
(1956) 07 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 632 of 1954

Golukonda Tirupathayya

APPELLANT

Vs

Gudivada Appalanaidu and Others

RESPONDENT

Date of Decision : 25-07-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Hindu Religious Institutions Act — Section 71, 78, 87

Citation : (1956) 07 AP CK 0011

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : C. Mallikharjuna Rao, for the Appellant; M. Seshachalapathi, Govt. Pleader for Respondent No. 5, E. Venkatesam and P. Kodandaramayya for Respondent Nos. 1 to 4, for the Respondent

Judgement

Satyanarayana Raju, J.—This is an application under Article 226 of the Constitution for the issue of a writ of prohibition to prohibit the Deputy Commissioner for Hindu Religious and Charitable Endowments, Masuli-patnam (5th Respondent) from proceeding with the enquiry in O. A. No. 174 of 1953 on his file.

2. The Petitioner is the archaka of a temple by name Nookalamma Temple" at Lingampeta, Nara-sipatnam taluk, Visakhapatnam district. The 1st Respondent is the managing trustee of the temple. Respondents 2, 3 and 4 are brothers of the Petitioner, who claim rights similar to the petitioner. They are not contesting this petition. The 5th Respondent is the Deputy Commissioner for Hindu Religious and Charitable Endowments, Masuli-patnam.

3. The 1st Respondent filed O. A. No. 174 of 1953 before the 5th Respondent against the Petitioner and Respondents 2 to 4, u/s 87 of the "Hindu Religious and Charitable Endowments Act (.1.9 of 1951.) (hereinafter referred to as the Act) for the issue of a certificate that the properties shown in the schedule appended thereto belonged to the temple. The Petitioner filed his counter and he is

contesting the said petition. The enquiry made some progress,- some documents have been marked, but it is not yet concluded. At this stage, the Petitioner has filed the above application in this Court seeking a writ of prohibition alleging inter alia that the necessary grounds that would furnish jurisdiction to the 5th Respondent to entertain the application for a certificate are absent and that therefore the 6th Respondent has no "jurisdiction to proceed with the enquiry.

4. The learned Counsel for the Petitioner has submitted that Section 87 of the Act, which is in pari materia -with Section 78 of the Hindu Religious Endowments Act could only apply in respect of admitted endowments. In support of this contention, he relied upon a Bench decision of the Madras High Court in Rangacharyulu v. Venkatanarasimhayya 1919 1 Mad LJ 200 : AIR 1949 Mad 897) (A).

In that case the facts were these: Applications were filed in the District Court of Cuntur and Krishna u/s 78 of the Madras Hindu Religious Endowments Act for recovery of possession of lands in the possession of archakas on the ground that they were temple properties and in support of their application, the applicants filed certificates as required by Section 78 of the said Act, granted by the Board. It was contended by the archakas that the certificates were invalid as on the date of the applications the Local Government had not prescribed any rules for the issue of such certificates under its rule-making power u/s 71. Satyanarayana Rao and Pancha-pakesa Sastri, JJ., held that the production of a certificate, as may be prescribed by the local Government was mandatory and a condition precedent to the institution of the application and that therefore the production of a certificate granted by the Board was not sufficient. The learned Judges also added that u/s 78 of the Act as it then stood, the scope of the enquiry was narrowed down and it could apply only against dismissed trustees or officers or servants of the temple or those claiming under them and only in respect of admitted endowments. They also held that the impugned" Section 78 did not apply to a petition filed before the date of the amendments as the amendment had no retrospective operation.

5. Dealing with a similar objection as to maintainability of an application u/s 87 of the present Act, Subba Rao, J., (as he then was) and Rana-swami, J., held in Prattipati Dandaiah and Another Vs. Nori Venkatrama Dikshitulu, Managing Trustee of Sri Brahmeswaraswami Temple at Vathcharukur and Others, , that under the present Act the Legislature attempted to get over the defects pointed out by the learned Judges in the aforesaid case. Under S. 87. it is obligatory on the Commissioner to give notice to the affected parties and to consider their objections before issuing, a .certificate. The present section, therefore, provides for an enquiry, and in this respect makes an important departure from the previous section, The enquiry before the Commissioner is intended to give an opportunity to the person in possession to prove his title and for the purpose of ascertaining prima facie whether the officeholder or the servant, as the case may be, has any title to the property. Even then his decision is not final for the

aggrieved party can always file a suit to establish his title in a civil Court. Section 87, therefore, provides ample safeguard; against arbitrary eviction. It also gives the aggrieved party an alternative remedy by way of a suit. That being the position, I do not consider that the Petitioner is entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution.

6. The learned Counsel for the Petitioner, however, contended that there is an initial lack of jurisdiction on the part of the 5th Respondent to entertain the petition and that being so, he should be prohibited from proceeding with the enquiry. Where the facts clearly establish a patent lack of jurisdiction, a writ of prohibition is no doubt, an appropriate remedy. Where, however, there is any doubt about the facts and where they have to be investigated and determined, it is not an appropriate remedy. Where this Court is satisfied that an inferior Court or authority has exceeded its jurisdiction and that absence of jurisdiction is patent a writ of, prohibition will issue. But where the defect is not apparent, the Court, in its discretion, may refuse the writ. In the present case, the Petitioner has not succeeded in establishing any patent lack of jurisdiction.

7. For these reasons I hold that the Petitioner is not entitled to a writ of prohibition, and this petition, therefore, fails and is dismissed with costs. Advocate's fee Rs. 100.