

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION Nos.20936 of 2006 & 1751 of 2009

COMMON ORDER:

Heard the learned counsel for the petitioners, learned counsel for the unofficial respondents and the learned Government Pleader of Endowments.

Since the subject matter and the parties in both these writ petitions are one and the same, with the consent of the learned counsel in both the writ petitions, common arguments are heard and the same are being disposed of by this common order.

The prayer in W.P.No.20936 of 2006 is as under:

“... this Hon'ble Court may be pleased to issue a writ of Mandamus or any other writ, order or direction directing the respondents to forthwith implement the orders of the Commissioner, Endowments, passed in Rc.No.R1/29734/82-1 dated 01.05.1982 and 25.05.1983.”

The prayer in W.P.No.1751 of 2009 is as under:

“... this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly a writ in the nature of Mandamus declaring the action of the 1st respondent – Executive Officer of Sri Chennakesava Swamy Vari Devasthanam, Koruthadiparru Village, Amarthalur Mandal, Guntur District in issuing the impugned letter dated 22.12.2008 directing the petitioner herein to handover the keys of Sri Chennakesava Swamy Vari Devasthanam to Sri Divi Appala Charyulu for performing his share of archakatvam as bad, illegal, arbitrary, oppose to law.”

The facts of the case are that Sri Chennakesava Swamivari temple is situated at Kodithadiparru Village, Amarthaluru Mandal, Guntur District. The Archakatvam in the said temple is being performed by two families, namely, Parasaram and Deevi for six months in a year. The

petitioners in both the writ petitions belong to Deevi family. As per the arrangement took place between the grandfather of the petitioner in W.P.No.20936 of 2006 and his brother, Hanumacharyulu, the petitioner's grandfather was doing Archakatvam for one month and his brother for five months out of the six months. The same was continued during the petitioner's father's time. The land admeasuring Ac.19.00 cents and odd was given for enjoyment for doing Archakatvam to Deevi family and out of the said land, the grandfather of the petitioner got Ac.4.00 cents for doing Archakatvam for one month and his brother got Ac.15.00 cents and odd for five months. The petitioner's father died in the year 1955 and his grandfather's brother, Hanuman Charyulu, died in the year 1969. Thereafter, one Pardhasarathi, son of Hanumacharyulu and father of the petitioner in W.P.No.1751 of 2009, raised a dispute regarding Archakatvam service for one month in the year 1972, but the same was resolved through an agreement dated 02.06.1972, wherein the Archakatvam rights of the petitioner in W.P.No.20936 of 2006 were admitted and written. Again in the year 1982, the said Pardhasarathi raised a dispute and refused to handover the keys of the subject temple for a period of one month which commences from Chaitra Suddha Pournami. In those circumstances, the Executive Officer of the temple has given a notice dated 21.10.1981 to the petitioner directing him to handover the land admeasuring Ac.4.00 cents. Consequent

thereto, the petitioner submitted representation dated 01.05.1982 to the Commissioner i.e., 1st respondent. Vide proceedings Rc.No.R1/29734/82-1 dated 01.05.1982, the 1st respondent directed the Executive Officer of the temple to allow the petitioner to render the service of Archakatvam for a period of one month in the temple and not to occupy the land that fell to his share. However, the said order was not implemented. Therefore, the petitioner submitted another representation dated 25.05.1983 to the 1st respondent. Vide proceedings Rc.No.R1/29734/82 dated 25.05.1983, the 1st respondent directed the Executive Officer of the temple once again to take back the keys of the temple from the archakas and handover the same to the petitioner. In the said proceedings, it was mentioned that any officer or archaka, who fails to comply with the said order will be suspended and directed the Assistant Commissioner to see that the order is implemented forthwith and sent a report. Aggrieved by the said proceedings, the father of the petitioner in W.P.No.1751 of 2009 filed a suit in O.S.No.315 of 1983 on the file of the Principal Munsiff Magistrate Court, Tenali, and sought consequential permanent injunction. On contest, the said suit was dismissed on merits by judgment and decree dated 26.04.1988. Questioning the same, the appeal in A.S.No.34 of 1988 was filed before the Court of Subordinate Judge, Tenali. However, the said appeal was also dismissed on 15.12.1993. After dismissal of the appeal, the 2nd respondent

vide his proceedings L.Dis.No.A2/10152/2005 dated 20.05.2006 directed respondent Nos.3 and 4 to implement the order of the 1st respondent dated 01.05.1982, but the same was not implemented till date. The petitioner also issued a registered notice to respondent Nos.3 and 4 requesting for implementation of the proceedings dated 20.05.2006. As there was no response, the petitioner was constrained to file W.P.No.20936 of 2006. During the pendency of the said writ petition, the petitioner in W.P.No.1751 of 2009 was impleaded as respondent No.5 vide WPMP.No.33259 of 2008.

