

(2003) 09 AP CK 0030
In the Andhra Pradesh High Court
Case No : Writ Petition No. 435 of 2003

M.T.V. Krishna Murthy

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966
— Section 17, 31, 31(1), 31(2), 77
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 34, 87, 93

Citation : (2004) 1 ALT 12

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Vidya Sagar, for the Appellant; Govt. Pleader for Endowments for Respondent Nos. 1 to 3 and M. Srinivasa Rao, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. This writ petition is filed challenging the orders issued by the Government of Andhra Pradesh in Memo dated 30-9-2002 in exercise of its powers of revision under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987, hereinafter referred to as the "New Act").

2. The matter relates to the dispute between the petitioner on the one hand and the 4th respondent on the other hand as regards the Archakatvam of a Temple. The case had a long and checkered background. The relevant facts may be stated in brief as under:

A Temple, with three deities namely; Sri Agasteswara Swamy, Sri Subrahmanyeswara Swamy and Sri Visweswara Swamy Varlu (hereinafter referred to as "the Temple") was brought into existence at Ramachandrapuram, East Godavari District, several generations ago. An extent of Ac.3.4 cents of land

was endowed for its benefit. One Sri Maddirala Thammayya was the hereditary Archaka of the Temple. He had four sons and the Archakatvam devolved upon several persons of the family, generation after generation.

3. In the year 1947, one of the hereditary Archakas appointed one Kothalanka

Yerrayya, the father of the 4th respondent as his deputy, to perform the poojas in the Temple on their behalf. The arrangement is said to have continued without any complaint till the year 1952. When Yerrayya was requested to discontinue from the arrangement, there was resistance from him. That resulted in filing of O.S.No. 32 of 1959 in the court of the District Munsif, Ramachandrapuram by one of the legal heirs of Sri Thammayya. The suit was decreed on 31-8-1959 declaring that Yerrayya was only an agent of the hereditary Archaka. A further arrangement is said to have been effected subsequent to this suit and that it was signed by both the parties. On the ground that Yerrayya resisted from it, one of the hereditary Archakas filed O.S.No. 289 of 1964 in the same court. The suit is said to have ended in compromise.

4. Subsequently, the petitioner and 16 others filed O.S.No. 469 of 1982 in the court of the Principal District Munsif, Ramachandrapuram, against Yerrayya, the Hereditary Trustee of the Temple and the Deity, claiming the relief of declaration that the plaintiffs therein are the hereditary Archakas for the Temple, that Yerrayya was their deputy and for consequential relief of delivery of possession of the suit Temples for enabling the plaintiffs to perform Archakatvam.

5. Through its judgment dt. 31-12-1992, the trial court decreed the suit partly. It granted relief of declaration, but refused to grant the relief of mandatory injunction for delivery of possession. Aggrieved by the decree of declaration, Yerrayya preferred A.S.No. 9 of 1993 in the court of the Subordinate Judge, Ramachandrapuram. To the extent, the trial court refused to grant the relief of mandatory injunction, the plaintiffs in the said suit filed A.S.No. 12 of 1993 in the same court. During the pendency of the appeals. Yerrayya died. He had two sons by name Kothalanka Ramakrishna Gandhi and Kothalanka

Chandramouli, the 4th respondent herein. However, Kothalanka Rama Krishna Gandhi was alone brought on record in the appeals. The appellate court dismissed A.S.No. 9 of 1993 and allowed A.S.No. 12 of 1993. Thereby the suit O.S.No. 469 of 1982 stood decreed in its entirety. This became final.

6. Consequent on the judgment of the appellate court, the petitioner herein submitted representation dated 9-10-1996 to the Assistant Commissioner of Endowments, Rajahmundry, third respondent herein, requesting him to pass appropriate orders to enable him and his other agnates to render Archakatvam. Through orders dated 27-8-1997, the third respondent has taken the view that the 4th respondent, who was functioning as an Archaka by that time, has no right to hold that office and directed the Executive Officer to replace him with the petitioner or any of his agnates.

