

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

+WRIT PETITION No.7269 OF 2017

%02.05.2018

#Between:

Swarna Gadadhara Babu

...Petitioner

AND

State of Telangana
Rep. by its Principal Secretary,
Revenue(Endowments) Department,
Secretariat, Velagapudi, Amaravathi
Guntur District and others

... Respondents

!Counsel for the Petitioner

: Sri M/s. V.S.K.Rama Rao

Counsel for the respondents 1 to 4

: Govt.Pleader.for Endowments

Counsel for the respondent No.5

: Smt. K.Lalitha (Standing Counsel)

<Gist :

>Head Note:

?Cases referred:

-Nil-



HON' BLE Dr. JUSTICE B.SIVA SANKARA RAO

Writ Petition No.7269 of 2017

ORDER

Heard the learned counsel for the petitioner and the learned Govt. Pleader for Endowments for R.1 to 4 viz; Principal Secretary, Revenue (Endowments) Department, the Commissioner, the Regional Joint Commissioner (for short, 'the RJC') and the Assistant Commissioner of Endowments Department of State of Andhra Pradesh and Smt. K.Lalitha, Standing Counsel for R.5-Sri Ramalingeswara Swamy Temple, and the unofficial respondents 6 and 7 who were served with notices with no appearance taken as heard and perused the prayer in the Writ Petition with supporting affidavit and other material on record including the counter of the R.5-Temple.

2. The prayer in the Writ petition is as follows:-

“to issue an appropriate writ, order or direction more particularly one in the nature of a WRIT OF MANDAMUS declaring the proceedings of the 3rd respondent in Rc No A3/ 3786/ 2016 dated 06-01-2017 declaring that the petitioner has no right of Archakatvam and not rendering service in Sri Ramalingeswara Swamy Temple Kankipadu Village and Mandal, Krishna District and entitled to hold any temple land and the consequential notice in Lr.No 02/ 2017 dated 16-01-2017 issued by the 5th respondent as illegal, arbitrary, void, without jurisdiction and violative of Articles 14 19 and 25 of the Constitution of India and consequently set aside the same by directing the respondents not to interfere in the hereditary Archakatvam of the petitioner and pass such other order or orders.”

3. The averments in the supporting affidavit are that he belongs to the hereditary Archaka family of Sri K.Poorneswara Rao, S/o Seetharamaiah who was the hereditary Archaka of R.5-Temple and the petitioner was declared as hereditary Archaka of R.5-Temple and said Seetharamaiah was declared as hereditary Archaka of R.5-temple vide Judgment and Decree in O.S.14 of 1932 by the District Judge, Guntur and after his death, his son Poorneswara Rao rendered Archakatvam

as hereditary and said Poorneswara Rao having no male issues, the petitioner, being the son of 2nd daughter by name Swarna Seetha Mahalakshmi, of said Poorneswara Rao, was brought up and given a share by said Poorneswara Rao, in his movable and immovable properties along with hereditary Archakatvam service through registered Will dt.08.10.1984 and since then he has been rendering Archakatvam service on turn basis besides the R.6 and 7. The petitioner further submits that there are 3 more branches of Kundurti families i.e. R.6 belongs to family of Kundurti Mohan Rao and R.7 belongs to the family of Kundurti Visweswara Rao, who are rendering Archakatvam on turn basis in yearly rotation and the family members of another Kundurti family of Kundurty Bala Krishna Murthy gave up their rights in the hereditary Archakatvam service. Thus, every individual rendering Archakatvam service will get his turn once in three years and accordingly the petitioner renders service in temple when his turn comes and the remaining two years, kept on doing a small business in Gudivada town of Krishna district to eak out livelihood. He further submits that while so, all of a sudden, the 7th respondent filed revision before the R.3-the RJC, questioning the proceedings of the R.4-Asst.Commissioner, for permitting the R.6 to render archkatvam in the temple by rotation along with the petitioner. The R.3-RJC, on enquiry, directed the petitioner to submit a letter indicating that he is doing business in Gudivada town residing at kankipadu in his own house and also to undertake to do Archakatvam service regularly without fail and on considering the said letter, the R.3 found that the petitioner is not rendering service and not produced any evidence and residing in Gudivada town and

