

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.25528 of 2005

Dwarapudi Brahma Reddy

....Petitioner

Vs.

Commissioner, Department of Endowments,
Government of Andhra Pradesh, Boggulakunta,
Hyderabad, and others

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 26.09.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment
may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wishes to
see the fair copy of the Judgment? Yes/No

CHALLA KODANDA RAM, J

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Government of Andhra Pradesh, Boggulakunta,
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.... Respondents

!Counsel for the Petitioner : Sri T.S. Anand

Counsel for Respondent Nos.1 to 3 : GP for Endowments

Counsel for Respondent No.4 : Smt. N. Indrani, Standing Counsel

Counsel for Respondent No.5 : Sri N. Siva Reddy

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>Head Note:

? Cases referred:

1. AIR 1983 AP 7

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.25528 of 2005****ORDER:**

The brief facts of the case are as follows:

There are two temples, by name, Sri Kodanda Rama Swamy Temple at G. Mamidada Village and Sri Umamaheswara Swamy Temple at Ubalanka, constructed by two brothers, by name, Sri Subbi Reddy and Sri Rami Reddy, and the properties were set apart by the founders as well as their family members by executing Settlement Deeds on 23.07.1939, 23.07.1948 and 06.07.1951; that all family members acted as founder trustees; that after the death of Sri Rami Reddy, his adopted son, Sri Ramachandra Reddy, continued to represent that branch; that on the demise of Sri Subbi Reddy, his sons, Sri Adi Reddy, Sri Ramakrishna Reddy, Sri Ramachandra Reddy and Sri Brahma Reddy continued to act as founder trustees; that Sri Satyanarayana Reddy, S/o Adi Reddy, submitted representations on 16.03.2002 and 07.01.2003 to the Assistant Commissioner, Endowments Department, Rajahmundry, to recognize his son, Sri Srinivasa Reddy, as Founder Family Member of the subject temples, in his place, as he is unable to discharge his obligations on account of his old age, and the said

request was acceded to by the Deputy Commissioner, Endowments, Kakinada, vide his order, dated 18.02.2003, recognizing Sri Srinivasa Reddy, as Founder Family Member of the subject temples; that the said Srinivasa Reddy died on 26.03.2003 and thereafter, his wife, Smt. Sridevimahalakshmi, the fifth respondent herein, approached the Deputy Commissioner seeking her to be declared as Founder Family Member of the subject temples; that after considering the legal heir certificate produced by her, the third respondent vide proceedings, dated 02.06.2003, declared her as Founder Family Member in the place of her deceased husband and that aggrieved by the same, the petitioner, who is the son of Subbi Reddy, filed Revision Petition No.185 of 2004 under Section 92 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act') before the second respondent - Regional Joint Commissioner, Multi Zone-I, Endowments Department, Kakinada, who in turn, vide order, dated 30.09.2005, dismissed the same confirming the order, dated 02.06.2003 of the third respondent. Challenging the said order, the petitioner filed this Writ Petition.

Sri T.S. Anand, learned counsel for the petitioner, while reiterating the grounds raised before the second respondent contends that as per the wishes of the founders of the subject temples and as mentioned in the Settlement Deeds, only male member should be appointed as trustee and therefore, recognizing the fifth respondent as Founder Family Member is contrary thereto as well as the bar contained in Section 19(1)(i) of the Act, as she is below 30 years and her date of birth is 08.03.1974; that on account of the language employed in Explanation II to Section 17(1) of the Act, only a male member should be recognized as Founder Family Member, as such, the fifth respondent being the female member, though belonging to the family of the founders, is not fit to be appointed as trustee and that the second respondent passed the order impugned without issuing any notice and without conducting any enquiry and therefore, the impugned order is unsustainable.

Sri N. Siva Reddy, learned counsel for the fifth respondent, submits that the contention of the learned counsel for the petitioner with regard to the age of the fifth respondent was not raised at any point of time before the authorities concerned and thus, there was no occasion for the authorities to deal with the

same. He further submits that in terms of Section 19 of the Act, the disqualification is not with respect to the person to be recognized as Founder Family Member but with respect to the appointment of trustee. He further submits that in terms of Explanation II to Section 17(1) of the Act, the children, grandchildren can be declared as Member of the family of the founder and for others, who are not children and grandchildren, the stipulation with respect to the agnatic line of succession is applicable and thus, there is no embargo with respect to the recognition of the fifth respondent as Founder Family Member. He also submits that the fifth respondent, who was recognized as Founder Family Member, is none other than the granddaughter as well as the daughter-in-law of Sri Satyanarayana Reddy.

Heard learned counsel for the parties and perused the record.

A perusal of the order, dated 30.09.2005 passed by the second respondent discloses that the petitioner is the fourth son of the first branch founder, Sri Subbi Reddy; that Sri Adi Reddy, being the eldest male issue of the Founder Family, his son Sri Satyanarayana Reddy was declared as Founder Family Member by the Assistant Commissioner,

Endowments, Rajahmundry, vide order, dated 28.01.2000 and as there being no challenge thereto, the said order became final; that on retirement of the said Satyanarayana Reddy due to old age, his son, Sri Srinivasa Reddy, was declared as Founder Family Member vide order, dated 18.02.2003, which is not challenged by the petitioner; that as there is abolition of hereditary rights under Section 16 of the Act, the question of succession to the Trusteeship does not arise and therefore, the condition stipulated in the Settlement Deeds with regard to succession to hold office by the eldest male issue does not operate and further, there is no bar to recognize a woman as Founder Family Member under the provisions of the Act, as such, the objection that the Trustee should be the eldest male member of the Founder Family was rejected.

