
(2012) 07 AP CK 0088
In the Andhra Pradesh High Court
Case No : Writ Petition No.21772 of 2003

K.V. Krishna Rao	Vs	APPELLANT
The State of A.P. and others		RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 15, 16, 17(1)

Citation : (2012) 07 AP CK 0088

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : V. Rajagopal Reddy, for the Appellant; Karthik Pavan Kumar
Representing Sri S. Srinivas Reddy for respondent No.4, for the Respondent

Final Decision : Dismissed

Judgement

Justice Noushad Ali

1. The petitioner, who is no other than the adopted son of Smt. K. Hymavathamma, the 4th respondent herein, is challenging the recognition granted in her favour as Founder Trustee per orders Rc.No.A1/4682/96, dated 1.10.1996 of the 3rd respondent-Assistant Commissioner of Endowments Department, Nellore, which was concurrently confirmed by the 2nd respondent-Regional Joint Commissioner, Multi Zone-II, Endowments Department, Tirupati, and the 1st respondent-State Government vide R.P.No.20 of 1999, dated 17.6.2000 and Memo.No.75921/Endts.IV(1)/2000, dated 25.8.2003, respectively. The undisputed facts are that Kamiseti Sundara Ramaiah Setty Choultry and Sri Mahalakshamma Temple are registered religious institutions under the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for brevity "the Act"). The temple was constructed by late Kamiseti Onnuri Setty and the Choultry was constructed by late Sundara Ramaiah, s/o. late Kamiseti Onnuri Setty. The past history as to the hereditary rights as trustees of these institutions is unnecessary for the disposal of the

controversy in this writ petition. Suffice it to note that after the death of Sundara Ramaiah, the management devolved firstly, on his second wife Lakshmi Nancharamma; and upon her death, on his son Subbarayudu, who was born through his first wife. On the death of Subbarayudu, his son Adi Seshaiah succeeded to the management. The 4th respondent herein is the wife of late Adi Seshaiah and the petitioner is their adopted son. Late Adi Seshaiah nominated his wife, the 4th respondent herein, as a Trustee of the subject institutions even during his life time. He also executed a registered Will dated 2.3.1987, in that regard. He died on 25.2.1993. In the meanwhile, an enquiry was undertaken by the Endowments Department for verification and registration of these institutions as a consequence of the Repeal of the Endowments Act No.17 of 1966 and enactment of new Act No.30 of 1987. The 3rd respondent-Assistant Commissioner of Endowments herein conducted an enquiry and found the 4th respondent herein eligible for recognition as the Trustee. Accordingly, orders dated 01.10.1996 were issued recognising her as Trustee of the subject institutions and the same has been confirmed by respondent Nos.2 and 1. The said orders are under challenge in this writ petition.

2. Heard Sri V. Rajagopal Reddy, learned counsel appearing for the petitioner as well as the learned Government Pleader for Endowments appearing for respondent Nos.1 to 3, and Sri Karthik Pavan Kumar, counsel representing Sri S. Srinivas Reddy, learned counsel appearing for respondent No.4.

3. The appointment of the 4th respondent as Founder Trustee is challenged on the sole substantive ground that her appointment is illegal, being contrary to Explanation-II to Section 17(1) of the Act.

4. According to the learned counsel for the petitioner, children in the agnate line of succession and who are declared or recognised as such alone are entitled to be recognised as Founder Trustees. Under the said provision, no female is eligible for appointment as Trustee. Thus, according to the learned counsel, the petitioner, though an adopted son, alone is eligible for Trustee as he comes within the agnatic line of succession.

5. Sri Karthik Pavan Kumar, learned counsel appearing for the 4th respondent, however, submits that the said provision has no application to the facts of the case. According to him, the 4th respondent was rightly recognised as Founder Trustee as per the provisions that existed when the appointment was made and that she has been recognised as a Founder Trustee and was acting as such even during the life time of her husband and subsequent thereto as per the rights accrued to her by virtue of the Will dated 2.3.1987 executed by her husband in her favour. He, therefore, submits that the 4th respondent has been validly recognised as Founder Trustee and the same does not warrant interference.

6. Before considering the aforesaid contentions, it is necessary to notice the relevant statutory position governing the issue. Until the enactment of Act No.30 of 1987, hereditary rights were recognised under the A.P. Charitable and Hindu

Religious Institutions and Endowments Act, 1966 for appointment of Trustees of religious and charitable institutions. The hereditary rights were taken away by enacting Act No.30 of 1987. Section 16 of the Act put an end to the rights of a person for the office of hereditary Trustee and provided that such office stood abolished on the commencement of the Act. Section 15 of the Act provides for appointment of Board of Trustees for managing the affairs of the institutions. Having due regard to the sentiments of the Founders and religious denominations, to which the institutions belong and the Endowment is made, whenever appointments of Trustees is made u/s 15 of the Act, the wishes of the Founders should be kept in view.

7. For better appreciation of the controversy involved in this case, it is useful to refer Section 17(1) of the Act, which is as under:

17. Procedure for making appointments of trustees and their term:- (1) In making the appointment of trustees u/s 15, the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall have due regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder:

Provided that the founder or one of the members of the family of the founder, if qualified as prescribed shall be appointed as one of the Trustees.

8. The aforesaid provision makes it abundantly clear that whenever an exercise is made for appointment of Board of Trustees u/s 15 of the Act, it can be done only keeping in view the wishes of the Founder or religious denominations, as the case may be.

9. It is in that view of the matter, the claim of the 4th respondent was examined and she was appointed as a Trustee of the subject institutions. In view of the fact that she was working as a Trustee of the subject institutions even during the life time of her husband and thereafter succeeded to the office under a registered Will dated 2.3.1987, the appointment made by applying the aforesaid provision u/s 17(1) of the Act cannot be said to be contrary to the said provision.

10. As noted above, the sole contention of the learned counsel for the petitioner is that the appointment of 4th respondent is opposed to Explanation- II to Section 17(1) of the Act. The said provision is as follows:

Explanation-II:- "Member of the family of the founder" means children, grand children and so in agnatic line of succession for the time being in force and declared or recognised as such by the relevant appointing authority.

11. A reading of the said provision no doubt shows that only those children of the Founder/Founder Member, who are in agnatic line of succession, are eligible for appointment as Trustees. It is very relevant to note at this stage that this provision was introduced by the Amendment Act No.33 of 2007 with effect from 03.01.2008. The said provision has not been given retrospective effect either by

express or by implication. There is nothing to suggest that the said provision is applicable to the appointments already made and those appointments are invalid. Thus, when the said provision was introduced with effect from 03.01.2008 alone, no rights were accrued in favour of the petitioner to claim Trusteeship prior to the said date under Explanation-II to Section 17(1) of the Act.

12. Indisputably, the 4th respondent was appointed as Trustee long prior to the said Amended Act. Therefore, the appointment of the 4th respondent cannot be said to be illegal or contrary to the said provision. This being the sole contention, which is found to be untenable, the impugned orders appointing the 4th respondent as Trustee cannot be said to be invalid or illegal.

13. For the aforesaid reasons, there are no merits in the writ petition and the same is accordingly dismissed. No order as to costs. In view of the disposal of the writ petition, W.P.M.P.No.6407 of 2012 is dismissed as unnecessary.