

(1973) 10 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 965 of 1972

K. Raghavendra Naik and Others

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 30-10-1973

Acts Referred:

Citation : AIR 1974 Kar 129

Hon'ble Judges : Jagannatha Shetty, J

Bench : Single Bench

Advocate : U.L. Narayana Rao, for the Appellant; M. Ramakrishna, High Court Govt. Pleader for Respondent Nos. 1 to 3, K.R. Karanth for Respondent Nos. 10 to 13 and B.P. Holla for Respondent Nos. 14 to 19, for the Respondent

Judgement

Jagannatha Shetty, J.—The validity of Section 58(1) of the Madras Hindu Religious and Charitable Endowments Act (Act XIX of 1951) ("the Act"), and the correctness of the order made thereunder by the Deputy Commissioner, H.R. and C.E., South Kanara, are the questions for decision in this writ petition under Article 226. Briefly stated the facts leading to the petition are these:--

The petitioners are the Managing Trustees of Sri Venkataramana Temple Karkal, South Kanara. It is a religious denominational institution founded by the Gowda Saraswath Brahmin Community of Karkala Pete and Hobli in the year 1537. The temple has got its own arrangements for the administration of its affairs. Complaining of mismanagement committed by the petitioners in the affairs of the temple, respondents 4 to 9 made an application in the month of July 1971 under Sections 45 and 58 of the Act before the Deputy Commissioner. HR & CE South Kanara. Therein, they have prayed as follows:--

That the Court may be pleased to issue notices to the respondents and such other persons interested as deems fit, and suspend the respondents 1 and 2 exercising the power u/s 45 till the disposal of this application and settle the scheme incorporating the provisions as set out in the application and award costs of this application and grant such other reliefs as deemed necessary in the case.

2. The Deputy Commissioner after notice to the petitioners, posted the application for preliminary hearing on 28-3-1972. On that day, he made a brief order as follows:--

Application under Sections 45 and 58 read with Section 95 of the Madras HR & CE Act, 1951.--

This case coming on preliminary hearing before me on 29-3-1972 in the absence of the Advocate for the petitioners and Advocate for the respondents. The Advocate for the petitioner and the Advocate for respondents eight to thirteen having pleaded that a scheme may be framed for the better administration of the temple pending disposal of the case under the powers vested with the Deputy Commissioner u/s 58(1) of the Madras HR & CE Act, 1951, it is hereby ordered that a scheme under S. 58(1) of Madras HR & CE Act, 1951 for better administration of Sri Venkataramana Temple, Karkala be framed pending disposal of the case.

Sd/- Deputy Commissioner. HR & CE., S.K., Mangalore.

3. The said order is challenged on the ground that the Deputy Commissioner has no jurisdiction to order framing of an interim scheme pending application to settle the scheme u/s 58 of the Act.

4. The second contention urged for the petitioners was that Section 58(1) is ultra vires of Article 26 of the Constitution. I will take up the second contention first.

5. The validity of several provisions of the Act including Section 58, came up for consideration before the Supreme Court in the leading case The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., B.K. Mukherjea, J., speaking for the Court observed at page 294 thus:

We find nothing wrong in Section 58 of the Act which relates to the framing of the Scheme by the Deputy Commissioner. It is true that it is a Government Officer and not the Court who is given the power to settle the scheme, but we think that ample safeguards have been provided in the Act to rectify any error or unjust decision made by the Deputy Commissioner. Section 61 provides for an appeal to the Commissioner against the order of the Deputy Commissioner and there is a right of suit given to a party who is aggrieved by the order of the Commissioner with a further right of appeal to the High Court.

