

(2015) 11 KAR CK 0124

In the Karnataka High Court

Case No : Writ Petition No. 8773 of 2004 (GM-R/C)

A. Sudhir Prasad Shetty

APPELLANT

Vs

Gangadhar Rai and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0124

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Sanathkumar Shetty K., Advocate, for the Appellant; Pundikai Ishwara Bhat, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The learned counsel for the petitioner has consistently remained absent.

2. The petition is filed in the following background.

It is stated that Shri Shastavu Brahma Temple is a public religious institution and lord Brahma is the presiding deity. This temple is numbered as 61 in the Inam Register and Shree Ishta Devata Balawandi Pilichamundi Daivasthana was declared as a public religious institution as per order dated 2.6.1980 on the file of the Deputy Commissioner and the said order was said to have been confirmed in appeal before the Commissioner for Religious Endowments, Bangalore, and therefore, it has attained finality.

3. One Sadashiva Shetty is said to be the hereditary trustee and the Assistant Commissioner has the authority to represent the institution. The claim of the first respondent as being the hereditary trustee was not admitted and there was no declaration in that regard in his favour. The institution was said to have been neglected and there was no maintenance till recently. Respondent No.1 also did not account the income that was derived and there was no contribution paid and the accounts were not audited for several years. It is the allegation that

respondent No.1 was not showing any interest in the betterment or development of the institution. When the matter stood thus, under the leadership of the petitioner, other likeminded persons of the village had joined together with the object of improving and renovating the institution and formed a Society known as Shree Kshethra Perar Seva Samithi and it was registered under the Societies Registration Act and it is claimed that the said Samithi was able to renovate the institution in a short period and a master plan was prepared for overall development of the institution and cost of improvement was estimated at Rs.90 lakh. The Zilla Panchayat is said to have sanctioned the approval for improvement and works were in progress. The petitioner has detailed the several items of works which resulted in the improvement of the institution and religious functions that were conducted on the premises of the institution. The marked improvement in the institution accrued more devotees, who made substantial contributions and the same were accounted and audited.

4. It is stated that respondent No.1 had participated in all the deliberations and meetings of the said Samithi and was fully aware of the activities of the petitioner and others. However, respondent No.1 for reasons best known stopped to co-operate with the functioning of the Samithi and refused to participate in the proceedings. It is in this background that the petitioner claims that there is necessity to frame a scheme for better management and administration of the institution.

5. It is stated that the first respondent having filed a suit to bring a deadlock to the situation, the devotees of the temple had to approach the competent authority by filing an application under Section 58(1) of the Madras Hindu Religious and Charitable Endowments, 1951, (hereinafter referred to as "the Madras Act", for short) seeking that a scheme be framed and the first respondent had issued a notice to the Assistant Commissioner for asserting that the temple was a private temple. The petitioner and others had filed an interim application in the said proceedings seeking appointment of a fit person to administer the temple, in the meanwhile. The application was said to have been opposed by the first respondent. However, the petitioner was appointed to manage the affairs of the temple. The application filed by respondent No. 1 seeking vacation of the order appointing the petitioner came to be rejected. Thereafter, it was carried in appeal to the Commissioner and the appeal having been filed after considerable delay, notice was ordered to the petitioner and others by which time the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 (hereinafter referred to as "the Karnataka Act") had come into force and this would entail the delay in filing the appeal be condoned at the first instance. However, the Commissioner proceeded to allow the appeal, cancelling the allotment in favour of the petitioner. The petitioner therefore claimed that since the annual Jatra was to be held on 5.3.2004 and since it was the petitioner who had conducted the Jatra in the previous year and in view of the order passed in the appeal, there was total confusion. Since all the preparations were made to perform the Jatra, the petitioner had approached this

Court by filing the above petition, contending that the Commissioner had no jurisdiction to consider the appeal filed by respondent No. 1 under Section 61 of the Madras Act, since the Madras Act stood repealed by virtue of the Karnataka Act, which had come into effect from 1.5.2003 and the Commissioner appointed under the Madras Act ceased to exist and it is only an appeal under Section 61 of the Madras Act was maintainable before the Commissioner appointed under the Madras Act and therefore, the appeal itself was not maintainable before the Commissioner and the same having been allowed has resulted in a miscarriage of justice and seeks quashing of the same.

6. The petition was contested by respondent No. 1 as well as the State contending that the petitioner was not entitled to any reliefs and that the society which the petitioner claims to represent would have no authority to maintain the institution and they could not have taken up any developmental work of the temple, which is under the control of the Department and that since there were hereditary trustees even according to the petitioner, any person amongst the family members with whom such hereditary right was vested could have been appointed to administer the temple and the Deputy Commissioner could not have appointed a third person when there were hereditary trustees. As regards the contention of the petitioner that the appeal not being maintainable, it is pointed out that the Commissioner had the authority to hear and dispose of the appeal filed under Section 61 of the Madras Act. The Karnataka Act was brought into force with effect from 1.5.2003 and it would not take away the powers of the Commissioner to hear and dispose of the appeals filed under the Madras Act, in view of proviso to Section 78(2) of the Karnataka Act clubbed with Section 6 of the General Clauses Act, 1989, which are applicable in respect of repeal of the Madras Act and hence, the Commissioner had rightly disposed of the appeal pending before him. It is in this vein that the statement of objections are filed.

7. It is to be observed that admittedly there were hereditary trustees to the institution. It is on the allegation that hereditary trustees having neglected the institution, the devotees and other likeminded persons such as the petitioner had taken up the task of managing the institution to bring about improvements. Even if they have done so, it would be without authority of law and since there was an impasse, the authority having been approached seeking to appoint a fit person to manage the institution to frame a scheme, a third party having been appointed, had been rightly quashed by the Commissioner, which is being challenged in the present petition. Insofar as the proceedings under the Madras Act being entertained in view of the Karnataka Act having come into force is also not a bona fide contention, in view of proviso to Section 78(2) of the Karnataka Act, which saves the proceedings in respect of Madras Act. Therefore, there is no merit in this petition and the same is dismissed.