Respondent Nos.1 and 2 filed counter affidavits with the same verbatim and contended that the Archakatvam in Sri Chennakesava Swamivari temple is being performed by two families. The said temple was published under Section 6(c)(ii) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, "the Act") and it is under the administrative control of the Assistant Commissioner, Endowments Department, Guntur. In fact, the lands of the subject temple were apportioned in between the temple and archakas as per the orders of the Commissioner, Endowments Department, A.P., Hyderabad, in R.Dis.No.39972/1969-M1 dated 17.04.1971. It is also stated in the said counter affidavit that the temple authorities are no way concerned with the shares and rendering of services by the archakas by fixing up their turns of performing

Archakatvam services. It is the duty and responsibility of the archakas to render service as per the mutual understanding arrived at in between them. It is stated that as the petitioner has been residing at Jandhrapet village of Chirala Taluq, Prakasam District, he is not rendering services in the above said temple, but is enjoying his share of land admeasuring Ac.4.00 cents since a long time. Consequently, the Executive Officer of the temple issued a notice dated 21.10.1981. However, on the representation made by the petitioner, orders have been issued by the 2nd respondent in L.Dis.No.A2/10152/2005 dated 20.05.2006 directing the Executive Officer of the subject temple to handover the share of the petitioner and allow him to perform Archakatvam service in the temple duly implementing the earlier orders of the Commissioner dated 01.05.1982, subject to the condition that no litigation is pending. However, it is stated in the counter affidavit that a lot of litigation is pending as to the Archakatvam service in the above said temple among the servicedars.

The petitioner in W.P.No.1751 of 2009 would contend that he being the son of late Sri Parthasaradhi is performing the Archakatvam service to the subject temple as a hereditary archaka and there was never at any point of time a dispute relating to the performance of the Archakatvam service by the petitioner on terms being one amongst the seven families, who are rendering service to the deity. The service to the

devastanam as archakas by the seven families is being performed by enjoying the temple land and the usufruct derived is taken in lieu of the services rendered to the subject deity as an Archaka. He also admitted that two families are rendering the hereditary service to the subject temple i.e., Parasaram and Deevi. However, it is specifically stated in the affidavit that though the 4th respondent, who is the petitioner in W.P.No.20936 of 2006, is hailing from the family of Deevi, he never at any point of time rendered his services to the subject deity and never claimed his right of Archakatvam in the subject temple as an archaka. Though the Commissioner of Endowments has issued proceedings permitting the 4th respondent to render his services to the subject deity in the year 1982, the same was not implemented since he never joined in service nor he has taken up the task of performing Archakatvam resulting in issuance of proceedings dated 25.05.1983 by the 2nd respondent to implement the earlier orders. Therefore, the 4th respondent, who kept quiet for a long time, with an intention to disturb the existing arrangement made an unsuccessful attempt in filing W.P.No.20936 of 2006, wherein he had no interim order. He challenged the proceedings dated 22.12.2008 issued by the 1st respondent since they are ex facie illegal for the reason that it refers only to the letter issued by the Assistant Commissioner of Endowments which does not speak as to under which agreement the 4th respondent is entitled to

render his services to the subject deity. There is no basis for allowing the 4th respondent to perform Archakatvam to the subject deity. The impugned proceedings are ex facie illegal since the 3rd respondent is not competent to give such suggestion. In fact, the Deputy Commissioner of Endowments is the competent authority. The 1st respondent has issued the impugned proceedings permitting the 4th respondent to occupy the post of Archakatvam service after a lapse of 27 years by disturbing the existing arrangement and he is ex facie illegal and not permissible in law. In those circumstances, he sought to set aside the impugned proceedings dated 22.12.2008.

The 1st respondent as well as the Additional Commissioner of Endowments department filed two counter affidavits reiterating the earlier stand taken in W.P.No.20936 of 2006. It is stated in the counter affidavits that the Deputy Commissioner, Endowments Department, Guntur, in Rc.No.B2/8683/2007 dated 26.11.2007 issued instructions to the Executive Officer and also to the Assistant Commissioner, Endowments Department, Guntur, to implement the orders of the 2nd respondent. The 3rd respondent in turn in his proceedings Rc.No.A2/12701/2007 dated 06.12.2007 issued instructions to the Executive Officer of the subject temple i.e., the 1st respondent herein to handover one month share of Archakatvam to the 4th respondent and allow him to perform Archakatvam.

