

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Writ Petition No.1244 of 2018

ORDER :

Heard learned counsel for the 4 writ petitioners and learned counsel for the 1<sup>st</sup> respondent who is rival to the petitioners and the learned Govt. Pleader for Endowments for respondents 2 to 4 and the learned standing counsel for the 5<sup>th</sup> respondent-Sri Rameshwara Swamy Temple Ganganammamet, Tenali town, representing by its Executive Officer and perused the prayer in the Writ Petition with supporting affidavit and the counter affidavit filed by the 1<sup>st</sup> respondent and reply affidavit filed by the petitioners and with no counter by the learned Standing Counsel for the Temple but for with reference to the facts borne by the record including with reference to the property registration and the orders in earlier WPMP No.38476 of 2015 in W.P.No.29704 of 2015 dt.05.10.2015 and common order in batch of the 4 writ petitions in W.P.Nos.23719, 21894 of 2013, 20704 and 23243 of 2015, dt.22.03.2017 and the order of the tribunal in I.A.No.1045 of 2017 in the pending O.A.No.541 of 2017, dt.03.01.2018 and decree dt.17.02.1954 in O.S.No.106 of 1951 of the learned Senior Civil Judge, Tenali.

2. The prayer in the writ petition reads as follows:-

“To issue a Writ, Order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the order dt.03.01.2018 passed in I.A.No.1045 of 2017 in O.A.No.541 of 2017 on the file of Court of A.P.Endowment Tribunal, Amaravathi, Pedakakani as illegal, arbitrary and unjust and contrary to the principles of natural justice and pass such other order or orders.”

3. The supporting affidavit averments of the writ petition 1<sup>st</sup> petitioner vis-à-vis the oral submissions of the learned counsel for the petitioners in nutshell are that the impugment is the order of the Endowments Tribunal in I.A.No.1045 of 2017, dt.03.01.2018 consequent

to the direction in the disposal of the 4 writ petitions by the learned Single Judge of this Court dt.22.03.2017; are that the impugned order of the tribunal is basically illegal and unsustainable. It is averred the writ petitioners are the hereditary Archakas since their ancestors including as per the terms of the registered agreement, dt.04.05.1951 between the then hereditary trustees and hereditary Archakas to perform rituals in the 5<sup>th</sup> respondent-Temple and that remuneration was paid by the Madras Hindu Religious Dharmikah Board (for short, 'the Board') to their ancestors and in that line of hereditary Archakathwam service in descendancy they were performing rituals and the Commissioner of Endowments in RC.No.11153/ 1970,dt.02.05.1970 issued proceedings in respect of the 5 hereditary Archakas by allotting the land for their performing Archakathwam service and also for Paditharam and Dhoopa Dheepa Naivedhyam. No dittam was fixed u/ sec.25 of the Act 30/ 87, that as per the Section 34(3) of the A.P.Charitable and Hindu Religious Institutions and Endowments Act ( for short, 'the Act') 30/ 1987 amended by the Act 33/ 2007 w.e.f. 03.01.2008, commencing with non-obstante clause in sub Section 1 and 2 of the Section of the qualified members of those Archaka families which were continuing in Archakathwam service under the provisions of the repealed Act, 1966, and recognized as such by competent authority, shall continue to have right of Archakathwam without having any right to emoluments such families used to receive earlier under the Act 17/ 66, however, they shall receive emoluments in accordance with the claim u/ sec.144 of the Act, 1987 amended as the case may be, and that cadre strength, salary and emoluments of the Archakas not fixed u/ sec.65-A of the Act, in saying it is because of the original agreement of the hereditary Archakas dt.04.05.1951 by the settlement referred supra including for Paditharam and Dhoopa Deepa

