THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.30338 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

> **'to issue a writ, an order or direction, more particularly one in the nature of writ of Mandamus, declaring the proceedings in Rc.No.E2/15021/14/2017, dated 10.8.2017 issued by the office of the 2nd respondent appointing the executive officer to the Petitioner Temple without even issuing any notice as being illegal, arbitrary, colourable exercise of power and violative of principles of natural justice and contrary to the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 apart from violative of Articles 14 and 19 of the Constitution of India and consequently to set aside the same in the interest of justice and to pass such other order or orders as are deemed fit and proper in the circumstances of the case.**

2. I have heard the submissions of Sri B. Praveen Kumar Reddy, learned counsel for the petitioner; of the learned Government Pleader for Endowments representing the respondents 1 to 3; and of Smt.K.Lalitha, learned Standing Counsel representing the 4th respondent. I have perused the material record.

3. The case of the writ petitioner and the submissions made on its behalf, in brief, is as follows: - 'The deponent of the affidavit filed in support of the writ petition is the son of late T.K. Murthy. The said T.K. Murthy, the deponent's father, constructed Sri Sri Sri Vijaya Durga Ammavari Temple [hereinafter, '4th respondent Temple'] in the year 1986 and installed the idol and developed it till his demise by taking care of the Temple affairs day to day. After his demise, the petitioner along with some others took over the management of the said Temple and continued the development in all respects by providing for Dhoopa, Deepa, Naivedyam and conducting rituals. When third parties started interference with the affairs and management of the said

Temple, the petitioner and some other persons hailing from respectable families in the society formed into a Society and got it registered *vide* no.45 of 2016 in the office of the Registrar of Societies, Machilipatnam; and, later filed OS.No.129 of 2016 on the file of the Principal Junior Civil Court, Gudivada, against a third party Society for injunction not to interfere with the day to day management and affairs of the said Temple and for other reliefs. Initially, a temporary injunction was granted. Later, the said order was vacated. C.M.A.No.15 of 2016 was preferred and it is pending on the file of XI Additional District Court, Gudivada. While so, the 2nd respondent-Commissioner of Endowments issued the impugned proceeding appointing an Executive Officer for the 4th respondent Temple on the report, dated 23.03.2017, said to have been submitted by the Assistant Commissioenr/3rd respondent against the petitioner managing committee by levelling allegations and imputing irregularities in the conduct of day to day affairs of the Temple. It is learnt that the 3rd respondent alleged that the petitioner committee misappropriated amounts, gold, silver, saris, blouse pieces, gifts and other donations offered to the Deity. The said allegations are false. No notice was issued and no explanation was sought for before appointing the Executive Officer for the subject Temple. The said report appears to have been submitted at the instance of some third parties. The petitioner committee paid property tax in respect of the Temple to the Gudivada Municipality. The Temple was not notified by the Endowments Department under any category of the temples under the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987, [Act 30 of 1987]. Its income is less than Rs.2,00,000/-. The appointment of the Executive Officer was done in a hasty manner without following the procedure established by law and in violation of principles of natural justice. The report of the 3rd respondent is not furnished. A request to furnish a copy of the same was made under the provisions of the Right to Information Act and a reply is awaited. Under the guise of the impugned notice, the petitioner committee is being compelled to handover charge to the Inspector, Endowments, Gudivada, who is appointed as Executive Officer, and interference is being caused to the day to day affairs and management of the subject Temple. Hence, the writ petition is filed.'

