THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.45735 of 2016

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner-Voruganti Ramalingaiah Chetty and Mangamma Charities ('the Trust', for brevity) represented by its Managing Trustee, seeking verbatim the following relief/s:

> '....it is prayed that the Hon'ble Court may be pleased to issue a writ, order or direction, more particularly a writ in the nature of Writ of MANDAMUS declaring the action of the 1st respondent, i.e., Executive Officer of Srikalahastheeswara Swamy Vari Devasthanam, Srikalahasthi Post and Mandal, Chittoor District in taking possession of the choultry i.e., Voruganti Ramalingaiah Chetty and Mangamma Charities, situated at No.3/533, Bazaar Street, Srikalahasthi Post and Mandal, Chittoor District, is bad, illegal, arbitrary, opposed to law, one without jurisdiction and in gross violation of principles of natural justice and pass such other order or orders as the Hon'ble Court may deems fit and proper."

2. I have heard the submissions of *Sri M.Vidyasagar*, learned counsel appearing for the petitioner-Trust; of *Sri A.Sreekanth Reddy,* learned Standing Counsel appearing for the 1st respondent; and, of the learned Government Pleader appearing for the respondents 2 & 3. I have perused the material record.

3. The case of the petitioner-Trust, in brief, is this:

The petitioner-Trust is established, on 19.05.1959, by Voruganti Mangamma, who is an Arya Vysya by caste, and resident of Madras. The Deed of Settlement executed by her indicates the aims and objectives of the Trust. In the said deed, the property was described as 'A' schedule property for the purpose of using it as a choultry. The choultry is intended to accommodate and permit Vysya & Brahmin pilgrims and travelers and to allow performance of marriages and auspicious ceremonies of the members of the said two communities in the choultry premises. The original settler also endowed one more property in Ramakrishnan Street, George Town, Madras, and the said property is endowed for a specific purpose. As per the terms of the Deed of Settlement, the income derived from the properties of the Trust are to be used for - (i) Parveta Utsavam of Sri Rama Varu in North Street, Kalahasthi, (ii) Utsavam of Sri Rama Mandiram at Car Street, Kalahasthi; and (iii) Garudostavam at Prasanna Varadaraja Swamy temple. Further, the income derived has also to be utilized for celebrating the death anniversaries of Voruganti Chalamaiah Chetty, who happens to be the grandfather of the Managing Trustee of the petitioner-Trust; the mother-in-law of the settler–Voruganti Venkata Lakshmamma; husband of the settler, Voruganti Ramalinga Chetty; and, of the settler. All the objectives are incorporated in the deed. The income from the property in Madras was to be used towards 'Nitya Dhoopa Deepa Naivedyam' to the deity that may be installed in Krishna Mandiram in Sholinghur, Tamil Nadu. On the death of the settler, in conformity with the Deed of Trust, Sri Voruganti Chalamaiah Chetty, grand father of the Managing Trustee of the petitioner-Trust succeeded as a Trustee of the petitioner-Trust and later, the father of the Managing Trustee of the petitioner-Trust succeeded as a life trustee and continued his management till his death and on his death, the present Managing Trustee of the petitioner-Trust is managing the petitioner-Trust in the line of succession. The 1st respondent-Srikalahastheeswara Swamy Vari Devastanam is in no way connected with the activities of the petitioner-Trust and its aims and objectives. The present Managing Trustee of the petitioner-Trust was elected as a Life Time Trustee. The petitioner-Trust was registered in the office of the Sub Registrar, Tirupati, *vide* Book IV.151/16, on

22.12.2016. The Trust was registered under the Societies Registration Act at Tirupati. Peculiarly, on the day of registration by the Managing Trustee, the Executive Officer of the 1st respondent Devasthanam had undertaken an illegal and an arbitrary exercise of taking possession of the petitioner-Trust in gross violation of the principles of natural justice and locked the premises of the petitioner-Trust and sealed the entire building. The Executive Officer of the 1st respondent Devasthanam has no right or jurisdiction to exercise powers over the petitioner-Trust in view of the aims and objectives of the Trust and the terms of the Deed of Settlement. If any such exercise is to be undertaken under the provisions of the Andhra Pradesh Charitable and Hindu Religious Trusts & Endowments Act, 1987 ('the Act', for brevity), the proper authority to exercise jurisdiction on the petitioner-Trust is only the jurisdictional authority of the District, that is, the Commissioner of Endowments. The 1st respondent Devasthanam is neither concerned nor connected; and, the Executive Officer of the said Devasthanam has no power to exercise jurisdiction on the petitioner-Trust as there is no Deed of Dedication. The Executive Officer of the 1st respondent-Devasthanam shall exercise the power over the Trusts and other institutions that are registered in the name of Sri Srikalahastheeswara Swamy Vari Devastanam and by any stretch of imagination; he cannot stretch hands on a charitable Trust, which is no way connected to the Devasthanam. The action of the Executive Officer of the 1st respondent in taking custody of the entire choultry and locking the premises of the office of the petitioner-Trust situated at No.3/994, Srikalahasthi, is an act, which is impermissible; and, such an action is *ex facie* illegal and one without jurisdiction. Hence, the writ petition is filed.