Naivedhyam though earlier it was only to main temple of Sri Rameswara Swamy Temple, there are now 5 sub temples and the Executive Officer of the Temple taken the secular activities and management of the Temple, installed hundis and collecting amounts including by sale of tickets for performing religious rituals of the temple without even providing any share nor any additional remuneration for their rendering Archakathwam rights, hereditary rights including in the sub-temples later constructed including for meeting expenditure therein additionally. It is however averred of no third party including any Purohitas perform Archakathwam service at Gharbhalayam of the main temple or sub-temples. Some third party purohitas filed O.S.No.204 of 1990 before the Principal District Municipality, Tenali against the then Executive Officer of the 5<sup>th</sup> respondent-temple claiming right to perform Archakathwam rights and also filed I.A.No.1348 of 1990 for temporary injunction that was ended in dismissal contesting holding that they have no right to claim as such apart from not qualified in Agamashastras. It is also averred of Trust member also has no power to permit Purohitas-third parties to render Archakathwam service but for these Archakas having Agamashastra praveeniyam and the suit was ultimately ended in dismissal and one of the Deputies as the 1<sup>st</sup> respondent by name Chavali Hanuman Kumar herein, filed W.P.No.23719 of 2013 seeking declaration of action of 5<sup>th</sup> respondent-temple in not taking steps to hand over his turns of Archakathwam pursuant to the terms of the agreement between him and the petitioners alleging that though he was not party much less his ancestors to the so called agreement, dt.04.05.1951 to claim as such much less to claim as one among the 5 hereditary family Archakas. It is Penumudi Sheshaiah who allegedly executed Will dt.23.04.1954 and transferred right of Archakathwam in favour of Chavali Hanumantha Rao

and Chavali Chandramouli who rendered service till 1985 and after his death, the 5 families were sharing Archakathwam service and presently Potturi Vijaya Shankar Rao, Chavali Hanuman Kumar, Potturi Venkata Suresh, Penumudi Venkata Subba Rao and Penumudi Venkata Koteswar Rao, are working as hereditary Archakas and that it is alleged that Chavali Hanuman Kumar was prevented from performing his so called hereditary rights in seeking the relief in the writ petition that is opposed by the present writ petitioners of said Ch.Hanuman Kumar never rendered Archakathwam in temple but for managed the authorities in so making a claim and what he alleged of his father died in 1985 is not correct from the death certificate issued by the Tahasildar shows his father died on 22.07.1997 and he came with a false version therefrom, leave about alleged Will dt.24.03.1954 is also a forged one and the same is clear from the facts demonstrating from the decree in O.S.No.106 of 1951 of the learned Senior Civil Judge, Tenali showing the 3<sup>rd</sup> defendant in that suit by name Penumudi Sheshaiah as died represented by L.R.Rukminamma (his wife) that said Ch.Hanuman Kumar failed to produce any material to show that has been performing hereditary Archakathwam from 1985 onwards. The impugned order of the Endowments Tribunal supra speaks that P.Sheshaiah allegedly executed Will dt.24.03.1954 and pursuant to the recitals, said Ch.Hanuman Kumar is entitled to perform Archakathwam in temple as successor of P.Sheshaiah is thereby false and misleading for the alleged Will is a rank forgery and brought into existence for P.Sheshaiah died prior to 17.02.1954 date of decree of the suit O.S.No.106/ 51 supra and after his death executing a Will on 24.03.1954 does not arise and even with such contention counter filed in opposing the I.A.No.1045 of 2017 before the

Tribunal but the Tribunal did not consider the fact. Thereby the impugned order of the Tribunal dt.10.11.17 is unsustainable.

4. The counter affidavit of the 1<sup>st</sup> respondent Ch.Hanuman Kumar- the petitioner in O.A.No.541 of 2017 and also in I.A.1045 of 2017 therein is with contentions vis-à-vis the oral submission while supporting the order of the Tribunal that the Writ Petition affidavit averments vis-à-vis reply averments to the present counter are untenable. The 1<sup>st</sup> respondent-O.A.petitioner has been rendering Archakathwam service as successor of P.Sheshaiah since his grandfather's time pursuant to the bequeath made by P.Sheshaiah to his grandfather Hanumantha Rao and another brother of Hanumantha Rao and wife's brother of P.Sheshaiah and the very present writ petition is unsustainable but for remedy for aggrieved if at all by the interim order of the court permitting the 1<sup>st</sup> respondent-Ch.Hanuman Kumar of the Writ Petition to render Archakathwam service is to maintain a revision as per the statutory remedy available and several contentions in the Writ Petition are invented for further round of litigation with propounded facts thereby the Writ Petition is liable to be dismissed.