4. The case of the 4th respondent Temple apart from denial of the case pleaded by the petitioner, in brief, is this:

The Temple was constructed in the year 1986 with the help of donations from general public and donors. Thereafter, the Temple was maintained by the Society, i.e., Sri Vijaya Durga Ammavari Committee, represented by its President, Venkatachalam. The said Committee was registered as a Society. The Society has misappropriated the funds of the Temple and not rendered accounts. It was brought to the notice of the department that huge donations were and are being made and that large number of devotees are attending the Temple and that all amounts being received from the general public are being misappropriated. The department proposed to publish the Temple under Section 6(c) of Act 30 of 1987. Hence, a notice was issued to the said Venkatachalam, who was managing the Temple prior to the publication; and, his explanation, if any, was sought for publication of the Temple under Section 6(c) of Act 30 of 1987. The reason for issuing the notice to the said Venkatachalam is this: - 'The petitioner Committee filed a suit (OS.No.129 of 2016) and obtained injunction order, on 06.05.2016, against the Society of Venkatachalam. On the contest of said Venkatachalam the injunction order was vacated by orders, dated 12.09.2016.' Even after receiving the notice, the said Venkatachalam has not submitted any explanation. By following the procedure, the publication was made under Section 6(c) *vide* proceedings, dated 03.03.2017, and thereafter the Executive Officer was appointed *vide* proceedings, dated 10.08.2017, and he has taken charge and issued a notice for handing over the accounts & record and movable & immovable properties of the Temple. To keep the Temple in their management by one means or the other, the petitioner Committee, which is hand in glove with the Committee/Society represented by Venkatachalam, filed this writ petition. There is no illegality in issuing proceedings appointing the Executive Officer. The petitioner committee has no *locus standi*. The Executive Officer conducted public auction for sale of saris and coconut halves offered to the Deity and the said auctions fetched Rs.12,500/- and 47,000/- respectively. The Hundial was opened after 28 days; and, it fetched around Rs.68,000/-. The Executive Officer conducted Dasara festival on a grand note. Sale of pooja tickets, ubhayams and annadanam donations fetched Rs.1,75,000/- during 10 days of Dasara festival. Both the Societies by being hand in glove have misappropriated donations, offerings, ubhayams and hundial collections and caused irreparable loss to the Temple. Since the Temple is published as 6(c) Temple after following the procedure, the petitioner committee, if aggrieved, has to approach the Endowment Tribunal. Issuance of notice is not necessary before appointing an Executive Officer. Hence, the writ petition may be dismissed.

5. At the hearing, learned counsel for both the sides made submissions in line with the pleadings of the parties.

6. I have given earnest consideration to the submissions. I have carefully perused the material record including the documents filed by both the sides along with the respective pleadings.

7. The Temple is published as 6(c) Temple. The said publication is not challenged; and, the learned counsel for the petitioner committee fairly stated that such publication of Temple as 6(c) Temple is not being challenged by the petitioner committee and that their challenge is only to appointment of Executive Officer. He submitted that the appointment of an Executive Officer without issuing notice to the petitioner committee is illegal. However, the interim injunction order granted in an interlocutory application in a civil suit filed by the petitioner committee against a Society represented by Venkatachalam was vacated by the learned trial Judge. No order is admittedly obtained in the CMA preferred by the petitioner committee against the said order. Be that as it may. The Executive Officer appointed reported to duty and joined in duty *vide* his joining report, dated 16.08.2017. The petitioner committee did not produce any accounts or records to show the income and expenditure of the Temple. It is stated during the course of arguments that no such records or accounts are maintained by the petitioner committee. After the Executive Officer assumed charge, it came to light that the 4th respondent Temple is getting huge incomes from various sources. It is stated in the counter that the Executive Officer conducted public auction for sale of saris and coconut halves offered to the Deity and the said auctions fetched Rs.12,500/- and 47,000/- respectively and that the Hundial was opened after 28 days and that it fetched around Rs.68,000/- and that the Executive Officer conducted Dasara festival on a grand note and that sale of pooja tickets,

ubhayams and annadanam donations fetched Rs.1,75,000/- during 10 days of Dasara festival. The said facts are not disputed by the petitioner committee. There is prima facie significant material that the income of the temple from all sources is substantial. Therefore, it is obvious that either the petitioner committee or the other Society, which might have realized huge incomes, never accounted for the income and expenditure of the Temple during the past several years though they make tall claims with regard to managing the affairs of the Temple. On the above analysis of the facts and circumstances it is manifest that the claims of the petitioner committee are not *bona fide* and that the appointment of the Executive officer which is intended for the purpose of avoiding mismanagement and ensuring better and efficient administration and management of the institution or endowment and its moneys and properties is justified and that the petitioner committee's claims in this writ petition are unjust and need no countenance.

8. Further, in the decision in **Uppalapati Venkata Gopalakrishna Rao v. Commissioner of Endowments, Hyderabad**[1], this Court, in similar circumstances, held that appointment of Executive Officer without prior notice to the person in management is perfectly in order. In the afore-said decision, this Court also referred to the decision of the Supreme Court in **K.A.Samajam v. Commissioenr H.R & C.E** rendered by a Bench of five Hon'ble Judges wherein it was held as follows:

> **'we have no hesitation in concurring with the decision of the High Court that restrictions which have been imposed by the provisions of the Act on the hereditary trustees are reasonable and are in the interest of the general public. The power to appoint non-hereditary trustees or Executive Officers where there is already a hereditary trustee or trustees notwithstanding that there is no mismanagement is only for the purpose of ensuring better and efficient administration and management of the institution or endowment…'**

[1] 2002 (2) ALD 477

9. Accordingly this Court holds that the writ petition is devoid of merit and is liable to be dismissed.

10. In the result, the Writ Petition is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

06.12.2017
Vjl