4. On 03.01.2017, this Court, while ordering notice before admission and while directing the respondents to file counter and directing to list the matter after Sankranthi Vacation of 2017 in the Motion list, passed the following interim order:

> 'Meanwhile, the Executive Officer of the 1st respondent-temple is directed to open the Choultry, i.e., Voruganti Ramalaingaiah Chetty and Mangamma Charities to enable the piligrims to stay therein during the period of Sankranthi and also on subsequent days.
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> The petitioner is allowed to assist the Executive Officer of the 1st respondent-temple. However, this order will not give any right to the petitioner to claim any right over the subject Choultry."

5. The Executive Officer of the 1st respondent-Devasthanam filed a counter affidavit. The case of the said respondent is this:

It is not true that the Deed of Settlement, dated 19.05.1959, is registered in Southern Kapu Street, Srikalahasthi. The rest of the allegations in paragraphs 3,4 and 5 of the writ affidavit are true. The rest of the allegations in the writ affidavit are false. Except the fact of spending the amounts derived from the trust towards religious functions, all other allegations are not correct. The income derived from the properties of the petitioner-Trust is to be utilized for ceremonies, namely, 'Punyathidhi' of Voruganti Chengaiah Chetty, who is the father of the Voruganti Ramalaingaiah Chetty and also his wife Voruganti Venkatalakshmamma. The contra allegations are all false. The allegation that as per the contents of the Deed of Settlement, the amounts have to be spent on Dhoopa, Deepa, Naivedyam to the deity that may be installed in Krishnamandiram at Sholingar is true and correct. The allegations that consequent to the death of the settler, Sri Voruganti Chelamaiah Chetty, the grandfather of the deponent of the writ affidavit had succeeded for maintaining the trust property and consequently, his father became a trustee and continued in the management till is death and that thereafter, he is managing the petitioner Trust in line of succession and as life time trustee are absolutely false and unfounded. The grandfather of the said deponent, namely, Voruganti Chalamaiah Chetty did not succeed to the management of the Trust. His son also did not succeed to the management of the Trust. To clutch the property of the petitioner Trust and its management, the deponent of the writ affidavit made false allegations. In this regard, it is submitted that as per the terms of the Settlement Deed, dated 19.05.1959, the settler has created the trust and appointed the following persons as trustees:

1. Mogili Radhakrishnaiah Chetty S/o Akkulaiah Chetty
2. Oruganti Chalamaiah Chetty S/o Rajanna Chetty
3. Mogili Lakshmana Murthy S/o Akkulaiah Chetty

The aforesaid persons were managing the affairs of the Trust. Subsequently, all three trustees died; and, as a result, there was no one to manage the trust. While the matter stood thus, the then Assistant Commissioner of Endowments Department, Chittoor, took initiative and passed orders in Rc.no.B1/5311/92, dated 06.04.1993, appointing the following persons as trustees:

1. Sri J.Harinath Babu, S/o J.Krishnaiah Chetty,
2. Sri M.K.Govindarajulu, S/o Krishnaiah Chetty,
3. Sri P.N.Kuppaiah Chetty, S/o P Narayana Chetty,
4. Sri K.Dayananda Gupta, S/o K.P.Rangaiah Chetty,
5. Sri V.Subbarayulu S/o V.Yandai Chetty