5. In fact, the common order of this Court covered by 4 writ petitions, dt.22.03.2017 speaks the factum of the 5<sup>th</sup> respondent-temple is more than 100 years old and the petitioner as one of the 4 writ petitions claimed rights tracing from bequeaths of his grandfather Ch.Hanumantha Rao and brother of Hanumantha Rao by name Ch.Chandramouli as legatees of P.Sheshaiah and there was a settlement agreement (document No.1111 of 1951), dt.04.05.1951 in favour of Ch.Hanumantha Rao, Chandramouli and P.Shehsaiah transferring his rights as hereditary Archakathwam rights in enjoyment of the service towards his share of rotation and after demise of Hanumantha Rao, the

petitioner's father being son of Hanumantha Rao by name Radha Krishna Murthy succeeded and after death of Radha Krishna Murthy, the petitioner has been rendering service from 1985 as one among the 5 hereditary families including along with the writ petitioners 1 to 4. The said Ch.Hanuman Kumar addressed a letter dt.19.07.2013 to the Manager of the Temple stating his rotation commenced from 07.08.2013 rendered Archakathwam for 6 months and the others among the writ petitioners has to hand over the Archakathwam service they are choosing through their rotation for the past 50 years and they filed W.P.No.21894 of 2013 claiming him as if only a deputy and has no right to continue as hereditary Archaka for the first time so propounding as if deputy unable to explain his continuation as hereditary Archaka in 1985. The Executive Officer of the Temple filed counters in the batch of the 4 writ petitions that is also referred therein from internal page 6 para-8 saying if there is any dispute between the Archakas, their rival claim has to be adjudicated by approaching Endowments Tribunal and as per the agreement, 5 families are doing Archakathwam service every year in rotation and Ch. Hanumantha Rao for two months, and the present writ petitioners are for 3 months, 3 months, 2 months and 2 months respectively and approved property Register though contained no entries in this regard, said rotation is in vogue of the hereditary rights of the 5 families tracing from the agreement dt.04.05.1951 by referring to so called bequeaths in the alleged Will dated 24.03.1954 to which it is claimed Pothuri Satyanarayana is one of the attestors. It is also referred about the Asst.Commissioner of Endowments, Bapatla conducted an enquiry and by memo dated 09.11.1972 asked to hand over charge to Ch.Radha Krishna Murthy, father of Hanuman Kumar at that time. The Archakas filed one unnumbered suit O.S.(CFR) No.5635 of 1999

questioning the establishments of Hundis by the Executive Officer of the Temple and against the suit not numbered, W.P.No.17466 of 1999 is filed where the agreement dt.04.05.1951 referred it about extent of Ac.24.81cents of land but for Ac.8.27cents in the management of the Executive Officer and the remaining 16.54cents is in the hands of the hereditary Archakas as remuneration for rendering Archakathwam service as Dhopa Deepa Naivedhyam. It is also referred about said settlement/ agreement, dt.04.05.1951 to P.Sheshaiah as one of the party signatories. By referring these facts, ultimately the learned Judge in disposal of the 4 writ petitions at the operative portion at para-19 internal page 14 observed that these are disputed questions of facts to be adjudicated by the Endowments Tribunal, thereby aggrieved party among the 4 Writ Petitions if any from that date 22.03.2017 within 4 weeks can approach the Endowments Tribunal by filing any interim application with a direction to the Tribunal to decide the same within a period of 4 weeks and in the meantime the interim orders granted in W.P.No.23719 of 2013 for continuation of Ch.Hanuman Kumar shall remain in force.