7. Aggrieved by this order dt. 27-8-1997, the 4th respondent filed W.P.No. 2075 of 1998 in this court. The writ petition was allowed and the order dated 27-8-1997 was quashed on the ground that the 4th respondent was not issued any notice before the said order came to be passed. The 3rd respondent was directed to consider the matter afresh in accordance with law and to pass appropriate orders. The 4th respondent filed another writ petition, being W.P.No. 12968 of 1998, seeking a direction to the authorities in the Endowments Department to regularize his services. The petitioner herein was not made a party in that writ petition. Later, he got himself impleaded in that writ petition.

8. While W.P.No. 12968 of 1998 was pending, the third respondent passed orders dated 12-2-1999 recognizing the right of the 4th respondent to continue as Archaka in view of the orders of appointment given to him by the hereditary trustee. At this point of time, the W.P.No. 12968 of 1998 came up for hearing. Having noted the said development,

this court disposed of the writ petition through orders dated 12-8-1999 leaving it open to the party aggrieved by the order of the Assistant Commissioner to workout their remedies, including the one by filing writ petition.

9. The 4th respondent preferred W.A.No. 1411 of 1999 against the order in W.P.No. 12968 of 1998. While admitting the Writ Appeal, a Division Bench of this court passed interim orders dated 29-9-1999 in WAMP No. 2547 of 1999 directing maintenance of status quo. The petitioner herein was not made a party to the Writ Appeal, though he was respondent No. 6 in the writ petition No. 12968/98.

10. The petitioner filed R.P.No. 21 of 1999 before the Regional Joint Commissioner of Endowments, Multi Zone-I, Kakinada, 2nd respondent herein. The 2nd respondent allowed the revision through his orders dated 5-5-2001. Consequent upon the orders of the 2nd respondent in R.P.No. 21 of 1999, the petitioner was put in-charge of the Archakatvam. The 4th respondent filed C.C.No. 853 of 2001 in this court, alleging that such a step contravenes the order of status quo. In view of this development, the petitioner was once again replaced by the 4th respondent. The petitioner came to be impleaded in the Writ Appeal only through orders dated 16-10-2001. On the same day, the Division Bench dismissed the Writ Appeal and closed the Contempt Case.

11. Challenging the orders of the 2nd respondent in R.P.No. 21 of 1999, the 4th respondent had filed W.P.No. 12218 of 2001 in this court and a revision before the Government, the first respondent herein, u/s 93 of the New Act. The said Writ Petition was disposed of on 16-8-2001 directing the 1st respondent to decide the revision pending before it and to consider the application for interim orders. The 1st respondent, in turn, passed orders dated 30-9-2002 setting aside the order of the 2nd respondent in R.P.No. 21 of 1999. Hence, the writ petition.

12. The petitioner contends that the 1st respondent failed to take note of the fact that since last several generations, the petitioner's family held the hereditary

Archakatvam, whereas the father of the 4th respondent was only their deputy. It is also his case that though the hereditary rights of his family were declared through competent civil courts, the 1st respondent did not even choose to refer to them. He urges that the 1st respondent decided the matter on hyper technicalities and pre-conceived notions. According to him, both under the Act 17 of 1966 (for short "the Old Act") or the New Act, the competent authority to fill such posts was the Commissioner and the hereditary trustee has no right to appoint the 4th respondent as Archaka. It is his further case that the appointment made during the pendency of the suit was of no consequence.

13. The third respondent filed counter. He took exception to the order passed by the 2nd respondent. According to him, the petitioner was over aged, he was not actually rendering any Archakatvam and he was not declared as hereditary Archaka under the provisions of the New Act. He states that the order of the 2nd respondent in R.P.No. 21 of 1999 "is not based on law", as it was issued without considering the legal position and facts of the case.

14. The 4th respondent filed counter-affidavit stating, inter alia, that he has been holding the office of Archaka as on the date of coming into force of the New Act. It is his case that since hereditary rights in Archakatvam are abolished u/s 34 of the New Act, the petitioner has no right against the said office. He has referred to the various proceedings and the orders passed therein extensively and ultimately sought to support the order passed by the 1st respondent.

