

(2006) 12 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22392 of 2006

Kondapaka Lakshmi Narasimha Charyulu

APPELLANT

Vs

J. Sudhakar and Others

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 11, 15, 16, 17, 18

Citation : (2007) 2 ALD 569 : (2007) 3 ALT 556

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

Bench : Single Bench

Advocate : B. Sudhakar Reddy, for the Appellant; GP for Endowments, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner is priest (Archaka) of Sri Lakshmi Narasimha Swamy Temple, Devunipally village of Peddapally Mandal in Karimnagar District (the temple, for brevity). He filed the instant writ petition impeaching the letter/order, dated 13/14.10.2006 passed by the first respondent. By impugned order, while initiating disciplinary enquiry into the alleged misconduct of the petitioner, first respondent placed him under suspension. The same is assailed mainly on the ground that the same is without jurisdiction. The petitioner's father was Archaka of the temple by reason of appointment order, dated 13.02.1986, issued by the third respondent (Deputy Commissioner). After death of the father, the petitioner was allegedly appointed by the second respondent (Assistant Commissioner) vide proceedings, dated 16.07.1993. The first respondent was appointed as Manager of the temple. He issued notice, dated 30.06.2006 proposing to conduct auction of the land in survey Nos. 283 and 661 situated at Andhugulapally, hamlet of Devunipally village belonging to the petitioner. He, therefore, filed W.P. No. 14569 of 2006 and the same is pending. After filing the writ petition, first respondent dropped all the proceedings. However, first respondent issued notice on 28.09.2006 asking the petitioner to handover

possession of lands in survey Nos. 283 and 388. He again filed W.P. No. 21426 of 2006. This Court dismissed the same observing that the temple has to take appropriate action either under A.P. Charitable and Hindu Religious and Endowments Act, 1987 (the Endowments Act, for brevity) or under A.P. Land Grabbing (Prohibition) Act, 1982. The petitioner alleges that first respondent is resorting to illegalities and the petitioner did not cooperate with him. For this reason, the first respondent issued impugned show cause notice framing charges without any jurisdiction.

2. At the stage of Admission itself, learned standing counsel for Endowments opposed the writ petition. A counter affidavit is filed by first respondent to the following effect. The writ petition is not maintainable as there is an effective alternative remedy u/s 37(3)(a) of the Endowments Act. The petitioner fraudulently sold land in survey No. 283 belonging to the temple by tampering with the revenue records and also constructed house in survey No. 388, which is the property of the temple. The first respondent has jurisdiction u/s 37(1) of the Endowments Act to take disciplinary action against the Archaka and also competent to place the Archaka under suspension, pending enquiry. The first respondent denied all other allegations.

3. Learned Counsel for the petitioner submits that the Manager is not the trustee of the temple. When the "trustee" as defined u/s 2(19) of the Endowments Act is conferred with power of suspension u/s 37(1) of the Endowments Act, the Manager cannot exercise such power. As per Section 11 read with Section 37 of the Endowments Act, it is only the second respondent, who is competent to initiate disciplinary action and place the Archaka under suspension. It is the Assistant Commissioner who is to take action against the petitioner. Per contra, learned standing counsel for first respondent submits that the Manager, in the absence of a non-hereditary trustee or hereditary trustee, has the power to appoint office holder and servant of temple and therefore, such Manager is also competent to take disciplinary action against such office holder/servant of the temple.

4. To appreciate the question of jurisdiction of a Manager of a temple to initiate enquiry and place the Archaka under suspension pending enquiry, a brief reference may be made to history of endowment law. Till A.P.Charitable and Hindu Religious and Endowments Act, 1987 was enacted, the control of temple administration by the State was limited. By and large, hereditary trustee of temples, charitable institutions, mutts etc., were at the helms of affairs. Some of the institutions were under the control of Managers, who were in exclusive control over the temple. The matter was examined in detail by Chief Justice Challa Kondaiah's Commission, which inter alia recommended the abolition of hereditary trusteeship. The Government of Andhra Pradesh accepted recommendation and A.P.Charitable and Hindu Religious and Endowments Act, 1966 was totally revamped. 1987 Act, which repealed earlier Act, by Section 16 abolished hereditary trusteeship and the rights of a person for the office of

hereditary trustee or Muthavali or Dharmakarta, were abolished. Section 2(9) of the Endowments Act, therefore, has to be understood in the background of history of 1987 Act.

