

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

W.P.No.1941 of 2018

ORDER:

Heard the learned counsel for the petitioner, learned Government Pleader for Respondents 1 to 3 and Smt.K.Lalitha, learned Standing Counsel for Respondents 4 and 5.

2. An order passed by the Assistant Commissioner of Endowments, Visakhapatnam-3rd respondent herein vide proceedings Roc.No.A1/5282/2011 dated 30.12.2017 is under challenge in the present writ petition.

3. By virtue of the said proceedings, the 3rd respondent herein directed the Executive Officer, 5th respondent temple to take over the management of the temple after following the prescribed procedure thereon and report compliance.

4. Broadly, there are two contentions raised by the learned counsel for the petitioner; (1) the impugned order is totally one without jurisdiction and contrary to the provisions of Section 29 of Act 30 of 1987 and that the Commissioner alone is the authority competent to appoint an Executive Officer, but not the Assistant Commissioner and (2) the Respondents herein have resorted to impugned action by completely giving a go-bye to the provisions of Sections 43 and 44 of Act, 1987.

5. On the other hand, it is maintained by the learned Government Pleader, so also the learned Standing Counsel appearing for Respondents 4 and 5 that the impugned action is only in furtherance of proceedings D.Dis.No.G4/35077/2080 dated 24.8.2000 of the Deputy Commissioner, office of Commissioner of Endowments.

6. With regard to the first contention raised by the learned counsel for the petitioner, it is to be noted that as per the second proviso to Section 29 of the Act, it shall be competent for the Commissioner to appoint an

Executive Officer to any institution having income of less than Rs. 2 lakhs per annum if there are substantial immovable properties to the institution or if he is satisfied that such appointment is necessary in the interest of better administration of the institution or for any other reason to be recorded in writing, but not the Assistant Commissioner as in the instant case. It is also significant to note that the proceedings dated 24.8.2000 issued by the Deputy Commissioner, office of Commissioner of Endowments were later superceded by way of proceedings dated 12.9.2008 issued by the Deputy Commissioner and by virtue of the same, the then Executive Officer was directed to handover the same to Archaka with a further direction to the Assistant Commissioner to implement the orders and to report compliance. Therefore, the justification sought to be offered by the Respondents herein to sustain the impugned action vide proceedings dated 24.8.2000 cannot be sustained.

7. In view of the above, on the ground of jurisdiction, the impugned order is liable to be set aside. Accordingly, the order passed by the Assistant Commissioner of Endowments, Visakhapatnam-3rd respondent herein vide proceedings Roc.No.A1/5282/2011 dated 30.12.2017 is set aside. However, it is open for the competent authority to take appropriate action, if they are advised to do so, to take action as per law including Sections 43 and 44 of Act 30 of 1987.

8. The writ petition is accordingly allowed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 24.7.2018
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24.7.2018

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