15. Mr. M. Vidyasagar, learned counsel for the petitioner, submits that the father of the 4th respondent was only a deputy under the family of the petitioner's ancestors and by resorting to various objectionable means, he has prevented the family from resuming the office of Archaka. He submits that the 4th respondent and his father have misused the very process of court. He cites the instance of the 4th respondent not choosing to come on record in the appeals before Sub Court, Ramachandrapuram, on the death of his father and his fabricating an order of appointment from the hereditary trustee, even while the suit O.S.No. 469 of 1982 was pending. He submits that they tried all their level best to defeat the rights of the petitioner and to remain as Archaka of the said Temple. He refers to the factum of the 4th respondent filing writ appeal, without impleading the petitioner, and obtaining an order of status quo, though there existed an order passed by the 3rd respondent in his favour. He contends that the 1st respondent did not even care to refer to any of the facts which were the subject matter of adjudication in the courts as well as various authorities, and had set aside the order of the 2nd respondent on a non-existent ground.

16. The learned Government Pleader had made certain submissions on legal propositions touching on the subject matter of the writ petition. Where the orders are passed by the authorities in exercise of statutory powers of quasi-judicial in nature, hardly any counter-affidavit is necessary on behalf of the concerned authorities in writ petitions, where such orders are in challenge. In this case, the 3rd respondent, the Assistant Commissioner who is much inferior

in rank to the second respondent had chosen to make a brazen attack on the orders passed by the 2nd respondent. Naturally, this situation brings embarrassment to the Government Pleader.

17. Mr. M. Srinivasa Rao, learned counsel for the 4th respondent, submits that his client has been appointed as Archaka, way back in the year 1984 by the hereditary trustee and he is continuing, as such, till today. According to him, since the 4th respondent was holding the office as on the date of coming into force of the New Act, he is entitled to be continued as such. He also submits that since the petitioner did not hold the office of hereditary Archaka as on the relevant date, he is not entitled for any benefit under the New Act.

18. In view of the narration of facts in the preceding paragraphs, it is not necessary to refer to them in detail once again. Certain facts, which either are borne out by record or the findings, which have become final are as under.

(a) Late Maddirala Thammayya was the hereditary Archaka of the Temple and that the petitioner hails from that family.

(b) In the year 1947, the father of the 4th respondent-Yerrayya was appointed as deputy of the petitioner's family. When he did not handover the Archakatvam, O.S.No. 32 of 1959 came to be filed in the court of the Principal District Munsif, Ramachandrapuram, and the suit was decreed.

(c) Similar dispute arose resulting in filing of O.S.No. 289 of 1964 in the court of the Principal District Munsif, Ramachandrapuram, against Yerrayya by the family of the petitioner-suit is said to have resulted in compromise.

(d) On 17-9-1960, Yerrayya entered into an agreement with the family of the petitioner to render Archakatvam on their behalf subject to certain terms (document marked as Ex.A-3 in O.S.No. 469 of 1982).

(e) O.S.No. 469 of 1982 filed by the petitioners and other family members against Yerrayya in the court of the Principal District Munsif, Ramachandrapuram for a declaration as to their right to function as hereditary Archakas and for consequential mandatory injunction was decreed partly granting the relief of declaration and rejecting the relief of mandatory injunction through judgment dated 31-12-1992.

(f) A.S.No. 9 of 1993 filed by Yerrayya aggrieved by the decree of declaration and A.S.No. 12 of 1993 filed by the petitioner herein and others aggrieved by the denial of relief for mandatory injunction. Yerrayya died during the pendency of the appeals. Though the 4th respondent and another person by name Kothalanka Ramakrishna Gandhi are his sons, the latter alone was brought on record. A.S.No. 9 of 1993 was dismissed and A.S.No. 12 of 1993 was allowed through judgment dated 1-8-1996 by the court of Subordinate Judge, Ramachandra Puram.

19. It is in this context that the petitioner approached the 3rd respondent for

enabling him to function as Archaka. An order was passed by the 3rd respondent on 20-7-1997 enabling the petitioner to function as Archaka. This was set aside by this court in W.P.No. 2075 of 1998. The matter was remanded for fresh consideration. After this remand, the 3rd respondent passed orders on 12-2-1999 accepting the claim of the 4th respondent. This, in turn, was set aside by the 2nd respondent in R.P.No. 21 of 1999. The 1st respondent had reversed the order under R.P.No. 21 of 1999 though the impugned order. Therefore, it needs to be seen as to whether there exists any basis for the 3rd respondent in passing the order dated 12-2-1999.

