THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.24441 of 2018

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Endowments appearing for the respondent Nos.1 to 3 and Sri K.Jagan Mohan Reddy, learned counsel appearing for the fourth respondent, apart from perusing the material on record.

A notification, issued by the Additional Commissioner of Endowments-third respondent herein, on 28.06.2018, inviting applications, under Section 15 (2) of the Telangana State Charitable and Hindu Religious Endowments Act, 30 of 1987, as amended by Act 33 of 2007 (for brevity, 'the Act'), for constitution of Trust Board of the fourth respondent, is under challenge in the present Writ Petition.

Broadly, there are two contentions raised by the learned counsel for the petitioner, namely:

1) The Additional Commissioner of Endowments has no power or jurisdiction to issue the impugned notification, under Section 15 (2) of the Act, and it is only the Commissioner, who is competent to issue such notification.
2) Petitioner herein submitted an application on 17.06.2015 to the Commissioner, Endowments praying for exemption and the same is pending consideration and, in view of the same, the notification issued by the third respondent cannot be sustained.

Section 15 of the Act deals with appointment of Board of Trustees and, even as per the petitioner, the instant institution, which is a temple, falls under Section 15 (2) of the Act. According to Section 15 (2) of the Act, where the income of the institution is between Rs.2.00 lakhs to Rs.25.00 lakhs per annum, the Commissioner shall appoint a Board of Trustees.

While pointing out the above provision of law, it is contended by the learned counsel for the petitioner that the Commissioner alone is competent to institute a Trust Board but not the Additional Commissioner.

On the other hand, it is pointed out by the learned Government Pleader that the term 'Commissioner' is defined under sub-Section 6 of Section 2 of the Act and the said term 'Commissioner' includes Additional Commissioner also.

In this context, it may be appropriate to refer the said provision of law. Sub-Section 6 of Section 2 of the Act reads as under:

> *"Commissioner means the Commissioner and the Additional Commissioner appointed under sub-Section (1) of Section 3 and includes every officer, for the time being exercises the powers and performs the functions of a Commissioner under this Act or the Rules made thereunder in respect of any Charitable or Religious institution or endowment as specified in sub-Section (5) of Section 3".*

It is very much clear from a reading of the above provision of law that the term 'Commissioner' includes the Additional Commissioner also. Therefore, the first contention of the petitioner herein cannot be sustained in the eye of law and, is, accordingly, rejected.

Coming to the second contention i.e. pendency of the application, filed by the petitioner herein for exemption, on 17.06.2015, except stating in the affidavit, filed in support of the Writ Petition, no evidence is placed on record by the petitioner herein to substantiate the said plea. It is also required to be noted that Section 154 of the Act deals with the exceptions.

In the instant case, it is not the case of the petitioner herein that the notification was issued by the Government, under the said provision of law, granting exemption to the subject institution. In the absence of any such notification, granting exemption, the second contention, raised by the learned counsel for the petitioner herein, also cannot be sustained.

For the aforesaid reasons, the Writ Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed.

A.V.SESHA SAI,J

17th July, 2018
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