HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 39401 of 2015, 39498 of 2015 and 42618 of 2016

COMMON ORDER:

1) Heard Sri M.Vishnu Vardhan Reddy learned counsel appearing for the writ petitioner in W.P.Nos.39401 and 39498 of 2015, Sri J.Prabhakar, learned counsel appearing for the writ petitioner in W.P.No.42618 of 2016 and Government Pleader for Endowments.

2) W.P.No.39401 of 2015 came to be filed seeking issuance of writ of mandamus declaring the action of the Assistant Commissioner, Endowments Department, Khammam District, Khammam, in issuing proceedings in R.C.No.D/2323/2015 dated 26.10.2015 as illegal, arbitrary and violative of principles of natural justice; and consequently to *set aside* the same.

3) W.P.No.39498 of 2015 came to be filed seeking issuance of writ of mandamus declaring the action of the Assistant Commissioner, Endowments Department, Khammam District, Khammam, in issuing proceedings in R.C.No.D/2323/2015 dated 26.10.2015 and the consequential proceedings of the Deputy Commissioner, Endowments Department, Warangal District in Rc.No.A4/2600/2015 dated 04.11.2015 as illegal, arbitrary and violative of principles of natural justice; and consequently to *set aside* the same.

4) W.P.No.42618 of 2016 came to be filed seeking issuance of writ of mandamus to declare the action of the Assistant Commissioner, Endowments Department, Khammam District, Khammam, in issuing letter Rc.No.D/2800/2013, dated 26.07.2016 as illegal, arbitrary, without jurisdiction and contrary to the proceedings of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act") and the Registration Act, 1908; and consequently to *set aside* the same with a direction to the respondents not to act upon the said letter.

5) Since the issue involved in all the writ petitions is one and the same, they are being disposed of by way of this common order.

6) The petitioner claims himself to be the absolute owner and possessor of the property bearing municipal No.8-6-30 to 8-6-35, 2-2-241 to 2-2-248 (New Number) situated at Gandhi Chowk, Khammam Town. It is stated that the said property was allotted to the paternal grand father of the petitioner by name A.Narasingam, who acquired the same towards his share in a partition that took place in O.S.No.420 of 1922 on the file of the High Court of Madras. After his death in the year 1951, the property devolved upon the father of the petitioner by name A.R.C.Vishweshwar Rao, who was the sole successor to the property. During his life time, Sri A.Narsingham, while he was residing at Warangal, executed a document bearing No.428 dated

3 Khurdad 1358 Fasli before the Sub-Registrar, Warangal, wherein it was stated that his father has been doing annadhanam and the same has to be continued forever. The rent on Rs.30,000/- worth building at Kotta Bazar, Khammammet be used for annadhanam. It was stated that rent on the house shall be used for maintenance of the building, miscellaneous expenses, taxes etc, and the remaining money is to be distributed as dharmadyam. The said document further reads that the people, belonging to Vysya and Brahmin Community, who come to Warangal are to be provided with groceries etc. to four people. Having regard to the above, it is said that the property is not an endowed property, more so when the document does not anywhere indicate that it was endowed. Hence, the petitioner submits that the action of the authorities in giving the impugned proceedings, as illegal, arbitrary and incorrect.

7) By an order dated 04.12.2015, this Court suspended the impugned proceedings subject to condition that the petitioner shall not alienate or change the physical features of the property in question pending further orders.

8) Sri Vishnuvardhan Reddy, learned counsel appearing for the petitioner in W.P.Nos.39401 and 39498 of 2015, would submit that except oral complaints on telephone there is no material to show that there was a Satram or any activities of Annadana Satram have been carried out in the premises. It is further urged that Section 1 (3) of the Act is only enforceable in respect of the public

charitable institutions and endowments, whether registered or not. Since the property referred to in the notice is neither a public charitable institution nor a endowed to any diety at that time and except a complaint on telephone, there is no other material for the authorities to act on. He places reliance on the judgments of the Apex Court in *Kuldip Chand and another v. Advocate General to Government of H.P. and others*[1] and in *Commissioner of Endowments and others v. Vittal Rao and others*[2] in support of his plea.

9) Sri J.Prabhakar, learned counsel appearing for the petitioner in W.P.No.42618 of 2016 would submit that very issuance of notice under Section 43 of the Act is illegal, improper and incorrect. According to him, the Assistant Commissioner, has no power to call upon the petitioner to make an application. It is his case that since the property is not registered, the authorities ought to have issued a notice under Section 44 of the Act, as Sections 43 and 44 of the Act operate in two different fields.