20. The order of the 3rd respondent in favour of the 4th respondent was based on two factors. According to him, any dispute in relation to any hereditary offices was to have been decided by the Dy. Commissioner of Endowments under the Act 17 of 1966 (Section 77(1)) or Act 30 of 1987 (Section 87) and since the petitioner herein did not obtain any such declaration, he cannot be treated as hereditary trustee. He has also observed that the petitioner did not furnish any documentary evidence to show that the father of the 4th respondent was appointed as their deputy. The second factor that weighed with the 3rd respondent was that the hereditary trustee of the Temple had accepted the resignation of Yerrayya through his proceedings dated 15-9-1984 and on the same day, appointed the 4th respondent initially for a period of one year and thereafter it was extended until further orders.

21. So far as the first aspect is concerned, the 3rd respondent was not at all correct. The adjudication of dispute between the family of the petitioner on the one hand, and the father of the 4th respondent-Yerrayya on the other hand, came to be initiated through OS.No. 469/82, in the court of the Principal District Munsif, Ramachandrapuram, at a time when the Old Act was in force. Section 77 thereof conferred power upon the Dy.Commissioner to adjudicate upon the disputes in relation to certain matters. Such dispute included the one as to whether the office held by any holder or servant is hereditary in nature. The petitioner or his predecessors could have been required to approach the Dy. Commissioner u/s 77 of the Act 17 of Old Act if only there was a dispute as to whether the Archakatvam of the said Temple was hereditary in nature or if Yerrayya had advanced a claim of hereditary Archakatvam of the Temple. The records disclose that there was never any dispute that there was a hereditary Archakatvam for

the said Temple. The disputes arose only when Yerrayya refused to handover the said office. Therefore, the petitioner and his family members wanted to get a declaration in the context of the refusal by Yerrayya to handover the office. In his pleading, Yerrayya never claimed any hereditary rights. Therefore, the subject matter of the suit O.S.No. 469 of 1982 did not at all fall within the scope and ambit of Section 77 (1) of the Old Act.

22. Even assuming that the dispute between the family of the petitioners on the one hand and the Yerrayya on the other hand, could have been resolved u/s 77

of the Old Act, there is no provision in the said Act, which ousted the jurisdiction of Civil Courts to adjudicate upon the matters within the purview of that Act. Adjudication of disputes through the medium of Civil Court is a common law remedy available to every citizen. Such a remedy can be curtailed only through a specific statutory provisions, ousting the jurisdiction of civil courts in respect of the specified categories of disputes. In H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, . Chief Justice Hidayatullah held as under:

"A provision which purports to exclude the jurisdiction of the courts in certain matters and to deprive the aggrieved party of the normal remedy will be strictly construed, for it is a principle not to be whittled down that an aggrieved party will not, unless the jurisdiction of the courts is by clear enactment or necessary implication barred, be denied his right to seek recourse to the courts for determination of his rights. The court will interpret a statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption against the law maker intending injustice and unreason. The court will avoid imputing to the Legislature an intention to enact a provision, which flouts notions of justice and norms of fairplay, unless a contrary intention is manifest from words plain and unambiguous. The provision in a statute will not be construed to defeat its manifest purpose and general values, which animate its structure. In an avowedly democratic polity, statutory provisions ensuring the security of fundamental human rights including the right to property must, unless the mandate to precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of constitutional and statutory provisions alike."

23. Even where the jurisdiction of civil courts is ousted, the Supreme Court held that mere ouster of jurisdiction without providing effective alternative remedy does not debar an individual from availing the remedy from a civil court. (See Bhim Sen Vs. The State of U. P., . and State of Madhya Pradesh and others Vs. Rameshwar Rathod, .).

