought to the notice of the Government, the authorities simply discarded the same without considering the effect and impact of the said proceedings on the instant proceedings. The said action can neither be approved nor countenanced. Though the Government noted in the impugned order about the same, did not consider the effect of pendency of O.A.No.92 of 2000 under Section 87 (1) (h) of the Endowments Act, 1987. Once the Tribunal seized of the matter, the authorities ought to have left the issue to the discretion and adjudication of the said authority under Section 87 (1) (h) of the Act instead of proceeding further. A perusal of the order of the revisional authority also reveals that the said authority also did not consider various issues raised before him. Since the impugned orders suffer from various infirmities as pointed *supra*, the same cannot be sustained in the eye of law and are liable to be set aside.

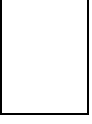
12. For the aforesaid reasons, the writ petition is allowed, setting aside the proceedings of the Assistant Commissioner, Endowments Department, Kadapa/third respondent herein vide Rc.No.A1/3357/2000, dated 24.08.2004 as confirmed by the revisional and reviewing authorities vide Memo No.54233/Edts.II(1)/2000 dated 05.12.2006 and Memo No.13958/Edts.II (I)/07 dated 03.04.2009. It is made clear that in view of this order, the order of the Assistant Commissioner vide Proceedings in D.Dis.No.3585/99 dated 09.02.2000 stands restored. However, this order will not have any effect on

the adjudication of the O.A.No.92 of 2000. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 19.07.2017
grk





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.11056 of 2009

Dated: 19.07.2017

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