Thereupon, the 3rd respondent in his proceedings Rc.No.A2/12701/2007 dated 11.11.2008 issued instructions to the 1st respondent to implement the orders dated 06.12.2007 and report compliance otherwise disciplinary proceedings will be initiated. As the said orders are not being implemented with, the 2nd respondent issued the impugned proceedings dated 22.12.2008 requesting the petitioner to handover the keys of the subject temple to the 4th respondent as per the instructions given by the Assistant Commissioner, 3rd respondent. It is also stated that if the petitioner fails to handover the keys, appropriate action will be taken against him. Therefore, there is no illegality in issuance of the impugned proceedings dated 22.12.2008.

Learned counsel appearing for the petitioner in W.P.No.20936 of 2006 would contend that the petitioner is entitled to do Archakatvam for one month as per the terms of the subject temple. As the 5th respondent raised a dispute with regard to the Archakatvam in the years 1972 and 1982, on his representation the 1st respondent issued proceedings dated 01.05.1982 and 25.05.1983 directing the Executive Officer of the subject temple to take back the keys of the temple from archakas and handover the same to him. Questioning the said proceedings, the 5th respondent i.e., father of the petitioner in W.P.No.1751 of 2009 filed a suit in O.S.No.315 of 1983 on the file of the Court of Principal Munsiff Magistrate, Tenali. The said suit was dismissed on

26.04.1988. Aggrieved by the said judgment, an appeal in A.S.No.34 of 1988 was filed which too was also dismissed on 15.12.1993. Even thereafter the 2nd respondent with the Assistant Commissioner of Endowments, Guntur, issued proceedings dated 20.05.2006 instructing respondent Nos.3 and 4 to implement the orders of the 1st respondent dated 01.05.1982. When the said proceedings have not been implemented, he was constrained to file the present writ petition. Therefore, there is absolutely no delay in filing the writ petition as contended by the petitioner in W.P.No.1751 of 2009. Alternatively, he also submitted that even if it is presumed that the petitioner is out of Archakatvam, but by virtue of his status as a hereditary archaka, his position and status will still exist.

As far as W.P.No.1751 of 2009 is concerned, the learned counsel submitted that the said writ petition is not maintainable on the ground of delay, since the proceedings dated 01.05.1982 and 25.05.1983 are being questioned in the year 2006 with a delay of 23 years. To substantiate his contention, he relied on the judgment of the Supreme Court in **Londhe Prakash Bhagwan v. Dattatraya Eknath Mane and others**¹. The relevant portion is as under:

“Even if we assume that no limitation is prescribed in any statute to file an application before the Court in that case, can an aggrieved person come before the Court at his sweet will at any point of time? The answer must be in the negative. If no time-limit has been prescribed in a statute to apply before the appropriate forum, in that case, he has to come before the Court within a reasonable time.”

¹ (2013) 10 SCC 627

He also contended that even though the 2nd respondent issued proceedings dated 01.05.1982 and 25.05.1983, the 4th respondent never joined in service nor he had taken up the task of performing Archakatvam to the subject deity. Therefore, there are no bona fides on the part of the 4th respondent in seeking Archakatvam of the subject deity. Therefore, he sought dismissal of W.P.No.20936 of 2006, as it is devoid of merits.

Learned counsel appearing for the petitioner in W.P.No.1751 of 2009 would submit that there was no dispute at any point of time relating to the performance of Archakatvam service among the seven families who are rendering service to the subject deity. He specifically contended that the 4th respondent though hails from the Deevi family, he never rendered his services to the subject deity. Though the Commissioner of Endowments issued proceedings to render his services to the subject deity in the year 1982 itself, he has not shown any interest and the said proceedings are never implemented. In fact, there is no basis for allowing the 4th respondent to perform the Archakatvam in the subject temple. Therefore, the proceedings dated 22.12.2008 are *ex facie* illegal since the Deputy Commissioner of Endowments is the competent authority for issuing the said proceedings.

From the material on record the undisputed facts are that in the temple of Sri Chennakesava Swamyvaru, the

Archakatvam is being performed by two families, namely, Parasaram and Deevi for six months in a year. As per the arrangement between the grandfather of the petitioner in W.P.No.20936 of 2006 and his brother, the petitioner's grandfather was doing Archakatvam for one month and his brother was doing Archakatvam for five months out of the six months from Deevi family.