5. Section 2(29) of the Endowments Act reads as under.

2(29) - "Trustee" means any person whether known as mathadhipati, mahant, dharmakarta, mutawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested; and includes a Board of Trustee.

6. Section 2(29) of the Endowments Act defines a "trustee" means any person whether known as mathadhipati, mahant, dharmakarta, mutawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment vests. To begin with definition in Section 2(29), therefore, is helpful to understand a provision like Section 16 or other cognate provisions in the 1987 Act which speak of the rights, liabilities, privileges, honours etc., that are claimed by those persons with hereditary claims. Here, one needs to look to the second part of the definition in Section 2(29) of the Endowments Act highlighted in the extract above and includes a Board of Trustees. As already seen, the first part of the definition of trustee deals with one category of persons who had hereditary rights. The second part of the definition "... and includes a Board of Trustees" refers to such of the non-hereditary trustees appointed in the Board after coming into force of 1987 Act. Sections 15, 17 to 22 of the Endowments Act deal with Board of Trustees and trustees appointed to Board of Trustees. Section 23 of the Endowments Act enumerates the powers of a trustee but nowhere the word "Manager" is used. Section 29 of the 1987 Act enables the Government to appoint Executive Officers, who exercise powers. As per Section 29(5) of the Endowments Act, a distinction, however, has to be drawn between Manager and Executive Officer. An Executive Officer appointed u/s 29 of the Endowments Act for one temple or a group of three temples may be a Manager of a temple but a person who is designated as Manager cannot be treated as Executive Officer appointed u/s 29 of the Endowments Act. In either case, both these cannot be equated as Board of Trustees or trustee of such Board. Sub-section (6) of Section 29 of the Endowments Act makes it clear that Executive Officer shall be employee of the Government subject to such conditions as determined by the Government and whose salaries are paid from the consolidated fund of India. By no stretch of imagination, therefore, Executive Officer can be equated as a trustee of the Board appointed u/s 17 of the Endowments Act.

7. Section 35 of the Endowments Act empowers the Board of Trustees to appoint office holders or servants/Archakas in a religious institution. Section 36 prescribes qualifications for Archakas. The Rules made by the Government vide G.O.Ms. No. 261, dated 20.05.2002, (The A.P.Charitable and Hindu Religious Institutions and Endowments Archakas and other Office Holders and Servants

Qualification and Endowments Rules) in relation to Section 35(3) of the Endowments Act, prescribed qualification of Archakas and other temple servants. Even as per these Rules, the Government or any officer of the Endowment Department or a Manager is not competent to appoint Archakas. Therefore, one has to fall back on Section 35(1) of the Endowments Act, which empowers only the Board of Trustees or trustee to appoint the Archaka. Therefore, disciplinary action can be taken only by the Board of Trustees or trustee, and not by an Executive Officer. In any event, certainly, not by a Manager.

8. Sections 37 and 38 of the Endowments Act deal with disciplinary proceedings and Section 39 of the Endowments Act empowers the Commissioner of Endowments to transfer office holders/servants attached to a temple or charitable institutions. Section 37(1) and (2) , and Section 38(1) of the Endowments Act read as under. Sub-sections (3) and (4) of Section 37, and Sub-section (2) of Section 38 of the Endowments Act deal with appellate powers on departmental officers.