24. Therefore, the reasoning adopted by the 3rd respondent in this regard cannot be sustained in law. The judgments in OS.No. 469 of 1982 and A.S.Nos. 9 and 12 of 1993 did constitute the basis of the claims and rights of the petitioner

25. Another facet of this aspect is that the 3rd respondent proceeded as though the claim of the petitioner herein was without any basis. He observed in his order as under:

"He has also not produced any documentary evidence appointing Sri K. Yerraiah as their deputy. He has not also produced any order of the Trustee accepting the appointment of the deputy."

26. The judgment of the trial court in O.S.No. 469 of 1982 and the one in the common judgment in A.S.Nos. 9 and 12 of 1993 of the appellate court were

placed before him. Except making a reference to them, he did nothing more. It is a matter of record that in O.S.No. 469 of 1982, the petitioner had filed the decree in O.S.No. 32 of 1959 and O.S.No. 289 of 1964. In that, the fact that Yerrayya was only a deputy of the petitioner's family was upheld. Ex.A-3 dated 17-9-1960 is an agreement, wherein Yerrayya had categorically admitted that he is only a deputy of the petitioner's family. The 3rd respondent did not choose to refer to these important aspects. He appears to have proceeded on the footing that he is above the civil courts and he need not take into account the adjudication undertaken by a civil court.

27. The second factor, which weighed with the 3rd respondent, was that Yerrayya submitted his resignation to the Archakatvam and it was accepted on 15-9-1984 by the hereditary trustee and on the same day, the 4th respondent was appointed. The relevant portion of the order reads as under:

"The Hereditary Trustee of the Temple in his proceedings dt. 15-9-1984 accepted the resignation of Sri K. Yerraiah the then Archaka since he was not keeping good health and appointed his son Sri K. Chandra Mouli as Archaka in the Temple initially for a period of One year This order was issued by the Hereditary Trustee by virtue of the powers vested in him Under Section.31 of the Act 17/66. Subsequently the Hereditary Trustee had confirmed the appointment of Sri K. Chandra Mouli as Archaka in the subject Temple in his proceedings dt. 12-9-1985.

The petitioner and others have obviously not raised any objections at the time of appointment of

Sri K. Chandra Mouli by the Hereditary Trustee on 15-9-1984 or at the time of confirmation on 12-9-1985 for the reasons not known. They had not filed any appeal before the competent authority against the aforesaid proceedings of the Hereditary Trustee and as such the said proceedings became final."

28. Learned counsel for the 4th respondent has placed before this court an order dated 12-9-1984 said to have been issued by the Hereditary Trustee. It is beneficial to extract the order in its entirety.

"Considering the request and Application of Sri Kothalanka Yerrayya Archaka of Sri Agasteswara Swamy Temple, Ramachandrapuram, dated 15-8-1984 to relieve him from the Post as he is not keeping good health and the request to Appoint his son Sri Kothalanka Chandra Mouli in his place, and the Application of Sri Kothalanka Chandra Mouli, his son, for the post of Archaka in the Temple, dated 15-9-1984 I, exercising the Powers of Hereditary Trustee of the Temple and in the best interests of the Institution accept the resignation of Sri Kothalanka Yerrayya to the Post of Archaka in the Temple and Appoint Sri Kothalanka Chandra Mouli S/o. Yerrayya for the Post of Archaka in the Temple, temporarily for a period of One year from this Day."

29. If at all anything, this only discloses the lack of regard for truth on the part of the Hereditary Trustee, Yerrayya and his son, the 4th respondent. The order is

said to have been passed on 12-9-1984. By that time O.S.No. 469 of 1982 was pending. Yerrayya figured as defendant No. 1 and the Hereditary Archaka by name S.R.K. Ramachandra Raju figured as defendant No. 2 in that suit. There was a serious contest. The judgment in the suit

was delivered on 31-12-1992. If what is contained in this order dated 12-9-1984 was true, there was no necessity for the trial court to undertake adjudication of O.S.No. 469 of 1982. The trial court in its judgment in the said suit had extensively considered the question as to whether the functioning of Yerrayya as Archaka can be said to be an appointment u/s 31 of the Old Act. An elaborate discussion was undertaken in paragraph 49 of the judgment, wherein it was held as under.