At the outset, it may be noted that as on the date of passing of the impugned order, there was no Trust Board constituted and the fifth respondent was not appointed as Trustee of the subject temples. However, it becomes necessary to notice certain statutory provisions i.e., Sections 2(16), 15 to 17, 19(1) and 20 of the Act.

Section 2(16) defines ‘Hereditary trustee’, which means the trustee of a charitable or religious institution or endowment the succession to whose office devolves according to the rule of succession laid down by the founder or according to usage or custom applicable to the institution or endowment or according to the law of succession for the time being in force, as the case may be.

As seen from the above quoted provision, there is a distinction between ‘Hereditary Trustee’ and ‘Founder Family Member’.

Sections 15 to 17, 19 and 20 of the Act deal with appointment of Board of Trustees; abolition of hereditary trustees; procedure for making appointments of trustees and their term; disqualifications for trusteeship and Chairman of the Board of Trustees, respectively.

In the case on hand, what all has been done by the authorities is, recognizing the fifth respondent as Founder Family Member. In other words, the said consideration is confined to Section 17 of the Act. However, there is no material available before this Court to take into consideration the assertion of the learned counsel for the fifth respondent that the fifth respondent

is the grand daughter of late Sri Satyanarayana Reddy, who was recognized as Founder Family Member. In the circumstances, even assuming for arguments sake, without entering into the controversy whether the restriction placed in Explanation II to proviso to Section 17(1) of the Act that only a member from agnatic line of succession could be recognized as Founder Family Member, and by giving expanded meaning to children and grandchildren, male or female, the fifth respondent being the daughter-in-law would not fit into Explanation II to the proviso to Section 17(1) of the Act. From this, it is clear that she could not be declared as Founder Family Member.

In Explanation I to the proviso to Section 17(1) of the Act, 'Founder' has been defined to mean that the person, who was recognized as Hereditary Trustee under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 or a Member of his family recognized by the Competent Authority.

In the case on hand, it is the specific assertion of the learned counsel for the petitioner that as per the Settlement Deeds, the trustee should be the male member of the Founder Family.

A close reading of Section 2(16) of the Act and Explanation I to the proviso to Section 17(1) of the Act makes it clear that only a person who could be was recognized as Hereditary Trustee would be recognized as Founder Family Member.

It may be noted that Section 2(29) defines 'Trustee' as any person whether known as mathadhipati, mahant, dharmakarta, mutawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested; and includes a Board of Trustees.

It may be noted further that the question as to whether the petitioner would be eligible to be recognized as Hereditary Trustee or not is not considered by any of the authorities. In view of specific recitals in the Settlement Deeds, the fifth respondent could not be recognized as Founder Family Member. However, from the limited material placed before this Court and in view of the second respondent rejecting the objection of the petitioner with regard to the fifth respondent being declared as Founder Family Member on the ground that there is no embargo for such recognition on account of abolition of Hereditary Trustees under

Section 16 of the Act, the question of considering whether the petitioner or the fifth respondent has a right to be appointed as Trustee was not an issue before the second respondent and the only issue before him was with respect to the fifth respondent being declared as Founder Family Member. As the fifth respondent does not fall under the category of children or grandchildren of the founders or founder, she could not have been declared as Founder Family Member. In view of the same, the impugned order is liable to be set aside.

Yet another aspect which requires to be clarified in the present case is that determination of a particular individual's claim to be recognized as Founder Family Member is limited to determination of a claim of such individual to be recognized as Hereditary Trustee. This enables such individual to make a claim to be appointed as Trustee and further, as Chairman of the Trust Board in terms of Section 20 of the Act. In the case on hand, the claim of the fifth respondent to be appointed as Trustee is not taken away of her not being recognized as Founder Family Member, as her claim is required to be considered independently on its own merits or on account of there being a requirement to appoint a woman in terms of Section 17(5) of the Act.

The argument of the learned counsel for the fifth respondent that on account of the fact that Sri Satyanarayana Reddy was recognized as Founder Family Member and thereafter, his son Srinivasa Reddy, the petitioner has no locus standi to challenge the recognition of the fifth respondent as Founder Family Member consequent upon being considered for trusteeship of the subject temples is liable to be rejected, as it is always possible to have more than one person being recognized as Founder Family Member. It is only when the question of selection/appointment of Trustee under the category of Hereditary Trustee, the relevant person among the members of Founder Family may choose to be appointed as Trustee. Merely because a person was recognized as Founder Family Member, the claim of another person to be recognized as Founder Family Member does not by itself disentitle him to make a claim and seek preferential treatment for being appointed as Trustee.

It is relevant to cite the judgment of this Court in **M. Sivarama Naicher v. Government of Andhra Pradesh and another**¹.

¹ AIR 1983 AP 7

Subject to the above observations, this Writ Petition is allowed by setting aside the impugned order.

Miscellaneous Petitions, if any pending, shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

26th SEPTEMBER, 2018.

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