directed the Executive Officer to take back the land admeasuring Ac.3.30 cents from his possession. The petitioner further submits that he mentioned in his letter that he has been rendering Archakatvam service of Sri Seetharamaiah family by enjoying the land admeasuring Ac.3.30cents in lieu of salary and further submitted that his grandfather even executed a Will dated 08.10.1984 allowing him to render Archakatvam service hereditarily in the R.5-temple but the R.3, without enquiry into the matter and without cross-examining and allowing the parties to submit their documents, simply issued impugned proceedings dt.06.01.2017 without application of mind and any jurisdiction and the same are liable to be set aside. The R.3 failed to verify Sec.38 and 43 Register maintained by the temple wherein at Column No.3, he is shown as Archaka of the temple and in Sec.38 Register the name of his grandfather Sri Kundurti Seetharamaiah is shown as hereditary Archaka. The R.3, having accepted at page No.2 of the impugned order that he belongs to the branch-1 of the hereditary of Archaka family, negated his claim and declared him as not eligible to render Archakatvam. The R.3 erred in concluding that he is not a lineal paternal descendant and therefrom not eligible for hereditary Archakatvam but Sec.34(3) of the Act, makes it clear that members of Archakas families continuing in service shall continue to have right to Archakatvam and nowhere it is mentioned as paternal or maternal but this ground is invented by the R.3. The R.3 failed to consider that the petitioner's turn of Archakatvam comes on rotation for every three years once and he is idle for rest of two years and he has to do some work for his livelihood, that cannot be a ground for canceling his established hereditary Archakatvam rights. The

petitioner further submits that as per Section 37 proviso of the A.P.Charitable and Hindu Religious Institution and Endowments Act,1987 (for short 'the Act'), it is the Commissioner competent to do so that too by following the procedure of issuance of a notice and conducting enquiry. The notice of the Executive Officer, dt.16.01.2017 directing the petitioner to hand over possession of the land is bad and illegal which clearly indicates that his hereditary rights are cancelled by the R.3. Since his turn comes during the period 2017-18 from Ugadi the Telugu New Year Day, without suspending the notice of R.3 directing him to hand over the land in his possession supra and allowing him to do Archakatvam service, he will be put to irreparable loss and hardship. Hence, to allow the Writ Petition.

4. Counter filed on behalf of the R.5-Temple by its Executive Officer, denying averments of the affidavit of the petitioner, shows that the then Archaka one Sri Stha Ramaiah was performing hereditary Archakatvam service in R.5-temple, thereafter his son Poorneshwara Rao who rendered Archakatvam, since had no male issues except two daughters, hereditary Archakatvam came to an end with him. The hereditary Archakatvam is not a personal property so as to transfer the rights of the same to some other person by alleged Will through which the petitioner claims hereditary Archakatvam, hence the Will dt.08.10.1984 will not create any rights over Archakatvam service in the R.5-temple. The petitioner attended the enquiry before the Inspector,(Endowment Department), Vijayawada and gave a statement that he is residing at Gudivada and running a business for livelihood and rendering Archakatvam service through a Deputy and

from now onwards he will render Archakatvam service by staying in Kankipadu, Krishna District. After considering his own statement the competent authority-R.3 declared that the petitioner is not eligible to continue as an Archaka and passed the orders accordingly and as such there is no illegality in said orders. Coming to the three branches of Kundurthi family Archakatvam in the temple and other matters are matter of record and hence not adverted to. The averment of the petitioner that he is rendering Archakatvam service in R.5-temple and doing petty business during vacancy period of rotation of Archakatvam runs contrary to his own statement given to the Inspector, Endowments Department, Vijayawada and the petitioner cannot do petty business while rendering Archakatvam. The R.7 filed application before the R.3 challenging the orders of the R.4 allowing the R.6 to render Archakatvam. After detailed enquiry, the R.3 issued orders dt.06.01.2017 declaring that the petitioner has no right to perform Archakatvam in the temple. Challenging said order, an appeal lies to the Commissioner, Endowments Department. Further the allegation of he forcibly obtained letter from the petitioner that he will undertake Archakatvam is false. The petitioner did not produce any documentary evidence except filing a Will and even not filed any documents before the R.3 showing that he is rendering Archakatvam. As such, the petitioner has no right to seek continuation in Archakatvam. A will until and unless is proved, it cannot be relied upon. The petitioner is enjoying the lands measuring Ac.3-30cents and performing Archakatvam through Deputy which is against Sec.34(3) of Act 30/ 87 as per which it is the Archaka families who are rendering Archakatvam services as per Act, 1966 and continuing to do so and recognized by

