

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

WRIT PETITION No.5726 & 19754 OF 2012

COMMON ORDER :

Since the petitioner in both the writ petitions is one and the same and as the present cases are interrelated and pertain to the same subject matter, this Court deems it appropriate and apt to dispose of these writ petitions by way of this common order.

W.P.No.5726 is filed for the following relief:

“to issue *writ of mandamus* declaring the action of the respondents in insisting the petitioner to vacate from the land of Ac.1.50 cents in Sy.No.174 of Chintagumpalle Village and also Ac.4.50 cents in Sy.No.219 of Maddiralamuppalla Village, as illegal, irregular, irrational and violative of provisions of Andhra Pradesh Charitable Hindu Religious Institutions & Endowments Act, 1987 (for short ‘the Act’).”

W.P.No.19754 is filed for the following relief:

“to issue *writ of mandamus* declaring the proceedings in R.C.No.DP2/2482/2012, dated 17.02.2012 and proceedings in L.Dis.No.D2/9691/2012, dated 15.05.2012, issued by the 2nd respondent and consequential proceedings dated 06.06.2012 and 13.06.2012 issued by 4th respondent, as illegal, irregular, irrational and violative of provisions Andhra Pradesh Charitable Hindu Religious Institutions & Endowments Act, 1987 (for short ‘the Act’).”

Heard Sri Sita Ram Chaparla, learned counsel for the petitioner, learned Government Pleader for the official respondents, Sri K. Anand, learned counsel for impleaded respondents and Sri Srikanth Reddy, learned Standing counsel

for the 4th respondent, apart from perusing the material available on record.

The questions that fall for consideration of this Court are-

1. Whether the action of the official respondents herein in publishing the subject institution as an institution under Section 6(c)(ii) of the Act is sustainable and tenable?

2. Whether the official respondents herein can interfere with the properties endowed by the petitioner's ancestors in the guise of the same?

There is no dispute that the ancestors of the petitioners endowed an extent of Ac.4.50 cents in Sy.No.219 of Maddiralamuppalla Village, Prakasam District and an extent of Ac.1.50 cents in Sy.No.174 of Chintagumpalle Village, Prakasam District, to the subject institution. At the first instance, complaining the illegal interference of the official respondents, petitioner herein filed W.P.No.5726 of 2012. In the said writ petition, this Court on 02.03.2012 passed an order, permitting the petitioner to harvest the crop, further directing that he shall not thrash or realize the blackgram and seek to remove it elsewhere. On the complaint made by certain villagers as regards the management of the temple, the Commissioner of Endowments passed an order vide proceedings in R.C.No.DP2/2482/2012, dated 17.02.2012, publishing the subject temple namely Sri Kodandarama Swamy Temple as an institution under Section 6(c)(ii) of the Act and pending the writ petitions, the Assistant Commissioner, Ongole issued certificate

of registration under Section 43 of the Act vide proceedings in R.C.No.A9/2921/16, dated 07.06.2016.

According to the learned counsel for the petitioner, the impugned action is contrary to Sections 43 and 44 of the Act besides being illegal and violative of principles of natural justice. It is further contended that no notice nor liberty was given to the petitioner before resorting to the impugned action.

On the other hand, it is contended by the learned Government Pleader that there is no illegality nor procedural infirmity in the impugned action and in the absence of the same, the present writ petitions are not maintainable and petitioners are not entitled for any relief under Article 226 of Constitution of India.

Totally, supporting the arguments of the learned Government Pleader, it is submitted by learned Standing counsel for the 4th respondent, Sri Srikanth Reddy, that in view of the allegation of mismanagement by the petitioner, the authorities are perfectly justified in resorting to the impugned action.

Learned counsel for the impleaded unofficial respondents Sri K.Anand Rao, submits strenuously that in view of the provisions of Sections 1, 6, 43 and 44 of the Act, which confer power on the authorities to publish the institutions, the writ petitions are liable to be dismissed as being devoid of merits.

There is absolutely no controversy in the reality that the ancestors of the petitioner endowed the subject properties to the 4th respondent institution and there is also no dispute that after

the death of his father, the petitioner started managing the affairs of the subject temple.

In the instant case, on the ground that certain villagers made complaint, the official respondents herein have resorted to the impugned action. There is no dispute on the power of the Commissioner to publish the institutions under Section 6 of the Act. Section 6 of the Act deals with the preparation and publication of list of charitable and religious institutions and endowments on the basis of income and the said provision of law, in a clear and unequivocal language, mandates preparation and publication in the prescribed manner.

Section 43 of the Act deals with Registration of Charitable and Religious Institutions and Endowments, on the applications made by the trustee or other person incharge of the management of every charitable or religious institution.

Section 43(5) of the Act stipulates that on receipt of the application, the Assistant Commissioner shall, after making such enquiry as he thinks fit and hearing any person having interest in the institution or endowment, pass an order directing its registration and grant to the trustee or other person a certificate of registration containing the particulars furnished in the application with the alterations, if any, made by him as a result of his enquiry.

Section 44 of the Act deals with power of Commissioner to have the institution or endowment registered, which reads as follows:

“Where any trustee or other person incharge of the management of a charitable or religious institution or endowment fails to apply for the registration of the institution or endowment, the Commissioner, shall give notice to the trustee or the other person aforesaid to make an application in that regard within a specified period and if he fails to make such application within the period specified, the Commissioner may have the institution or endowment registered after following the prescribed procedure and recover the cost incurred for such registration from the funds of such institution or endowment.”

In the instant case, it is the categorical statement of the petitioner that without complying with the above said mandatory provisions of law and without issuing any notice to him, the authorities have resorted to the impugned action. It is very much clear from a reading of the above provisions of law that in the event of there being any failure on the part of the trustee or incharge of the management of the institution, the Commissioner shall give notice to the trustee or other person in management or incharge of the institution. There is no denial of this statement in the counter affidavit filed by the 4th respondent. Therefore, the said statement needs to be taken as correct. The claim of the unofficial respondents that they are in possession of part of the property cannot be gone into in the present writ petitions and if they have any grievance in respect of the same, they may pursue the same in appropriate forum and cannot agitate the same in the present writ petitions.

It is brought to the notice of this Court that pending these writ petitions, on 07.06.2016, the Assistant Commissioner,

Ongole issued certificate of registration under Section 43 of the Act vide proceedings R.C.No.A9/2921/16, dated 07.06.2016.

In view of non-compliance and non-adherence to the mandatory provisions of Section 44 of the Act, the above proceedings, in the considered opinion of this Court, cannot stand for judicial scrutiny. In the guise of the said orders, the respondent authorities cannot interfere with the possession and enjoyment over the subject lands.

For the aforesaid reasons, writ petitions are allowed and the proceedings of Commissioner of Endowments, Hyderabad R.C.No.DP2/2482/2012, dated 17.02.2012, and the proceedings of Assistant Commissioner of Endowments, Ongole vide R.C.No.A9/2921/16, dated 07.06.2016, are set aside. Consequently, the official respondents shall not interfere with the possession and enjoyment of the persons, over subject properties. However, this order will not preclude the respondent authorities from proceeding in accordance with law. There shall be no order as to costs.

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

A.V.SESHA SAI, J

25.07.2017
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