6. Before coming to discuss further, so far as the W.P.M.P.No.38476 of 2015 dt.05.10.2015 in W.P.No.29704 of 2015 by then pending is concerned, the present writ petitioners 1 to 4 are the writ petitioners therein and the 1<sup>st</sup> respondent herein Ch.Hanuman Kumar was the 6<sup>th</sup> respondent therein, there are 8 to 20 unofficial respondents who were allowed to render Archakathwam in the temple that was impugned and the impugment was upheld by the interim direction of this Court.

7. Undisputedly, the Temple is though more than 100 years old and there are the property Registers right from the year 1926, 1951 and

1966 in none of the property Registers including present one, Section 43 of 1987 Approved Property Register, the names of hereditary Archakas and Archakas were mentioned but for mentioning about hereditary Trustees and unnamed hereditary Archakas in reference to the property Registers prior to 1987, but for saying at best of which of the hereditary Archakas enjoying in which of property set apart from Archakathwam service.

8. Undisputedly, the law is fairly settled that even, there is any presumption of 30 years old document to presume as genuine and so far as a bequeath in a will, but for to prove the same as contemplated by Section 63 of the Indian Succession Act, and in the absence of any of the attestors alive, by examination of persons acquainted with the signature of the attestors either u/ sec.47 or 67 of the Act, or by following the procedure contemplated by Sec. 69 to 71 of the Indian Evidence Act. Thus, as held by the another Bench of this Court in dismissal of 4 writ petitions order dt.22.03.2017, the disputed question of fact as to the Will is genuine or not is a matter to be decided by the Endowment Tribunal.

9. Coming to the interim suspension order of pending disposal of the present writ petition passed by another Single Judge of this Court dt.11.01.2018 concerned, the interim order passed by the Tribunal which got jurisdiction to pass interim order cannot be disputed including from the settled law of even the Endowments Act and the Tribunal Rules are silent as to the competency to pass interim orders under the general law of CPC and their exercise of the power, interim protective orders to be passed is the settled law to exercise such powers by the tribunal with the powers u/ sec.152 r/ w 149 of the Endowments Act 30 of 1987. What the learned Single Judge in passing the interim suspension order in

this regard is once there is a dispute in respect of the fact more particularly with regard to the execution of the Will, the interim application should not have been allowed.

10. It is premature from the factual matrix more particularly from the common order dated 22.03.2017 facts referred to come to any such objections in the 4 writ petitions common disposal referring to one of the contentions of the present writ petition herein in their counter contest referred at para-7 internal page 4 that the petitioner is claiming even by then as rendering Archakathwam service however as one of the deputies.

11. The question of deputy Archaka is unknown in the Act including by the amended Act 32 of 2007. An Archaka is Archaka. Once such is the case, leave apart where the very Will brought into is contested as forged and fabricated and the executant died prior to the date of the Will set up in the so called demonstration by referring to the decree in O.S.No.106 of 1951 and leave about the father of Ch.Hanuman Kumar by name Ch.Radhakrishna Murthy, claimed died either in 1985 or in 1987 as the case may be and even taken for arguments sake; he was in continuation as Archaka since 1985 in support of his contention and at least from the date of death of his father that is also reflected from the counter filed in the batch of the 4 writ petitions by the Executive Officer of the Temple, suffice to say without going into the correctness of the so called Will dated 24.03.1954, said Ch.Hanuman Kumar, can be continued as Archaka but for to say pending disposal of the O.A. 541 of 2017, he cannot be allowed to share any of the properties given for hereditary Archakathwam service of the present writ petitioners 1 to 4, nor it effects their right of rotation but for the Endowment authorities to continue him without disturbing right of rotation of the 4 hereditary

Archakas since he is otherwise entitled to continue as Archaka at least in any of the 5 sub-temples.

12. With these observations, the Writ Petition is disposed of as any further undertaking of discussion touching merits despite common order of this Court dt.22.03.2017 in the disposal of the 4 Writ Petitions is very clear of the factual dispute, adjudication cannot be undertaken by this Court by sitting against again.

13. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date:12.03.2018  
vvr

Dr. B.SIVA SANKARA RAO J,