The objection urged against the provision of Clause (3)(b) of Section 58 does not appear to us to be of much substance. The executive officer mentioned in that clause could be nothing else but a manager of the properties of the Math, and he cannot possibly be empowered to exercise the functions of the Mathadhipathi himself. In any event, the trustee would have his remedy against such order of the Deputy Commissioner by way of appeal to the Commissioner and also by way of suit as laid down in Sections 61 and 62. Section 59 simply provides a scheme for the application of the "Cv pres" doctrine in case the object of the trust fails

either from the inception or by reason of subsequent events. Here again the only complaint that is raised is, that such order could be made by the Deputy Commissioner. We think that this objection has not much substance. In the first place, the various objects on which the trust funds could be spent are laid down in the section itself and the jurisdiction of the Deputy Commissioner is only to make a choice out of the several heads. Further an appeal has been provided from an order of the Deputy Commissioner under this section to the Commissioner. We therefore, cannot agree with the High Court that Ss. 58 and 59 of the Act are invalid.

6. Mr. Narayana Rao, learned Counsel for the petitioners, urged that the ratio of the said decision should be limited only to the public temple and cannot be extended to a denominational institution such as the one before me.

7. I think that the contention has no substance. In that case, the matter arose out of a scheme in connection with a mutt known as Shirur Mutt of which the petitioner therein was the head or superior. The Endowment Board called upon the petitioner to show cause why a scheme should not be framed for the administration of the trust and the petitioner challenged the validity of the Act under which the scheme was framed. The main contention in the appeal was that having regard to the fundamental right guaranteed by our Constitution in matters of religion and religious institutions belonging to a particular religious denomination, the Act including Section 58 regulating the framing of a scheme was ultra vires and void. The Supreme Court while striking down some of the provisions of the Act held that Section 58 was not void or ultra vires of Articles 25 and 26 of the Constitution.

8. Article 26 refers not only to Religious denominations but also sections thereof, a mutt or spiritual fraternity. The temple in question in the present case is admittedly belonging to the religious denomination, viz.. Gowda Saraswatha Brahmin Community of Karkala Pete. The freedom to manage its religious affairs is guaranteed under Article 26 and not by any other provisions of the Constitution. In relation to that right, the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, upheld the validity of Section 58. There is, therefore, no scope for the petitioners to contend that that decision is only applicable to the rights of the public institutions, and not to an institution run by denominations or sections thereof.

9. This brings me back to the first contention urged for the petitioners. In my opinion, there is considerable force in it. Section 58(1) provides,--

When the Deputy Commissioner has reason to believe that in the interests of the proper administration of a religious institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application in writing, stating that in the interests of the proper administration of a religious institution a scheme should be settled for it, the Deputy Commissioner

shall consult in the prescribed manner the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution: and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he - shall, by order, frame a scheme of administration for the institution.

(2) A scheme settled under sub-section (1) for a temple or for a specific endowment other than one attached to a math may contain provisions for,--

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(Omitted as unnecessary)

10. The Rules framed under S. 58(1), provide for a detailed procedure to be followed by the Deputy Commissioner before he orders framing of a scheme in respect of any institution.

11. Any person aggrieved by the scheme framed u/s 58(1), may appeal to the Commissioner u/s 61(1) of the Act. Any person aggrieved by the order of the Commissioner may institute a suit with a right of appeal to the High Court as provided u/s 62 of the Act. The scheme of the Act, as it appears to me, is that the Deputy Commissioner after following the procedure in accordance with law may order framing of a scheme for the administration of the institution and he has no power to frame an interim scheme pending consideration of the application for framing a regular scheme. The "scheme" contemplated u/s 58(1) is a scheme to be settled once after hearing all the interested parties and it does not include an interim scheme. Section 58 does not authorise the Deputy Commissioner to settle an interim scheme. There is no other provision in the Act conferring jurisdiction on the Deputy Commissioner to frame an interim scheme.

12. In the result, the writ petition is allowed. The order dated 29-3-1972 Annexure-B made by respondent 2 is hereby quashed. It is needless to state that the Deputy Commissioner has got still the power to dispose of the application of respondents 4 to 9 in accordance with law. No order as to costs.