.....In sub-Section (ii) of Section 31 in case of office holder and servants of hereditary in nature, the procedure that has to be followed is contemplated and in such situation appointment has to be made by the trustee with the permission of the commissioner or Deputy Commissioner as the case may be. In this present suit on hand, it is to be seen that Ex.B-1 is the proceedings of 2nd defendant in which 1st defendant is appointed as Archaka. As seen from the record during 1972 in which the appointment of 1st defendant is made the old Act of 1966 is in existence. Admittedly, the post of Archaka for 3rd defendant Temple should be as contemplated under sub-secs. 1 and 2 of Section 31 of the Act. The post should be filled with the permission of the Commissioner after due enquiry by the Hereditary Trustee. In the present suit on hand, it is meticulously clear that there was no evidence believable placed before the court that there was an enquiry conducted as contemplated"under Section 31 of the Act 1966 for the appointment of 1st defendant as Archaka independently."

30. If Yerrayya was not functioning as Archaka since 12-9-1984, the relief of declaration that he was only a deputy or that the office of Archakatvam be delivered to the petitioner and his family members did not survive. If at all any body, the person aggrieved by the outcome of the suit could have been the 4th respondent in case he was functioning as Archaka by 1992. Neither the Hereditary Trustee nor Yerrayya have pleaded or deposed before the trial court that Yerrayya ceased to be the Archaka or that the 4th respondent was functioning as Archaka.

31. Another curious aspect of the matter is that in the year 1993, Yerrayya has chosen to prefer an appeal to the appellate court aggrieved by the decree of the trial court. If he did not hold the office of Archaka from 1984 onward, there was absolutely no necessity for him to prefer an appeal almost 10 years after the said date. The fraud played by Yerrayya and his family members reached its pinnacle when only one of his sons came on record, on the death of Yerrayya, during the pendency of the appeal. The 4th respondent did not come on record. He wanted to lay foundation for his plea of ignorance of suit and appeal. He was busy in preparing the 2nd channel of litigation. Hence the irresistible conclusion is that the order dated 12-9-1984 was fabricated or brought into existence by the

Hereditary Trustee, Yerrayya, and his son, the 4th respondent, to nullify the rights of the petitioner and his agnates under the decree in O.S.No. 469/82.

32. The Hereditary Trustee, on whom a sacred status is conferred and who is almost considered the representative of the deity, has chosen to act in a most unethical manner, and thereby brought shame to his ancestors, who had established the temple with a noble object. Yerrayya and his son, the 4th respondent, have brought similar disrepute to the office of Archakatvam of the Temple. They have stooped down to very low levels of morals and ethics in their attempt to cling to the office, depriving the Hereditary Archakas of the Temple of their right for over half a century.

33. In the revision preferred by the petitioner, the 2nd respondent had extensively referred to the findings recorded by the trial court and appellate court in the suit and appeal referred to above. He has extracted several paragraphs to bring home the point that Yerrayya was only a deputy and that there did not exist any basis for the claim of the 4th respondent. He has recorded a categorical finding that the order dated 12-9-1984 appointing the 4th respondent as Archaka is not valid. He has also taken into account the fact that hereditary Archakatvam held by the petitioner's family did not come to an end at any point of time and any steps taken by Hereditary Trustee affecting the rights of the petitioner's family was contrary to the provisions of both Old and New Act. The order of the 2nd respondent did not leave any aspect, both legal and factual, untouched.

34. This court is constrained to observe that the 3rd respondent has exceeded his limits in making certain remarks in his counter-affidavit against the 2nd respondent forgetting that he was only a subordinate and last in the hierarchy of officers.