The aforesaid persons took charge as trustees and started managing the affairs of the Trust. Among the aforesaid trustees, P.N.Kuppaiah Chetty was elected as the President. Subsequently, in the year 1994, he expired. Then, M.K.Govindarajulu was elected as president. The committee consisting of the Trustees was managing the affairs of the petitioner-Trust by conducting meetings and passing resolutions from time to time from the year 1993 onwards. Thus, the petition schedule property was under the management of the trustees. In the meanwhile, one of the legal heirs of the founder, by name, Voruganti Sarojanamma W/o Radhakrishaniah came forward and endowed the petition schedule property to the 1st respondent-Devasthanam by executing a letter of 'Kainkaryam', dated 22.12.2016, and delivered possession of the petition schedule property to the 1st respondent Devasthanam. Ever since, the 1st respondent Devasthanam has been in exclusive possession and management of the affairs of the petition schedule property as per the conditions incorporated in the settlement deed. All the contra allegations in the writ affidavit are false. The deponent, Voruganti Nageswara Rao, was never elected by the trustees mentioned above and as such, the question of he becoming the Managing Trustee or a so called life trustee does not arise. The Executive Officer of the 1st respondent has undertaken an illegal and arbitrary exercise of taking over possession of the petitioner-Trust in gross violation of the principles of natural justice is not correct. There is no need to give any notice to the said Voruganti Nageswara Rao, who has nothing to do with the trust property in the possession of the 1st respondent Devasthanam. It is true that the petition schedule property is under the lock and key of the 1st respondent Devasthanam. As certain unruly persons are attempting to enter into the premises without any right or authority, the schedule property was kept under the lock and key of the 1st respondent Devasthanam, in order to avoid such contingencies and to safeguard the trust property, which is the bounden duty of the Executive Officer of the

1st respondent Devasthanam. All the legal formalities are followed by the 1st respondent Devasthanam while taking possession of the schedule property and the property is being used for providing accommodation and for stay of the pilgrims by opening the choultry as per the directions of this Court. The allegation that the Executive Officer of the 1st respondent temple cannot either exercise power or take possession of the property of the petitioner Trust is false. The deponent of the writ affidavit, Voruganti Nageswara Rao, is a stranger to the Trust and hence, the writ petition is liable to be dismissed.

6. While reiterating the case of the petitioner, learned counsel for the petitioner submitted that though an interim order is granted, the Executive Officer is not permitting the Managing Trustee of the petitioner-Trust to assist the Executive Officer of the 1st respondent temple. This contention apart, learned counsel for the petitioner strongly contended that the petitioner Trust is a charitable Trust capable of maintaining itself out of its own funds and that it is being properly managed and its administration is under proper management and that it is a very specific and distinct endowment unconnected with the 1st respondent Devasthanam, and that therefore, the Executive Officer of the 1st respondent Devasthanam has nothing to do with the petitioner Trust and its properties. The terms of Settlement Deed also lay bare the said facts; and, hence the high-handed action of the Executive Officer of the 1st respondent Devasthanam in taking possession of the properties of the Trust and putting them under lock & key and seal is without any jurisdiction or power under law. He further submits that in doing so, the principles of natural justice were violated. He also stated that if the Endowment Department wanted to adopt or amalgamate the Trusts in any Trust, the Commissioner is the only

competent authority to pass appropriate orders for either adoption or amalgamation; Even assuming for a moment that the Commissioner is the competent authority to pass such an order, the Executive Officer of the 1st respondent Devasthanam has no manner of right or business to interfere with the petitioner Trust and its properties.

7. However, the learned Government Pleader for Endowments and the learned Standing Counsel for the 1st respondent Devasthanam reiterated the contentions in the counter of the 1st respondent Devasthanam, which are extracted supra, and contended that it is in public interest and in the interests of the Trust & its properties and to avoid unruly persons from entering into the properties of the Trust and its office, action as contemplated under law is taken and that the deponent of the writ affidavit, who is the person representing the Trust in this writ petition, is not the successor Managing Trustee as being claimed and he is a stranger to the property and that as on the date of taking possession, three persons whose names were mentioned in the counter affidavit are managing the affairs of the Trust and that successors to all of them died and as a result, there is no one to manage the trust, and that, therefore, the then Assistant Commissioner, Endowments, Chittoor, took initiative and passed orders in B1/5311/92, dated 06.04.1993, and appointed J.Harinath Babu, M.K.Govindarajulu, P.N.Kuppaiah Chetty, K.Dayananda Gupta and V.Subbarayulu as trustees and the said persons took charge and started managing the affairs of the Trust and P.N.Kuppaiah Chetty was elected as the President and that he expired in the year 1994 and that later, M.K.Govindarajulu was elected as President and that the said Committee consisting of trustees was in management of the affairs of the Trust by conducting meetings and passing resolutions from time to time from the year 1993 onwards and

that in the meanwhile, the legal heir of the founder, Voruganti Sarojanamma, came forward and endowed the petition schedule property to the 1st respondent Devasthanam by executing a letter of Kainkaryam, dated 22.12.2016, and delivered possession of the petition schedule property to the respondent-Devasthanam and that ever since the execution of the said letter, the respondent Devasthanam has been in exclusive possession and managing the petitioner Trust as per the conditions incorporated in the Settlement Deed.

