**(2003) 02 AP CK 0058**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 12918 of 2002

C. Subhash Mudiraj APPELLANT

Vs

Regional Joint Commissioner, Multi Zone-III, Endowments Department and Another RESPONDENT

**Date of Decision :** 07-02-2003

**Acts Referred:**

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 16, 2(18), 6, 92(1), 92(4)
Limitation Act, 1963 — Section 12(2)

**Citation :** (2003) 2 ALD 750 : (2003) 4 ALT 128

**Hon'ble Judges :** V.V.S. Rao, J

**Bench :** Single Bench

**Advocate :** A. Krishna Murthy, for the Appellant; Government Pleader and M. Vidya Sagar, for the Respondent

**Final Decision :** Dismissed

# Judgement

V.V.S. Rao, J.—The petitioner claims to be a member of family that constructed the temple known as ''Sri Kattamaisamma Mahalakshmi Temple'', Begumpet, Hyderabad. He claims that due to his efforts the temple acquired valuable properties and prominence. It was registered u/s 43 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, the Act). He filed an application being O.A. No. 16 of 1994 before the Deputy Commissioner of Endowments, Hyderabad, to declare him as member of the founder''s family. After due enquiry, the said official by order dated 15.3.1995 recognised the petitioner as founder member of the temple. Aggrieved by the same, a revision was filed before the Regional Joint Commissioner, Multi Zone-Ill, first respondent herein. The said revision being Revision Petition No.40 of 1997 was allowed by the first respondent by order dated 22.9.1997 setting aside the order of the Deputy Commissioner on the ground that as per the judgment of the Supreme Court in Writ Petition No.817 of 1997 and also Circular instructions of the Commissioner of Endowments dated 25.3.1996 the Deputy Commissioner has no jurisdiction to declare a person as member of founder''s family and only Assistant Commissioner can do so. The petitioner therefore approached the Assistant Commissioner who appears to have conducted enquiry and declared the petitioner as member of the founder''s family by proceedings dated 10.5.2001.

2. The second respondent herein claiming to be "person interested" preferred a revision petition before the first respondent. The same being R.P. No.39 of 2001 was allowed on 1.6.2002 and the proceedings of the Assistant Commissioner dated 10.5.2001 were set aside and case was remanded to the Deputy Commissioner, Hyderabad for necessary enquiry. The second respondent was also given opportunity to avail appropriate remedy u/s 87 read with Section 45 of the Act for deleting relevant entry in the endowments register purporting to show the petitioner''s family members as founders. The order of the first respondent dated 1.6.2002 in R.P. No.39 of 2001 is assailed in the writ petition.

3. Learned Counsel for the petitioner Sri A. Krishna Murthy submits that the second respondent is not interested and therefore at his instance the first respondent could not have entertained a revision petition u/s 92 of the Act, that the second respondent preferred revision petition after expiry of 90 days and therefore the same is barred by limitation and that the declaration given by the Assistant Commissioner initially is final and cannot be revised.

4. Sri M. Vidya Sagar, learned Counsel appearing for second respondent, submits that the temple in question is classified u/s 6(b) of the Act and therefore the Deputy Commissioner is alone competent to appoint Board of Trustees u/s 15(b) of the Act. As a necessary corollary the Deputy Commissioner alone is competent to recognise/declare a person as belonging to founder''s family and the Assistant Commissioner is not competent to give such declaration. He refutes the contention that the revision is barred by limitation. He submits that second respondent came to know about the proceedings issued by the Assistant Commissioner only when the petitioner claimed right as founder trustee in the temple. Second respondent immediately obtained order copy on 20.8.2001 and filed a revision. The alleged enquiry by Assistant Commissioner was closely guarded secret where neither the second respondent nor public are aware of any such enquiry and therefore the revision filed is within time. He lastly contends that when the order of Assistant Commissioner declaring the petitioner as member of the founder''s family is itself without jurisdiction no finality can be attached to the same.

5. The case on hand requires a decision on two questions - (i) whether the second respondent is "person interested" to invoke jurisdiction of first respondent u/s 92 of the Act; and (ii) whether the revision petition filed by the second respondent is barred by limitation in which event it was improper for the first respondent to exercise jurisdiction u/s 92 of the Act after a period of ninety days.

Whether Second Respondent is "person interested":

Section 2(18) of the Act gives broader definition of "person having interest". It reads as under.

2(18) Person having interest includes-

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a charitable institution or endowment or a religious institution other than a math or a religious endowment a person who is entitled to attend at or is in the habit of attending the performance of service, charity or worship connected with the institution or endowment or who is entitled to partake or is in the habit of partaking in the benefit of any charity or the distribution of gifts thereat;

(c) in the case of a specific endowment a person who is entitled to attend at or is in the habit of attending the performance of the service or charity or who is entitled to partake or is in the habit of partaking in the benefit of the charity.

6. As per Clause (b) of the above definition, any person who is entitled to attend at or is in the habit of performance of service or worship conducted by the institution, is a person having interest. It is not denied before me that the second respondent used to regularly perform worship at the temple in question. The learned Counsel for the petitioner, however, submits that the second respondent''s father died in accident in front of the temple and since then he is not attending the temple or worshipping at the temple. Therefore, he cannot be treated as person having interest in the temple. I am afraid, I cannot agree with the submission for two reasons.