37. Punishment of office holders an servants:

(1) All office-holders and servants attached to a charitable ore religious institution or endowment, shall be under the control of the trustee; and the trustee may, after following the prescribed procedure and for reasons to be recorded in writing, impose fine, or order suspension, removal, dismissal or any other prescribed penalty, or any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of conduct laid down or neglect of duty assigned by or under this Act or other sufficient cause.

(2) Notwithstanding anything in Sub-section (1), in the case of an office-holder or servant of an institution or endowment whose annual income exceeds rupees ten lakhs, the power to impose any penalty specified in that Sub-section shall, subject to such restrictions and conditions, as may be laid down by the Government, be exercised by the executive officer after following such procedure as may be prescribed.

38. Power of Commissioner, Deputy Commissioner or Assistant Commissioner to punish officer-holders etc., in certain cases:- Where it is noticed by the Commissioner, the Deputy Commissioner or the Assistant Commissioner having jurisdiction that any officer holder or servant attached to an institution or endowment has not been dealt with suitably by the trustee or the Executive Officer as the case may be u/s 37 for any of the lapses specified in Sub-section (1) thereof, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may direct the trustee or the Executive Officer to take action u/s 37, failing which the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may after following the prescribed procedure, impose by an order in writing any of the penalties specified in Sub-section (1) of that section on such office-holder or

servant.

9. Section 37(1) and (2) of the Endowments Act confer power only on the trustee to punish office holders/servants after following the procedure and impose the punishment of suspension, removal, dismissal or any other prescribed penalty. Indeed, under Sub-section (5) of Section 37 of the Endowments Act, if an Executive Officer of a temple fails to deal with an erring office holder/servant of a temple, the trustee can even direct such course of action and in default by the Executive Officer, impose punishment by following the procedure. Apart from this, u/s 38(1) of the Endowments Act, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, having jurisdiction, may direct the trustee or the Executive Officer to take action u/s 37 of the Endowments Act, failing which such officer of the Department of Endowments may impose any punishment after following the procedure. Therefore, either u/s 37(1) or 38(1) of the Endowments Act, the Manager of a temple has no disciplinary powers. The provision empowering an authority to take disciplinary action has to be interpreted strictly and when the language of the provision is clear, it is not possible to read some unintended word into the provision so as to confer power on the Manager. It is also settled that a public servant can be removed or dismissed from service only in accordance with law and by an order passed following the procedure prescribed by law. Admittedly, the petitioner's father was hereditary Archaka and after demise of his father, the petitioner was appointed and recognized as Archaka governed by the new statutory regime. Therefore, the Manager is not competent to place the Archaka under suspension. Whether enquiry initiated against the petitioner is sustainable?

10. Section 38(1) of the Endowments Act confers powers on the Commissioner, Deputy Commissioner or Assistant Commissioner having jurisdiction to direct the trustee or Executive Officer to take action u/s 37 of the Endowments Act. The impugned order is purportedly issued under instructions, dated 28.09.2006, of the Deputy Commissioner of Endowments, Warangal (as seen from the reference entry in the impugned order). Whether such a thing can save the impugned order? In the considered opinion of this Court, this would not make any difference on the right of the petitioner to be dealt with legally. Section 38 of the Endowments Act enables the Deputy Commissioner to give directions to the Board of Trustee/trustee or Executive Officer when the first respondent is not admittedly a member of Board of Trustees or a trustee within the meaning of Section 2(29) read with Section 17 of the Endowments Act (non-hereditary Board of Trustees), the first respondent cannot be clothed with such power of initiating enquiry against the petitioner or placing him under suspension.

11. In the result, for the above reason, the writ petition is allowed and the impugned order bearing letter No. Lr. No. SLNSD/2006, dated 13/14.10.2006 issued by the first respondent, the Manager of Sri Lakshmi Narasimha Swamy Temple, is quashed. This order shall not however preclude the competent authority to take any disciplinary action as is warranted in the facts and

circumstances of the case. This order also does not preclude the appropriate authority to initiate criminal action against the petitioner for any fraud or mischief or cheating allegedly committed by him. There shall be no order as to costs.