10) A counter came to be filed by the Assistant Commissioner opposing the same. It is stated in the counter that on 19.08.2015 one S.Anandh, S/o. Jagannadham, R/o. Ramannapet, Warangal Town, lodged a complaint before the Deputy Commissioner of Endowments, Warangal, against the petitioner about his illegal activities in respect of the property in question. On the said basis, the Deputy Commissioner instructed the Assistant

[1] (2003) 5 SCC 46
[2] (2005) 4 SCC 120

Commissioner to look into the matter in question. The report of the Inspector, Endowments Department, dated 27.08.2015, shows the intentional attitude of the petitioner over the property. Hence, he issued the proceedings dated 26.10.2015 calling the petitioner to register the property under Section 43 of the Act so as to protect the valuable asset of Sathram, since the petitioner and his father have not yet implemented the aims and objectives of the founder of the Sathram and did not remit the share amounts and profits in their business to the temple as per the deed apart from selling away some properties. The petitioner and his father have submitted illegal registration documents to the Municipal authorities, Khammam, to change the title of the property though they have no right to make partition of the property. It is also stated in the counter that the Endowments Tribunal is the only competent authority to declare any land or property as belonging to the Institution or Endowed or not, under Section 87 of the Act and that the petitioner has to approach the Endowments Tribunal in this regard. In view of the above, it is urged that there are no merits in the writ petitions.

11) The Government Pleader for Endowments would submit that a reading of the document would clearly indicate that the activities which are going on in the premises would fall within the meaning of charity as defined under the Act. It is urged that late Narasingam had executed a registered deed, in which, it has been clearly stated that the income derived from the property shall be used for charity. It has spelt out the aims and objectives of the

founder, which have to be followed by his successors and legal heirs. She further submits that due to exorbitant price rise, the petitioner is now trying to sell away the property for his personal benefits and only for that purpose the petitioner and his father, illegally executed a document before the Sub-Registrar, Warangal on 05.03.2014 in which Annadana Satram property was said to have been allotted to the petitioner and basing on which the petitioner applied for mutation of the name of the Satram, which action clearly indicates the activities of the said satram. It is further contended that a reading of Section 1 (3) of the Act would clearly show that the provisions of this Act are made applicable not only to public charitable institutions and endowments registered but also to properties which are not registered. It is further urged that since the property in dispute falls in Section 6 (c) of the Act, the Assistant Commissioner is an appropriate authority to issue notice. In view of above, it is urged that there is nothing wrong in notice being issued by the Assistant Commissioner of Endowments.

12) In *Kuldip Chand and another v. Advocate General to Government of H.P. and others* (1 supra) the Apex Court laid down certain tests to determine the facts as to whether an endowment is of a public or private nature, which are as under:

> "1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right.

2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstances where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large.

3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature.

4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

13) Since none of the tests were satisfied and as no documents were produced, an adverse inference was drawn and accordingly it was held that the petitioner therein is not a public charitable trust. It was a case where one Raj Kumar Bir Singh, constructed a Dharmasala and the same was dedicated to the general public. Subsequently, one Jagat Bahadur Singh sold the property. Claiming the said property to be a trust property. A suit was filed by the Advocate-General of the State alleging that the said property has been dedicated to a public purpose. After full fledged trial, the said suit was dismissed holding that a public

trust was not created and the Dharmasala in question had all along been treated by Raj Kumar Bir Singh, Ranzor Singh and jagat Bahadur Singh as their own property and not as trustees thereof. Aggrieved by the same, Advocate-General preferred a letters patent appeal. The Division Bench reversed the judgment and decree, holding that as no instrument was required for creation of a trust, the only test therefore would be to see as to whether the general public in exercise of their rights have been deriving the benefits of the institution in sequence of the objects for which it came to be established. It was also held that the plea of adverse possession raised was not sustainable. Challenging the same, a S.L.P. was preferred wherein the Apex Court laid down certain guidelines referred to above.

14) In *Commissioner of Endowments and others v. Vittal Rao and others (2 supra)* the Apex Court held that "mere use of the premises as a "Dharamshala" for number of years could not lead to an inference that the same belongs to a public trust. Whether an endowment is of public or private nature, depends on the facts of each case satisfying certain tests and guidelines.