7. The Act gives a broader meaning of the term "person having interest". Further, the Legislature used the word "includes" while defining person interested. It is well settled that when the definition is given with the usage of the word "includes", the Court should give broadest meaning to the term. The person having interest in its sweep takes into all persons who are entitled to attend religious institutions or who are in the habit of attending or performing service or worship. Secondly, a person need not always attend life worship, and if by reason of his belonging to the religious denomination or sect or community is entitled to attend to service, or worship at the temple, he is treated as person having interest. As noticed, it is not denied that he was one of the regular visitors to the temple and even if the allegation that the second respondent stopped coming to temple after death of his father is true, the same does not disqualify the second respondent to be person having interest. Further, be it also noted that the second respondent has been contending that he is natural devotee of the temple and therefore there is no substance in the submission of the petitioner''s Counsel.

Question of limitation:

Section 92 of the Act reads as under:

92. Power of the Commissioner to call for records and pass the orders :--(1) The

 

commissioner may either suo motu or on the application, call for and examine the record of any Deputy Commissioner or Assistant Commissioner, or of any other Officer subordinate to him or of any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or a specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application, or reference to a Court is provided by this Act to satisfy himself as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Commissioner that such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly.

(2) The Commissioner shall not pass any order prejudicial to any parry under Subsection (1), without giving him an opportunity for making representation.

(3) The Commissioner may stay the execution of any decision or order or the nature referred to in Sub-section (1) pending the exercise of his powers under the said sub-section in respect thereof.

(4) Every application to the Commissioner for the exercise of his powers under this Section shall be preferred within ninety days from the date on which the order or proceeding to which the application relates was received by the applicant.

8. A plain reading of above provision would show that under Sub-section (1) of Section 92 of the Act, the Commissioner is empowered to call for and examine the record of any Deputy Commissioner or Assistant Commissioner or any other Officer subordinate to him and examine the legality or propriety of such decision. If it appears to the Commissioner that such decision requires modification, he may annul, modify, remit or reverse the matter. The Commissioner is entitled to exercise the power of revision either suo motu or on application made by any person. Subsection (2) requires giving an opportunity to a person who is likely to be prejudicially affected. Sub-section (3) enables staying execution of any decision in respect of which the Commissioner either suo motu or on application call for records for examination. Sub-section (4) lays down that on application to the Commissioner to revise any order or decision of a subordinate official shall be preferred within ninety days "from the date on which the order or proceeding to which the application relates was received by the applicant."

9. There cannot be any dispute that the period of limitation of ninety days prescribed by sub-section (4) of Section 92 of the Act is not applicable when the Commissioner suo motu calls for records and examines them. The period of limitation is applicable only when an application is made by an aggrieved person. The period of ninety days is not from the date of the passing of the order of the Deputy Commissioner and/or Assistant Commissioner or any other official subordinate to the Commissioner, but it is from the date on which the order of the subordinate official is received by the applicant.

10. The Assistant Commissioner passed orders on 9.5.2001. The same was not addressed to the second respondent. The same was not directed to be displayed at the notice board of the temple or notice board of the office of the Assistant Commissioner or Commissioner. Indeed, the Assistant Commissioner passed orders on the application made by the petitioner through his advocate and order was passed by the Assistant Commissioner after relying on the report of the Inspector of Endowments dated 25.4.2001. No objections were invited and no notice was issued to anybody, much less to any other members of the family of the petitioner, who are allegedly members of the founders of the temple who can be presumed to have interest in the matter. The second respondent filed additional affidavit on 7.1.2003 to the effect that when the petitioner started exercising rights as founder trustee, he came to know about the decision of the Assistant Commissioner, and obtained a copy on 20.8.2001 and preferred a revision petition within ninety days from that date. The file produced before me would show that the second respondent filed a revision petition within ninety days from the date of receipt of copy on 20.8.2001. When admittedly, the Assistant Commissioner did not conduct any enquiry, Inspector of Endowments has not conducted enquiry by giving notice to interested parties, and in the absence of any denial that the copy of the order was received by the second respondent on 20.8.2001, it must be held that the revision petition is filed within period of limitation prescribed under Subsection (4) of Section 92 of the Act.