8. However, the grievance of the writ petitioner is that the present Trust is a distinct and specific endowment and it cannot be either adopted or amalgamated without proper proceedings and initiation of action as per the procedure established by law by the competent authority, even assuming that the contention that Voruganti Sarojanamma executed a letter of kainkaryam, dated 22.12.2016, and delivered possession of the petition schedule property to the 1st respondent Devasthanam is true. The further submission is that the individual identity and status of the petitioner Trust has to be maintained by the Endowment Department till an appropriate order is passed by the competent authority as contemplated under Section 145 of the Act.

8.1 In view of the facts & submissions, it is profitable to refer to Section 145 of the said Act, which reads as under:

> 145. Adoption or amalgamation of Trusts and Endowments: (1) Where the Commissioner has reason to believe that any religious Trust is not capable of maintaining out of its funds, he may, in the interest of proper management of administration, subject to such restrictions and conditions as he may deem fit, direct the amalgamation or as the case may be, the adoption of such religious Trust by any other religious Trust having similar objects and capable of managing such Trust and thereupon the

trustee of the Trust to which it is amalgamated or by which it is adopted shall maintain and administer such Trust.

[Provided that the conditions to be satisfied for any such adoption or amalgamation shall be as may be prescribed]

(2) On such amalgamation or adoption the Trusts shall be deemed to comprise a single Trust and administered as if they were a single Trust published under Section 6.

(3) Where the Trust so amalgamated or as the case may be adopted under sub-section (1), subsequently found to be capable of being managed by itself, the Commissioner may in the interest of proper management of administration, revoke the orders issued under sub-section (1), and thereupon the Trust shall manage its affairs independently out of its funds.

(4) An appeal shall lie to the Government against the orders passed by the commissioner under sub-Section (1) or sub-section (3)."

Admittedly, no proceeding is filed to show that the Commissioner or the Assistant Commissioner or any other competent officer of the Endowment Department placed the Executive Officer of the 1st respondent Devasthanam as incharge officer for the management of the petitioner-Trust. Further, no proceeding issued by any competent authority is produced by the respondents to show that the Executive Officer of the 1st respondent Devasthanam is authorized to take over management of the petitioner Trust. However, the Executive Officer of the 1st respondent Devasthanam is only contending that the legal heir of the founder by name Voruganti Sarojanamma came forward and endowed the schedule property to the 1st respondent Devasthanam by executing a letter of kainkaryam, dated 22.12.2016, and delivered possession of the schedule property to the 1st respondent Devasthanam and that ever since the execution of the said letter, the 1st respondent Devasthanam has been in possession and managing the petitioner Trust as per the conditions incorporated in the settlement deed. After such letter of Kainkaryam, dated 22.12.2016, also proceedings, if any, issued by a competent officer directing to take over possession and management of the trust and its properties is produced. In that view of the matter, this Court is of the considered view that this writ petition can be disposed with appropriate directions.

9. Accordingly, the Writ Petition is disposed of with the following directions:

(i) The officer competent of the Endowment Department shall take steps forthwith for appointing an Executive Officer separately or any Executive Officer as incharge Executive Officer for the management of the subject trust and its properties by issuing appropriate proceedings by following the procedure established by law.

(ii) Further, in the interests of justice, steps shall be taken by the Competent Authority for appointment of Trust Board for the petitioner Trust for effective management of the Trust and its properties.

(iii) The necessary exercise in the above regards shall be completed as expeditiously as possible and in any event within two (2) months from the date of receipt of a copy of this order. Till such time, as per the interim orders of this Court, the Executive Officer of the 1st respondent Devasthanam is allowed to continue and the petitioner is allowed to assist the said Executive Officer in management.

(iv) It is needless to state that a separate individual identity of the petitioner Trust and its property as a specific endowment shall be maintained until an order, if any warranted, is passed by the Commissioner as contemplated under Section 145 of the Act by following the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

17.09.2018
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