When the petitioner in W.P.No.20936 of 2006 was obstructed from doing the Archakatvam in the year 1972, it was resolved by executing an agreement dated 02.06.1972, wherein the Archakatvam rights were categorically admitted and written. However, the said fact was denied by the petitioner in W.P.No.1751 of 2009, but on the representations given by the petitioner in W.P.No.20936 of 2006, the 1st respondent has issued proceedings dated 01.05.1982 and 25.05.1983 directing the Executive Officer of the subject temple to handover the keys of the temple for performing Archakatvam by the petitioner. Though the petitioner in W.P.No.1751 of 2009 challenged the said proceedings in O.S.No.315 of 1983, it culminated in dismissal of the suit as well as the appeal filed thereafter. Therefore, it is not open for the petitioner in W.P.No.1751 of 2009 to contend that though the proceedings were issued in the years 1982 and 1983 by the Commissioner of Endowments, Hyderabad, that the petitioner in W.P.No.20936 of 2006 failed to render service of

Archakatvam in the subject temple since he obstructed the Archakatvam service by filing civil suits.

A further perusal of the material on record would reveal that there is delay and latches on the part of both the petitioners in filing the writ petitions since in both the writ petitions the proceedings issued by the Commissioner of Endowments dated 01.05.982 and 25.05.1983 are being questioned in the form of implementation on one hand and to set aside the same on the other hand. As far as whether the petitioner in W.P.No.20936 of 2006 was doing Archakatvam from the beginning and his services were obstructed only in the years 1972 and 1982, as contended, between the parties, is prima facie a disputed question of fact which cannot be decided in a writ petition filed under Article 226 of the Constitution of India. But, at the same time, recognizing archaka services rendered by the petitioner, the Assistant Commissioner as well as the Commissioner of Endowments issued proceedings to handover the keys of the subject temple for doing archaka service by the petitioner.

It is relevant that to note that this Court on 04.02.2009 in WPMP.No.2220 of 2009 in W.P.No.1751 of 2009 was pleased to pass the following order:

“There shall be interim direction to respondent Nos.1 to 3 to allow the petitioner as well as respondent No.4 to perform Archakatvam in Sri Chennakesava Swamy Vari Devastanam, Koruthadiparru Village, Amarthalur Mandal, Guntur District, until further orders. The petitioner shall not present respondent No.4 from performing his Archakatvam in the subject temple until further orders.”

By virtue of the above interim orders passed by this Court, the Archakatvam service is being rendered by both the parties according to their turns and also in compliance with the above said orders. When there is serious dispute with regard to rendering of Archakatvam service to the subject deity, it cannot be resolved unless there is a detailed enquiry by a competent authority. In this regard, Section 87 of the Act is relevant and the same is extracted as under:

“87. Power of Endowments Tribunal to decide certain disputes and matters:- (1)(e) whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;

(h) whether a person is a founder or a member from the family of the founder of an institution or endowment.”

As per the above said provisions, any dispute relating to any custom or otherwise to any honour and also what the established usage of such institution or endowment is in regard to any other matter and whether a person is a founder or a member from the family of an institution or endowment is in the realm of the Tribunal constituted under Section 87 of the Act.

In the light of the above said provision, the Tribunal constituted under the Act is competent and having jurisdiction to enquire into and ascertain whether the petitioner in W.P.No.20936 of 2006 was doing Archakatvam from the beginning and the same was obstructed in 1982 and

whether there was any agreement executed between the parties on 02.06.1972. Further, it is also contended that the petitioner has been residing at Jandhrapet village of Chirala Taluq, Prakasam District and even though he did not render service in the subject temple, he is enjoying his share of land. So in the light of these disputes, this Court is of the opinion that it cannot decide as to who has to do the Archakatvam in the subject temple.

Under these circumstances, both the writ petitions are disposed of directing the petitioners to approach the Tribunal constituted under Section 87 of the Act within a period of six week from the date of receipt of a copy of this order to resolve the issue of Archakatvam service in the temple of Sri Chennakesava Swamyvaru at Kodithadiparru Village, Amarthaluru Mandal, Guntur District and seek appropriate orders. Since the interim orders passed in WPMP.No.2220 of 2009 in W.P.No.1751 of 2009 are being complied with, the same shall continue till the disposal of the proceedings before the Tribunal. No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

P. KESHA RAO, J

Date: 01.05.2018.
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