11. The submission of the learned Counsel for the petitioner that the application for the certified copy of the order of the Assistant Commissioner was itself made beyond ninety days and, therefore, the revisional authority ought not to have entertaining the revision, is devoid of any merits. In M/s. India House v. Kishan N. Lalwani AIR 2003 SCW 78 : 2003 (1) Sup 12, the Supreme Court considered the question whether the factum that application for certified copy is not made within statutory period is material in exercising power u/s 5 of the Limitation Act, 1963. The Supreme Court, after considering Sections 5, 12(2) and 29(2) of the Limitation Act, laid down as under:

................... Although the language of Subsection (2) of Section 12 is couched in a form mandating the time requisite for obtaining the copy being excluded from computing the period of limitation, the easier way of expressing the rule and applying it in practice is to find out the period of limitation prescribed and then add to it the time requisite for obtaining the copy - the date of application for copy, and the date of delivery, thereof both included - and treat the result of addition as the period of limitation. The underlying principle is that such copy may or may not be required to accompany the petition in the jurisdiction sought to be invoked yet to make up one''s mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefore the litigant must be armed with such copy Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a farce. All that Subsection (2) of Section 12 of the Limitation Act says is the time requisite for obtaining the copy being excluded from computing the period of limitation, or, in other words, as we have put in hereinabove, the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed In adopting this methodology it does not make any difference whether the application for certified copy was made within the prescribed period of limitation or beyond it. Neither it is so provided in Subsection (2) of Section 12 of the Limitation Act nor in principle we find any reason or logic for taking such a view,

12. In my considered opinion, having regard to the nature of the power under Subsection (1) of Section 92 of the Act, whereunder the Commissioner is vested with suo motu powers of revision to call for records for examination and modify, or annul any order, the said power cannot be allowed to be defeated by the period of limitation under Sub-section (4) of Section 92 of the Act, In a given case, arguably, on application by aggrieved person made beyond ninety days, can itself be the basis for the Commissioner to exercise suo motu powers u/s 92 of the Act. As noticed, under Sub-section (1) broad powers are conferred either to reverse, modify, annul or remit the matter to the subordinate officials. I must, however, hasten to add that the above observations are subject to settled principle of law that when suo motu powers are conferred without prescribing any time limit, those powers are to be exercised within a period of reasonable time unless fraud or misrepresentation are used for obtaining favourable order. A reference may be made to the decisions of the Supreme Court in The State of Gujarat Vs. Patil Raghav Natha and Others, and Hindustan Times Ltd. v. Union of India. AIR 1998 SC 688.

13. Yet another submission made by the learned Counsel for the petitioner is that in his round the Deputy Commissioner must recognise the petitioner as belonging to founder''s family and therefore the order passed by the Assistant Commissioner is not vitiated by illegality. In this regard, the observations made by the Assistant Commissioner in his order dated 9.5.2001 may be noticed.

In the instant case the suit Temple has been published u/s 6(b)(ii) of the Act and is under the administrative control of the Deputy Commissioner, Endowments Department, Hyderabad, and the Deputy Commissioner, Endowments Department is only the competent authority to constitute the Trust Board. The matter of recognising the Founder Trustees has been already adjudicated by the Deputy Commissioner, Endowments Department, Hyderabad, in O.A. No. 16/94 wherein he has recognised the applicant as founder trustee on merits. I, therefore, do not hesitate to recognise the applicant as Founder of the subject temple in the context of the circular instructions of the Commissioner, Endowments Department, Hyderabad.

14. The Assistant Commissioner himself comes to the conclusion that the subject temple is classified u/s 6(b)(ii) of the Act and therefore the Deputy Commissioner, Endowments, Hyderabad alone is competent authority to constitute Trust Board. However, very curiously, Assistant Commissioner

 

proceeds further and recognises the petitioner as member of founder''s family of the subject temple on the ground that the matter of recognising founder trustee has already been adjudicated by the Deputy Commissioner of Endowments in O.A.No.16 of 1994. This approach ignores the fact that the said order was already set aside by the Joint Commissioner by order dated 22.9.1997 in Revision Petition No.40 of 1997 filed by some other aggrieved person against the orders of the Deputy Commissioner dated 15.3.1995. This fact was ignored by the Assistant Commissioner.

15. The Supreme Court in Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another, , while upholding Section 16 of the Act (by which hereditary trusteeship was abolished) observed that the interest of the temple or charitable institution could be well safeguarded by appointing member from founder''s family as a trustee and making him the Chairman of the Board of Trustees, A question arose before this Court in W.P.No.20212 of 1999, as to who is competent authority to recognise a person as belonging to founder''s family. By order dated 34.2.2001 it was held that the authority competent to appoint Board of Trustees u/s 15 of the Act is competent to recognise a person as belonging to founder''s family. The subject temple is registered/notified as temple falling u/s 6(b)(ii) of the Act. Therefore, as per Section 15(2) of the Act it is only the Deputy Commissioner having jurisdiction who is competent to constitute Board of Trustees consisting five persons appointed by him, The Circular issued by the Commissioner of Endowments in proceedings No.J5/5288/96 (Acts and Rules) dated 25.3.1996 contains instructions pursuant to judgment in Pannalal Bansilal Pitti v. State of A.P., (supra). According to this, appointing authority to appoint trustees is only competent to recognise member of founder''s family after causing thorough enquiry. In this case, enquiry was conducted by Assistant Commissioner, which cannot be called a thorough enquiry. Therefore, the submission of the learned Counsel for the petitioner is rejected. The Deputy Commissioner to whom the matter stands remitted by the first respondent shall dispose of the matter within a period of two weeks from today and pass appropriate orders as to right of the petitioner to be recognised as member allegedly belonging to family of founder of the temple.

16. For the above reasons, the writ petition fails and is dismissed with costs.

 