HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 14159 of 2018

ORDER:

1) Sri Krishna Chaithanya Sangham, Kapavaram village, filed the present writ petition seeking issuance of a Writ of Mandamus to declare the removal of idol of Lord Sri Krishna, which was installed on 13.11.2017 at the foot of the right side steps of the 1st respondent-temple from the said place, as illegal, improper and incorrect and violative of Articles 25 to 28 of the Constitution of India and consequently to direct the respondents to forthwith restore/re-install the idol of Lord Sri Krishna at the said place.

2) The petitioner herein is an organization, whose object is to propagate the best of Lord Sri Krishna. The first respondent/temple is under the supervision and control of the Executive Officer of the second respondent. A three feet idol of Lord Sri Krishna was said to have been installed at the foot of the steps of the first respondent temple, with a space of about three feet on all the four sides of the idol. The said idol was installed on 13.11.2017 in the presence of the Trust Board Chairman of the first respondent/temple. It is said that the writ petitioner/society through its devotees has been sending One Crore Talambralu, manually peeled from the grain to Lord Srirama at Bhadrachalam

and Vontimitta of both the states of Telangana and the Andhra Pradesh on the occasion of Srirama Navami. The petitioner/society grow paddy in the lands specially chosen for the purpose of Talambralu and the grains are peeled manually to make them husk free. The installation of idol of Lord Sri Krishna on 13.11.2017 was a grand public affair. It is said that the Executive Officer of the second respondent/temple was fully aware about the existence and activities of the petitioner/society. However, the E.O. of the second respondent without any notice to and knowledge of the petitioner/society got the said idol of Lord Sri Krishna removed on 18.12.2017 and peremptorily kept it outside the respondent/temple exposing it to vagaries of nature. This action of the second respondent in removing the idol is subject matter of challenge in the present writ petition.

3) Sri S.R. Sanku, learned counsel for the petitioner/society mainly submits that once an idol is installed, it becomes the property of the temple and that the action of the second respondent in not issuing any notice to the Chairman of the Trust Board of the Temple; and forcibly removing the same is in violation of principles of natural justice. He further submits that though a representation came to be made on 16.01.2018 to the Executive Officer of the second respondent, the same was not considered

inspite of repeatedly requesting him to do so. Relying upon the judgment of this Court in **Pindi Jaggaiah v. The Diety of Seetharama Swamy Varu reported in 1987(1) ALT 18**, the counsel would contend that the action taken by the authority in removing the idol is improper and incorrect.

4) A counter came to be filed by the second respondent disputing the averments made in the affidavit filed in support of the Writ Petition. It is stated that the Trust Board Chairman of the Temple has no right to take a decision for installation of the idols in the temple premises as it is the Executive Officer of the Temple, who is competent authority to take decisions, for up-keeping of the temple and maintain its sanctity. It is stated that if any idol is to be installed in the temple, it would be after following the Aagamasastra and taking opinion of Vedapandits. Insofar as sending Talambralu to Bhadrachalam and Vontimitta, on the occasion of Srirama Navami, is disputed stating that the same is not within their knowledge. It is further stated that the Temple is notified by Archaeological department as a historical monument as per G.O.Rt.No.157 dated 31.01.1977. Having regard to the above, no activity can be carried on in the temple without the prior permission of the Archaeological department. It is said that even for the minor repairs the temple authorities have to seek

permission from the Archaeological department. All the other allegations made in the affidavit with regard to the Executive Officer throwing away the idol forcibly and that he has no faith in the Hindu philosophy are denied. The allegation that the Executive Officer has committed an offence punishable under Section 295 IPC is also denied. It is further stated that the allegation of the petitioner that the idol was kept outside the temple is incorrect. The counsel would submit that the idol which was initially installed was also exposed to sun and air and that it has been shifted to another covered place but within the temple compound.

5) A reply came to be filed by the writ petitioner stating that Aagamasastras were followed while installing the said idol in the presence of none other than the Chairman of the temple, who himself is an expert in the Aagamasastras. Gita Homam was also got conducted in his presence by 108 women devotees of Malayala Swami Gita Ashramam, Rajahmundry Branch. In any event, it is pleaded that a notice ought to have been issued prior to removing the idol so that Trust Board could have explained their stand. Further stated that the fact of temple being under the control of Archeological department was never informed to any of the trustees. Having regard to all the circumstances he pleads that

the authorities ought not to have removed the idol in highhanded manner, more so when it was installed by following all the rituals.

6) Learned counsel for the respondents would contend that if idols are sought to be installed to the whims and fancies of the trust board, definitely the management of the temple, which is vested with the Executive Officer, will not be in a position to run the temple, more so when the temple is under the control of Archeological department. While accepting the plea that the idol has been shifted to other prominent place in the temple, with a cover over it, pleads that instead of complicating the matter, it would be just and proper to give a quietus to the issue by directing the authorities to deal with the representation of the petitioner.

