THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.21291 OF 2005

ORDER:

Order dated 12.02.1996 in O.A. No. 52 of 1993 was passed by the 2nd respondent Deputy Commissioner, Endowments, on an Application made by the 6th respondent seeking to declare Sri Ramakrishna Hanuman Temple (hereinafter referred to as 'Hanuman Temple') situated at Champa Darwaza as an independent institution having its own status and not as a sub-institution of Sri Jagannathdwara Mutt, Begum Bazar, Hyderabad (hereinafter referred to as 'Jagannath Mutt'). Likewise, proceedings No. E/356/99, dated 12.03.1999 was issued recognizing the 6th respondent as founder and the 7th respondent (impleaded as per order in I.A.No. 1 of 2018) as member of the founder's family of Sri Ramakrishna Hanuman Temple, Champa Darwaza, for the purpose of managing the said temple in accordance with the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as 'the Act'). Challenging the above two orders, a writ of certiorari is prayed for with a further consequential direction to the respondents to decide the disputes by impleading the petitioner as one of the respondents and to hold enquiry afresh. Pending disposal of the Writ Petition, suspension of the above two proceedings is sought.

2) At the outset, it may be noted that initially, the Writ Petition was filed in the name of Mahant Jaidev Das Khaki, a disciple of Mahant Vasudev Das Khaki and thereafter, the cause-title was amended to read as *'Jagannathdwara Mutt, Begum Bazaar, represented by its Mahant Jaidev Das Khaki'*. As the writ petition

was filed in the name of Mahant Jaidev Das Khaki, in his individual capacity, in the entire writ affidavit, the deponent of the writ affidavit was referred to as the petitioner, on account of which, there is a bit of confusion with respect to the relief sought by the petitioner after insertion of Jagannathdwara Mutt, Begum Bazaar as the writ petitioner. For the purpose of disposal of the Writ Petition, Jagannathdwara Mutt, Begum Bazaar is treated as the petitioner and the deponent of the affidavit would be referred to as Mahant Jaidev Das Khaki.

3) The brief facts, as pleaded by the deponent of the writ affidavit, can be summarized as under:

Two temples; one Sri Jagannathdwara Mutt at Begum Bazar and the other viz. Sri Ramakrishna Hanuman Temple at Champa Darwaza, behind the High Court Building, Hyderabad, were under the control of one Mahanth Jagannath Das, disciple of Sri Mahant Mohan Das. Both the temples were registered with the Endowments Department. Since 1973, they are under the control of the Endowments Department and the Executive Officers / fit persons were appointed to oversee their administration. O.S.No.37 of 1957 on the file of the IV Assistant Judge, City Civil Courts, Hyderabad, subsequently renumbered as O.S. No. 189 of 1958, filed by one Ramkaram Das, claiming his exclusive possession and control of these temples was dismissed on 13.06.1959 holding that Mahant Jagannath Das is in possession of the temples. After the demise of Sri Jagannat Das, the temple administration came under one Mahant Ramthaldas Ji, who also died on 27.07.1973. Between 1961 and 1970, budget was sanctioned by the Endowments Department. After the demise of Mahant Ramthaldas, on account of disputes between one Ramcharandas and Raghuveerdas, *vide* proceedings dated 01.08.1973, a fit person was appointed for both the temples viz., Jagannathdwara Mutt and Hanuman temple. The Application filed by the deponent Mahant Jaidev Das Khaki was allowed recognizing him as Mahant and Chela of late Mahanth Ramthaldas Ji, who was Mahant of both the temples. However, in the proceedings dated 14.11.2000, he was recognized as Mahant of only Jagannathdwara Mutt, Begumpet, Hyderabad. These orders were passed under Section 53 / 54 of the Act. On the deponent protesting the order dated 14.11.2000 before the Assistant Commissioner, he was advised to file an Application before the Deputy Commissioner of Endowments for determination of his claim with respect to Hanuman Temple as part of Mutt. The deponent therefore, filed an Application before the Deputy Commissioner seeking to declare Sri Ramakrishna Hanuman Temple as part of Jaganndh Dwara Mutt, invoking Section 45 r/w 87 of the Act and further, sought to handover possession of the temple. The same was numbered as O.A.No. 80 of 2001 and the Deputy Commissioner passed the order on 08.12.2004 dismissing the same. In the said order, the Deputy Commissioner had held that the two institutions are separate and the prayer of the petitioner was not clear i.e., what are the entries to be deleted and which documents are to be modified or annulled under Section 45 of the Act. For the first time in the order dated 08.12.2004, a reference to the order dated 12.03.1999 in proceedings No. E/356/99 and the order in O.A.No.52 of 1993, dated 12.02.1996, was made. The petitioner was not aware of the proceedings in O.A.No.52 of 1993 or proceedings No.E/356/99, dated 12.03.1999. In the said proceedings, the 6th respondent did not choose to make the petitioner as party-respondent and none represented the petitioner's institution. It is the case of the petitioner that originally, as can be seen from the material documents on record, particularly, the judgment in O.S.No.189 of 1958, the proceedings dated 18.12.1961 and 12.06.1970 of the Endowments Department, both the temples were under the control and possession of Jagannathdas Ji and thereafter, under the control of Ramthaldas Ji and further that even as far back as on 01.05.1953 and 11.11.1960, it was recognized that there was a request from Ramthaldas Ji to treat Sri Ramakrishna Hanuman temple as part of Jagannatdwara Mutt, as is evident from the certified copies furnished under the Right to Information Act. At no point of time, there was any independent enquiry determining Sri Ramakrishna Hanuman temple as a separate institution and not attached to Jagannathdwara Mutt, Begum Bazaar. The Application made by the 6th respondent without making the petitioner institution as party respondent, purportedly under Section 87 of the Act is not binding and the said proceedings is affecting the rights of the petitioner's institution and is in utter violation of the principles of natural justice and thus, liable to be set aside.