the competent authority will only have right in hereditary Archakatvam. In the instant case, the petitioner does not belong to the Archaka family is claiming right through a Will and is not rendering Archakatvam. As such, the petitioner does not have any right to seek continuation of Archakatvam and possession of the land. The entries in Sec.38 Register mentions about the grandfather of the petitioner and not of his name. The claim of the petitioner cannot be accepted as he is claiming right through a Will. Mere declaration of Seetaramaiah as hereditary Archaka in O.S.No.14/ 1932 will not automatically entitle the petitioner to render Archakatvam as hereditary Archaka. The Commissioner is competent if the petitioner is a hereditary Archaka or an Archaka eligible to be continued in temple for termination under Sec.37 of the Act. The petitioner is not eligible to render Archakatvam as per the orders of R.3 and has no right to continue with the land belonging to the temple.

5. The Will, dt.08.10.1984 executed by Sri Poorneswara Rao s/o Kundurthi Sta Ramayya r/o. Kankipadu Taluk, Vijayawada, Krishna District, shows that he had only two female children namely Venkata Subbamma @ Baby and Sta Mahalakshmi. After death of his first wife he married second time to one Saraswathamma who is alive. He performed the marriages of his two daughters as per rites. His second daughter Sta Mahalakshmi's eldest son Gadhadhar Babu was brought up by himself and his wife. Due to his ill-health, he is taking medicine and staying in the house of his second daughter Sta Mahalakshmi. Due to his ill-health, he is executing the Will with his free will and stable mind is that all his hereditary Archakatvam rights in Sri Rama

lingeswara Swamy temple, Kankipadu village along with enjoyment of the lands and other emoluments that devolves upon his eldest daughter Mamillapalli Parvathi Venkatasubbamma @ Baby thereafter upon Sri Gadhadhar Babu-the writ petitioner and the house situated in Kankipadu belonging to him and his brother at D.No.8-54 and his half share in land, the tiled house etc., shall devolve upon eldest daughter Mamillapalli Parvathi Venkatasubbamma @Baby with all the rights but not with the alienable rights and thereafter all the rights including the alienable rights will devolve upon his grandson Gadhadhar Babu-the writ petitioner. Out of the total land excluding his brother's share, his half around 200sq.yards devolves upon his grandson-Gadhadhar Babu with all the rights. As his wife Saraswathamma is innocent lady and if any property is given to her, someone will cheat and execute any deed without her knowledge, thus no property is given to her. As his grandson is minor, he appoints his second daughter Sita Mahalakshmi as guardian. Till the lifetime of his wife Saraswathamma, his eldest daughter Mamillapalli Parvathi Venkatasubbamma @ Baby and Gadhadhar Babu will take care of her equally. All his hereditary Archakatvam rights in Sri Ramalingeswara Swamy temple, Kankipadu village devolve upon his eldest daughter Mamillapalli Parvathi Venkatasubbamma @ Baby thereafter upon Gadhadhar Babu-the writ petitioner. He does not have any debts to be recovered, all his bank amounts, deposits and moneys to be received shall devolve upon Gadhadhar Babu-writ petitioner, if any other assets shall also devolve upon Gadhadhar Babu with all the rights.

6. Heard both sides and perused the material on record.

7. Before going into the facts coming to the relevant provisions, the Section 2 of the Act contains definitions which starts with the words '*In this Act, unless the context otherwise requires*', coming to the definition of Archika, Section 2(1) and (1A) of the Act '*Archaka includes a Poojari, Panda, an Archakatwam Mirasidar or other person, who personally performs or conducts any archana, puja or other rituals.*' Section 2(15) defines '*Hereditary Office-holder means any office holder including Pedda Jeeyangar, Chinna Jeeyangar, a Mirasidar and an Archaka 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 the usage or custom applicable to the institution or endowment or according to the law of succession for the time being imposed as the case may be*'. Section 34 of the Act defines as erstwhile hereditary rights of the Archakas under the old Act were originally abolished that continue including by Act 17/ 1966, the very coming into force of the Act, 30 of 1987 by incorporation of sub section 3 of Section 34 by the amended Act 33 of 2007 came into force w.e.f.03.01.2008 and for more clarity entire amended Section 34 is reproduced herein.