15) Similarly in *State of W.B. and others v. Sri Sri Lakshmi Janardan Thakur and others*[3] the Apex Court held that religious endowments are of two kinds, public and private. In a public endowment, the dedication is for the use or benefit of the public at large or a specified class. But when property is set apart for

[3] (2006) 7 SCC 490

the worship of a family god, in which the public is not interested, the endowment is a private one. It was a case where the Revenue Officer made enquiry in order to ascertain the total extent held by the deity and to decide the question as to whether the endowment is a public or private nature. The Revenue Officer disposed of the proceedings holding that the endowment was of public nature exclusively for charitable and religious purpose. Challenging the same, O.A. was filed by the Shebaits of the said Deity before the Tribunal, claiming that the character of the Deity was private in nature. The said O.A. was disposed of by the Tribunal directing the appellants to prefer statutory appeal under the provisions of the Act before the designated appellate authority. Thereafter, they preferred an appeal in terms of Section 54 of the Act and the same was dismissed. Aggrieved by the same, O.A. was preferred before the Tribunal claiming properties of the Deity as absolute and not personal property of its Shebaits. After hearing the parties the said O.A. was rejected. Challenging the same a writ petition was filed. The said writ petition was allowed *setting aside* the orders passed by the Revenue Officer, appellate authority and the Tribunal. Aggrieved by the same an appeal came to be filed, in which the Apex Court held that in order to ascertain whether a trust is private, the following factors are relevant.

1. If the beneficiaries are ascertained individuals.
2. If the grant has been made in favour of an individual and not in favour of a deity.

3. The temple is situated within the campus of the residence of the donor.

4. If the revenue records or entries suggest the land being in possession of an individual and not in the deity. On the other hand an inference can be drawn that the temple along with the properties attached to it is a public trust.

   (a) If the public visit the temple as of right.

   (b) If the endowment is in the name of the deity.

   (c) The beneficiaries are the public.

   (d) If the management is made through the agency of the public or the accounts of the temple are being scrutinized by the public.

16) Since the High Court has not considered the above factual position in its proper perspective manner, the Apex Court remanded the matter back to the High Court.

17) In the instant case, an application has been filed directly before the High Court to declare that the impugned notice as illegal on the ground that the property, which is subject matter of dispute in the writ petitions, is not a satram and no charitable activity is going on in the said place. In my view, the said issue involves number of factual aspects, which can be decided only during a full fledged trial before the Endowments Tribunal.

Therefore, the plea of the petitioner that the order under challenge is to be *set aside* on the said score cannot be accepted.

18) It is also to be noted that the impugned notice came to be issued asking the petitioner to register the properties of Satram under Section 43 of the Act. It may be true that the provisions of the Act may apply even to un-registered public charitable institutions and endowments but Section 43 the said Act provides for registration of charitable and religious institutions and endowments. Section 43 (2) of the Act prescribes as to what is to be done by the Assistant Commissioner on receipt of application. Section 43 (3) of the Act takes care of the situation when any institution or endowment was already registered and entered in the book of endowments before the commencement of the Act.

19) A reading of Section 43 of the Act comes into play when the institution or the endowment by itself, makes an application seeking registration. It does not prescribe issuance of notice for registration of the said institution or endowment. Section 44 of the Act takes care of such a situation, which reads as under:

> "44. Power of Commissioner to have the institution or endowment registered: 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."

20) Section 45 of the Act provides a remedy to a person who aggrieved by an entry or omission to make an entry in the register maintained under Section 43 of the Act.

21) It is not in dispute that in the instant case, a notice was issued by the Assistant Commissioner under Section 43 of the Act calling upon the petitioner to submit registration proposals under Section 43 of the Act. Explanation to the said notice came to be submitted explaining the factual and legal aspects. However, consequential order came to be passed by the 3rd respondent.

22) Since the orders dated 26.10.2015 and 04.11.2015 came to be passed by the Assistant Commissioner, Endowments and the Deputy Commissioner, Endowments, calling upon the petitioner to submit registration proposals, which in my view contrary to Section 44 of the Act which empowers only the Commissioner of Endowments to do the same, the orders under challenge are liable to be set aside.

23) Accordingly, the writ petitions are allowed, setting aside the orders dated 26.10.2015 and 04.11.2015 passed by the Assistant Commissioner, Endowments and Deputy Commissioner, Endowments respectively and the letter of the Assistant Commissioner, Endowments, Khammam, dated 26.07.2016.

However, the respondent-authorities are at liberty to deal with the issue in accordance with law.

24) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

07.04.2017
gkv