4) Counter-affidavits were filed on behalf of the 1st respondent-commissioner as well as the 3rd respondent. In the counter affidavit filed by the 1st respondent, it is stated that Hanuman Temple, Champa Darwaza was originally forming part of Sri Jagannathdwara Mutt, Begum Bazaar and was registered in the books of Endowments and late Jagannathdas was Mahant of both the temples. Sri Ramthaldas, who was a disciple of late Sri Jagannathdas, in his lifetime, managed both the temples and O.S.No.189 of 1958 filed by one Ramkarandas against one Mahant Ramthaldas was dismissed on 13.06.1959, confirming that Hanuman Temple was under the control of Ramthaldas. After the demise of Ramthaldas on 27.07.1973, on

account of disputes with regard to succession of late Mahant Ramthaldas, one Mahant Vasudev Das Khaki filed O.A.No. 92 of 1973 before the Deputy Commissioner, Endowments Department, Hyderabad, who passed orders on 27.06.1974 directing both the parties to approach the civil Court with respect to their rights for such declaration. In the meanwhile, the Endowments Department took possession of both the temples and appointed a fit person to look after their day-to-day affairs. On 14.11.2000, the Commissioner, *vide* proceedings in R. Dis.No. 13/49652/98, rejected the claim of one Raghubeer Das as successor of Mahant Ramtaldas and recognized the deponent as Mahant of Jagannathdwara Mutt. In para 6 of the counter-affidavit, a reference was made to O.A. No. 80 of 2001 filed by the deponent before the Deputy Commissioner, Endowments Department, Hyderabad and dismissal of the same. In para 7 of the counter-affidavit, a reference was made to the earlier proceedings in O.A.No.52 of 1993 declaring Sri Ramakrishna Hanuman temple as independent institution and not as a sub-institution of Jagannadhdwara, Begumbazaar. Further it is stated that the aggrieved party, whether it is an institution or an individual, may challenge the orders of the Deputy Commissioner by filing an appeal. Further, it is asserted in para 8 of the counter-affidavit that it is open for the parties in O.A.No.80 of 2001 to question the order, dated 08.12.2004, passed by the Deputy Commissioner, before the appropriate forum. The counter-affidavit of the 3rd respondent is in similar lines.

5) One Nanda Kishore Das, S/o Raghunandan Das filed I.A. 1 of 2018 seeking to implead himself as a party respondent. It is stated in the implead petition that he has been recognized as a member of the

founder family of Hanuman Temple by the authorities *vide* order dated 22.08.2007 and further, he was arrayed as the 4th defendant in O.S. No. 1622 of 1983 filed by Mahanth Vasudev Khaki (died) and the deponent Mahanth Jaidev Das Khaki. The said suit was dismissed on 25.07.2006. He was also a party respondent No. 5 in O.A. No. 80 of 2001 before the Deputy Commissioner of Endowments and thus, he is interested in contesting the Writ Petition. Along with the Implead Petition, he had enclosed a copy of the death certificate of the 6th respondent, order in O.S.No.1622 of 1983 and order in CMA No. 77 of 2005.