7) Therefore, the issue that arises for consideration is "Whether the second respondent was right in shifting the idol from the place where it was installed in the temple premises to another place in the same temple without giving any prior notice to the temple represented by the Board?"

8) The fact that the temple is under the supervision and control of second respondent is not in dispute. The fact that the temple is also under the control of Archeological department and that alterations/repairs/constructions if any shall be made with

the prior approval of the Archeological department is also not in dispute.

9) Keeping the above circumstances in the background, it is to be noted whether the second respondent was justified in shifting the idol of Lord Sri Krishna from the place where it was installed to another place within the same premises. Section 24 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (herein after referred to "the Act") deals with duties of the trustees, which reads as under:-

Section 24:- Duties of the trustees

(1) The Commissioner, the Deputy Commissioner, or the Assistant Commissioner, as the case may be, having jurisdiction over any charitable or religious institution or endowment,-

(a) may require the trustee or any person, in possession of, or responsible for the custody of any books, accounts, returns, reports or other information relating to the administration of the institution or endowment, its funds, income, monies or other properties connected therewith or the appropriation thereof, to furnish or produce or cause to be furnished or produced for any inspection which may be made under the provisions of this Act, all or any of them at such place and time and in such manner as he may direct;

(b) shall, at all reasonable times, have free access to such books, accounts, documents, funds, income, monies or other properties.

(2) It shall be the duty of the trustee, all servants and employees working under him, any agent of the trustee, or any other person having concern in the administration of such institution or endowment, to afford such assistance and facility as may be necessary or required in connection with any inspection.

> (3) The trustee of every charitable or religious institution or endowment shall obey all lawful orders issued under the provisions of this Act, by the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be.
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> (4) It shall be the duty of the Trsutees of every temple to foster faith, devotion and ethical conduct in the society by facilitating formation of a Bhaktha Samajam attached to each temple, on a voluntary basis, consisting of the devotees thereof in order to periodically organize Bhajans, religious discourses, devotional and other religious programmes such as nagara sankeertanas etc., appropriate to the custom, usage, tradition and sampradayams of the temple concerned. It shall be competent for the Commissioner with the approval of the Dharmika Parishad to frame bye-laws for the constitution and functioning of the Bhaktha Samajams.

10) A reading of the said section does not anywhere authorize the trustee to install an idol. Section 23 of the Act, which deals with powers of the trustee, is also silent as to the performance of functions/installation of the idol in the temple. Section 29 of the Act deals with appointment and duties of the Executive Officer. However, sub-section 3(b)(i) to Section 29 states that Executive Officer shall, subject to such restrictions as may be imposed by the Government, be responsible for the proper maintenance and custody of all the records, accounts and other documents and of all the jewels, valuables, money, funds and other properties of the Institution or Endowment.

11) In view of the above said provisions, it appears that it is only the Executive Officer, who is competent to decide issues relating to installation of idols in the temple. But, at the same time, it is

also to be noted here that this temple is notified as archaeological historical monument. Since the Government was of the opinion that the said temple requires protection, declared the said temple as a protected monument. Once a temple is declared as protected monument and as it is in the custody of the Archeological department, no authority vest with the trust board to act in any manner, more so with regard to installation of an idol in the temple. Any action to be taken by them should be with the consent of the Archeological Department.

12) The learned counsel for the petitioner would submit that a notice ought to have been given by the second respondent before removing the same from the place where it was installed and then shift it to another place within the same compound. If really, the idol came to be removed without following due process of law as urged by the petitioner, the trust board or its Chairman would have been the appropriate authority to question the same. None of them came forward questioning the action of the second respondent. On the other hand, the petitioner/organization, which aims to propagate the best of Lord Sri Krishna, filed the writ petition. Therefore, a doubt arises as to whether really the action of the second respondent was in violation of any law or against the

principles of natural justice, as urged by the learned counsel for the petitioner.

13) But, the photographs which are placed before this Court, show that the idol is now kept at a place in the temple covered by stone made umbrella with a pedestal. Therefore, the allegation that the idol has been removed and kept outside the temple appears to be incorrect. If the idol is sought now restored back on the ground that no notice was given to the trustee earlier, it may again lead to further complications. It appears that the present issue came to be raised because of differences between the Executive Officer of second respondent and the members of the trust board of the first respondent/temple. The disputes between the two, appears to be patent, in view of criminal cases being lodged against the Executive Officer of the second respondent and before the District Legal Services Authority, questioning the action of the second respondent.

14) Therefore, taking into consideration the facts and circumstances of the case and to see that the sentiments of the devotees who visited the temple are not affected, the representation dated 16.01.2018 of the petitioner/society may be dealt with by second respondent in consultation with the trust board and Archeological department in accordance with the

practice and procedure that is being followed while installing an idol.

15) With the above observation, the Writ Petition is disposed of. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

Dt:08.11.2018
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