34. Abolition of hereditary rights in Mirasidars, Archakas, and other office holders and servants:-

(1)(a) Notwithstanding anything in any compromise or agreement entered into or scheme framed or sanad or grant made or judgment, decree or order passed by any Court, Tribunal or other authorities prior to the commencement of this Act and in force on such commencement, all rights, whether hereditary, contractual or otherwise of a person holding any office of the Peddajeeyangar, Chinna Jeeyangar, a Mirasidar or an Archaka or Pujari or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished.

(b) Any usage or practice relating to the succession to any office or service or post mentioned in clause(a) shall be void;

© All rights and emoluments of any nature in cash or kind or both accrued to and appertaining to any office or service or post mentioned in clause(a) and subsisting on the date of commencement of this Act shall on such commencement stand extinguished.

(2) Every office holder and servant mentioned in Clause(1) of sub-section (1) holding office as such on the date of commencement of this Act shall notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-sections (3) and (4) of Section 35.

(3)¹ Notwithstanding anything contained in sub-section((1) and (2) of this section, the qualified members of those Archaka families which were continuing in Archakatham service under the provisions of the repealed the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and recognized as such by the competent authority shall continue to have the right to Archakatham without having any right to emoluments such families used to receive earlier under At, 17 of 1966. However, they shall receive emoluments in accordance with the scheme under Section 144}.

8. From the above, particularly from the amended Section 34(3) with non-obstante clause to override the non-obstante clause in sub-section 1 of Section 34 from its say as referred supra notwithstanding anything contained in sub sections 1 and 2 of the Section, the qualified members of those Archaka families which were continuing in Archakathwam service under the repealed Act, 1966 having been recognized thereunder shall continue to have the right of Archakathwam. Thus, by virtue of the amended provisions if entitled to the benefit it is for them to take pleas as provided in the Act and the Rules made thereunder before the proper forum as per Section 34(3) amended provision supra. In the case on hand, there is no such difficulty for the facts not in dispute at all as to Kundurthy family of Kankipadu, where the 5th respondent-Temple is situated, are continuing by performing hereditary Archakathwam rights and it is

¹ Added. By Act No.33 of 2007 w.e.f.3-1-2008.

also not in dispute of there are 4 male descendants of the kundarthi family of whom one Balakrishnamurthy relinquished his hereditary Archakathwam rights long back and among the other three, leave about R.6 belongs to one of them by name Kundurti Mohan Rao and R.7 belongs to one other among them by name Kundurti Visweshwara Rao and the other one was one Seetaramaiah who were undisputedly declared as hereditary Archakas of R.5-Temple in the decree and judgment in O.S.No.14 of 1932 of the learned District Judge, Guntur under the Madras Act, 1926 and continued as such even under the Act, 1951 and subsequent to the Act till the hereditary archathwam rights were abolished by Section 34(1) of the Act, 30 of 1987 till revived by the amended Act, 33 of 2007 w.e.f. 03.01.2008. In this regard, it is required to detail the undisputed facts that out of 4 brothers for one relinquished among the three including Seetaramaiah whose son Poorneshwara Rao, who is no other than the maternal grandfather of the Writ Petitioner, also was recognized and entered in Section 38 Register of the Act, 17/ 1966 that is also not in dispute. Once such is the case, and even Section 43 Register speaks of whom how far originally the RJC-R.3 justified in preventing his rendering of Archakathwam service by holding not entitled for four male descendants of said Poorneshwara Rao and in asking to resume his Archakathwam service in the land of Ac.3-30cents by the impugned order dt.06.01.2017 in directing the Executive Officer of the 5th respondent-Temple to resume the land or to take possession of the same from him as the case may be which is in fact the subject matter of the writ petition.