7) Heard the arguments of the learned counsel Sri Bankatlal Mandhani, learned counsel for the petitioner, Smt. Pramada Reddy, learned Government Pleader for Endowments Department and Sri S. Jagadish, learned counsel appearing on behalf of the implead petitioner, who reiterated their respective contentions, as pleaded in the affidavits filed before this Court with further elaborations.

8) At the outset, it may be noted, as mentioned earlier, that originally, the cause-title in the Writ Petition was in the name of the deponent of the affidavit and thereafter, name of the institution was added. For all practical purposes, it was agreed by all the parties that the Writ Petition is for and on behalf of the institution represented by the deponent Mahant Jaidev Das Khaki. It is the contention of the petitioner that the institution was not made as a party-respondent in the impugned proceedings. The respondents have made extensive reference to various proceedings before the authorities as well as the Courts. While the proceedings in O.A.No.52 of 1993 was at the instance of the 6th respondent seeking to declare Hanuman temple as an independent institution and not part of the petitioner's institution,

in the O.A. proceedings, only the Assistant Commissioner and the Inspector of Endowments Department were made as party respondents and not the petitioner institution. It may be noted that the 6th respondent sought declaration to the effect that Sri Ramakrishna Hanuman temple was not part of the petitioner institution, thereby, suggesting that the petitioner institution was involved, in one way or the other, with Sri Ramakrishna Hanuman temple and the petitioner institution has some interest, however, remote it may be. Giving a declaration in favour of the 6th respondent jeopardizing the interest of the petitioner institution, without making the petitioner as a party, is fatal to the proceedings initiated before the 2nd respondent, who ought not to have proceeded further without insisting the petitioner to be made as a party respondent. Once it is admitted and there being no dispute that the petitioner institution was never put on notice, the proceedings initiated and concluded against the petitioner's institution cannot be sustained, as there is a clear violation of the principles of natural justice. No doubt, at all points, the deponent of the affidavit, who was admittedly, at the helm of the petitioner institution, in his individual capacity, had approached the authorities and failed in his attempts. However, the same cannot be put against the petitioner's institution, especially, in the light of the admission of the 1st respondent in his counter-affidavit that as far back as in 1959 in O.S.No.189 of 1958, a finding was recorded to the effect that Sri Ramakrishna Hanuman Temple is under the control of the petitioner Mutt. The claim of the deponent of the writ affidavit that he be declared as a Mahant of Jagannathdwara Mutt and such declaration having been given recognizing him as a Mahant of Jagannathdwara Mutt alone also does not affect the rights of the petitioner in any way.

9) From a close scrutiny of the documents filed before this Court, though it is clear that extensive reference has been made by the respective counsel, there was no mention about the Mutt at any point of time except in the proceedings, dated 10.05.2001 of the Assistant Commissioner. Registration of two temples in the books of endowments at Sl.No.104 in file No. 51/2 of 1358 Fasli and at Sl.No.135 in file No.8/2 of 1343 Fasli would have to be examined in the light of the earlier legal proceedings before the Courts and other documentary evidence. This Court does not wish to express any opinion in the light of the fact that so far as the proceedings in O.A.No. 52 of 1993 affecting the rights of the petitioner's institution were conducted *ex parte* and in violation of the principles of natural justice and thus, the order is liable to be quashed under certiorari jurisdiction. Time and again, the Supreme Court held that exercise of certiorari jurisdiction is an exception to the principle of availing alternative remedy of appeal and the same is available in cases where the order is made without jurisdiction or in violation of the principles of natural justice and for that reason, the argument of the respondents that the petitioner ought to have availed the alternative remedy of appeal does not deter this Court from issuing a Writ of Certiorari so far as quashing the orders in O.A.No.52 of 1993 is concerned.

10) However, the petitioner has also prayed for quashing Proceedings No.E/356/99. The same need not be examined by this Court as the said proceedings were issued accepting the claim of the 6th respondent and the implead petitioner to be recognized as a founder and a member of the founder family, as, obviously, the petitioner institution, by itself, cannot make any claim for that status.

As stated earlier, there is an element of confusion in the pleadings as to the interests of the petitioner's institution and the interests of the deponent of the Writ affidavit in an alternating manner. In those circumstances, the relief claimed to quash the order in Proceedings No.E/356/99 does not merit consideration and accordingly to that extent, the Writ Petition is dismissed. Insofar as the order in O.A. 52 of 1993, dated 12.02.1996 of the 2nd respondent is concerned, the same is quashed and the Writ Petition is allowed to that extent.

11) In the result, the Writ Petition is allowed in part. No costs.

12) Consequently, the Miscellaneous Petitions pending, if any, shall stand dismissed.

CHALLA KODANDA RAM J.

25th September 2018

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