35. In the further revision preferred by the 4th respondent, the 1st respondent had set aside the order passed by the 2nd respondent. It needs to be seen as to how far the 1st respondent was justified in doing so. The two paragraphs (6 and 7), which constitute the adjudication of the matter by the first respondent, read as under:

"6. The only point for consideration is whether respondent 3 (petitioner herein) is entitled for Archakatvam service in the Temple in question. No counter has been filed by the respondent 3. In the absence of any rebuttal it is construed that he has no case. Sri A. Krishna Murthy advocate for the departmental Officials has accepted the contention that no civil court or any other court judgments are valid since the Hon'ble Supreme Court of India has upheld the validity of the provisions of Section 34 of the Endowment Act 30/87 on the other hand he has contended that the respondent 3 has not obtained any declaration to the effect that he is a hereditary Archaka of the Temple from the D.C.E.D as required u/s 77 of the repealed Act before abolition of hereditary rights under the present Act 30/87 and that the order of the Assistant Commissioner of Endowments, is

elaborate and was passed after considering all the aspects keeping in view of the judgments of the Supreme Court and thus finally requested to confirm the orders of the Assistant Commissioner of Endowments, Multi Zone-I.

7. It could be seen that the hereditary trustee of the Temple in his proceedings dt. 15-9-84 has appointed the petitioner herein as Archaka of the Temple initially for a period of one year and subsequently the hereditary trustee has confirmed the appointment of the petitioner as Archaka in his proceedings dated 12-9-1985 and these appointment orders and confirmation order was issued by the Hereditary Trustee as early as in the year 1984 by virtue of his power vested in him u/s 31 of the repealed Act 17 of 66 independently. Further as could be seen from the Sub-section (2) of Section 34 all the Archaka who were working at the commencement of this Act are entitled be continued. The petitioner who was inducted into the service as Archaka is still working as the Archaka and therefore he is to be confirmed in the service statutorily as per the provision of the Act and the rules there-under. The contention raised by the petitioner are valid in Law."

36. The observations of the 1st respondent is that in the absence of any rebuttal, it is construed that he has no case" and that no civil court or any other court judgments are valid since the Hon"ble Supreme Court of India has upheld the validity of the provisions of Section 34 of the Endowment Act 30/87". The officer who passed the order did not realize the fact that he was dealing with a statutory order, that too, passed in a revision and the question of its being supported by a counter-affidavit by a party in whose favour it was passed did not arise. It is not known as to which judgment of the Apex Court had rendered the judgments of the Civil Court and other judgments as invalid with one stroke of pen. He did not appreciate the scope of Section 77 of the Old Act in its proper perspective, nor took into account the effect of absence of any provision in the said Act, barring the jurisdiction of civil court. So far as the claim of the 4th respondent on the basis of the orders dated 15-9-1984 is concerned, he repeated almost the same observations as made by the 3rd respondent in his order dated 12-9-1999. In a way, the findings, and conclusions of respondents 1 and 3 on all the aspects are similar. Whatever was observed, in the preceding paragraphs, in the context of the order of the 3rd respondent dated 12-9-1999, shall hold good as regards the impugned order passed by the 1st respondent.

37. The 1st respondent took the view that whoever was functioning as Archaka as on the date of coming into force of the New Act was entitled to be continued as such. There cannot be a quarrel with this proposition. However, such functioning should be lawful. The benefit of such provision is not available to interlopers or those who do not have a valid right. Conferring the benefit on the 4th respondent would amount to putting a premium on the fraud played by him and his father, on the family of the petitioner, the Temple and the courts from time to time.

38. This court finds that the order of the 1st respondent cannot be sustained either on facts or in law. The same is accordingly set aside.

39. In his counter-affidavit, the 3rd respondent made improper remarks against the second respondent to the effect that the orders of 2nd respondent in R.P.No. 21 of 1999 have no legs to stand for legal scrutiny. At paragraph (8) of the counter-affidavit, he stated "it is submitted that the 2nd respondent without considering the various legal aspects, and facts involved in the case allowed the R.P. filed by the petitioner which will not stand for legal scrutiny". He forgot the fact that the 2nd respondent was discharging a statutory quasi-judicial function and a subordinate office is never supposed to find fault with the way the superior officer, particularly when he discharges his quasi-judicial functions. It is only for the superior officers or the courts to make their observations, if warranted. This court disapproves the acts of the 3rd respondent, in this regard.

40. In writ petition is allowed. The 3rd respondent is directed to ensure that the petitioner is installed as Archaka of the Temple forthwith. The 4th respondent is directed to pay an amount of Rs. 2,000/-towards costs, to the petitioner.