9. In this regard, it requires no repetition of Section 2(1) and Section 2(15) and the amended Section 34 sub section 3 referred supra, it is clearly laid down from Section 34(3) of the qualified members of Archaka families which were continuing under the repealed Act, 17/66 in the Archakathwam service having been so recognized thereunder shall continue to have the right of Archakathwam and it is crystal clear the abolition of hereditary Archaka rights u/sec. 34(1) of the Act, is revived once they were continuing by the time of the repeal of Act 17/66 under the repealed Act by the new Act in 1987 of respectively, later on not continued from the very wording supra of the amended Section 34(3) by the Act 30 of 2007, leave it apart from the very definition of Section 2(15) of the hereditary office holder which includes Archaka, the succession to whose office devolves concerned, it is according to the Rule of succession laid down by the founder or according to usage and custom applicable to the institution or endowment or according to the law of succession for the time being in force. It is not a case of rule of succession allowed by the founder of the institution or endowment. Coming to the law of succession concerned, where Archakas herein are Hindus undisputedly governed by the Hindu Succession Act, 1956 and as per the very Section 8 of the Act r/w schedule-1 wife and daughters are the class-1 legal heirs for no sons to the rule of succession. It is not even the case of the respondents that the wife or even she is now no more as the case may be of Poorneshwara Rao at least wife-Saraswathamma among the two daughters one eldest by name Manikyavalli Parvatha Venkata Subbamma @Baby mentioned as innocent and not even ascertained the petitioner's mother Swarna

Seethamahalakshmi is eligible or not. However among the provisions covered by section 34(3) what it speaks is qualified members of those Archaka families irrespective of what is the definition of Archaka and hereditary office holder in Section 2(1) and (15) supra, she continued having eligibility. The maternal grandson known as Dowhitra cannot be disputed as family members of said Poorneshwara Rao. It is not even a case of said grandson of Poorneshwara Rao by name Swarna Gadhadhara Babu-the writ petitioner not qualified for continuing as Archaka. Undisputedly he is continuing from the death of Poorneshwara Rao died prior to the Act 30/ 87 came into force making a bequeath providing rule of succession and he is to be considered for all purposes as founder Archaka to his share concerned of the hereditary rights u/sec.2(15) and of the Act once continuing as Archaka even under Section 34(2) of the Act, despite abolition of hereditary Archaka rights, he is entitled to continue after Section 34(3) introduced by amended Act 32/ 2007 as hereditary Archaka by the rule of succession which includes for the bequeath is only to the member of the Archaka family that is to the maternal grandson who is the only eligible family member of said Poorneshwara Rao to continue as descendant of him in the line of succession including by testamentary for performing Archaka rights.

10. Coming to the factum of he was staying at Gudiwada and doing small or petty business or earlier employee in Deputy in his place to perform the Archaka duties, no action taken thereunder undisputedly much less for any disciplinary action is as contemplated by Section 37 of the Act and even from the very statement of the writ

petitioner made to the Inspector relied on in the counter of R.5-Temple represented by its Executive Officer, he clearly stated that he continues personally in performing Archakathwam of his rotation which cause for each of the three branches, once in a year for every third year in the rotation of every three years. He cannot be found fault for the other two years to attend any business or other avocation for nothing much less by any person by any of the respondents 1 to 5 to attend his duties regularly and not by rotation for even any such case if he failed to comply, he is prone for disciplinary action u/sec.37 of the Act. Thereby the impugned proceedings of the RJC, dt.06.01.2017 in asking him not to attend or not eligible or asking to resume his archka service land of Ac.3-30 cents is unsustainable.

11. Accordingly and in the result, the Writ Petition is allowed by setting aside the impugned order of the R.3-RJC, with a direction to continue his yearly rotation of service once in three years which according to him present rotation falls during 2017-18 if at all rendered by any other person by directing the respondents to permit him in the place of the person who enjoyed that rotation to compensate by continuing once in every three years rotation of him representing the branch of his maternal grandfather Poorneshwara Rao s/o Seetharamaiah. It is made clear if at all possession of the land was resumed, it must be restored back to him with attendant benefits derived from it to restitute his rights within one month from the date of receipt of the order including proceedings to be issued by the

Commissioner by virtue of this order for his continuing of service meantime to get his turn of rotation as inducted supra.

12. Consequently, miscellaneous petitions if any pending in this Writ Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:02.05.2018.

Note: L.R. Copy to be marked.

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