
(2003) 11 AP CK 0060
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17872 of 2003

P. Raja Lingam

APPELLANT

Vs

Commissioner of Endowments and Another

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 87(5)

Citation : (2003) 6 ALD 681 : (2004) 1 ALT 460 : (2004) 1 APLJ 234

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

Bench : Single Bench

Advocate : M. Vidya Sagar, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner herein filed an application before the Deputy Commissioner of Endowments u/s 77 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (hereinafter called "the 1966 Act") (the same provision is ipsiss ima verba as Section 87 in the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter called "the 1987 Act") for a declaration that the property bearing Municipal No. 742/12 (Door No. 5-3-742) does not belong to Tulja Bhavani Temple and that the same is verified from the register of Endowments. The said application, being O.A. No. I of 1996, was allowed by the Deputy Commissioner of Endowments on 26-4-2000.

2. Sub-section (5) of Section 87 of the 1987 Act stipulates that any decision of the Deputy Commissioner u/s 87(1) of the 1987 Act shall not take effect unless the same is confirmed by an order of the Commissioner. Therefore, the order of the Deputy Commissioner was sent to the Commissioner, who, by the impugned order, remitted back the matter to the Deputy Commissioner for de novo enquiry. This order is assailed in this writ petition.

3. Learned Counsel for the petitioner Sri M. Vidyasagar contends that subsection

(5) of Section 87 does not enable the Commissioner to remand the matter to the Deputy Commissioner. The Commissioner, the learned Counsel urges, can either confirm the order or reject to confirm the order, but, the cannot remit back the matter to the Deputy Commissioner. The learned Assistant Government Pleader refutes this contention.

4. Section 87 of the 1987 Act confers power on the Deputy Commissioner to decide certain disputes and matters inter alia the question whether any property is an endowment or not. A decision given by the Deputy Commissioner requires confirmation under Sub-section (5) of Section 87, which is to the following effect:

"Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner."

5. A plain reading of Sub-section (5) of Section 87 would show that the Commissioner may pass orders confirming the decision of the Deputy Commissioner. The power to confirm, as a necessary corollary, includes the power not to confirm. However, the Legislature has not contemplated any situation where the Commissioner could modify the decision or remit back the matter to the Deputy Commissioner. This would be clear by comparing Sub-section (5) of Section 87 with Sub-section (1) of Section 92. The latter section confers the power on the Commissioner either to modify, annul, reverse or remit back for re-consideration to the lower authority.

6. As per Section 88, any person aggrieved by the decision of the Deputy Commissioner u/s 87 may prefer an appeal to the District Judge or the Chief Judge, City Civil Court if it is in the limits of Municipal Corporation of Hyderabad. This indicates that the Deputy Commissioner exercises quasi-judicial powers. Be it noted, the enquiry conducted by the Deputy Commissioner u/s 87 read with Section 149 has to be in accordance with the procedure contemplated under the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. Against any decision given by the Deputy Commissioner u/s 87, no revision is provided u/s 92(1). Indeed, Section 92(1) provides for a revision to the Commissioner against an order not being a proceeding in respect of which a suit or an appeal to a Court is provided by the Act. u/s 88 of the 1987 Act, a decision of the Deputy Commissioner is appealable to the District Court.

7. When the Legislature specifically choose to exclude the power to modify or remit for re-consideration, it is not possible to interpret Sub-section (5) of Section 87 of the 1987 Act, so as to confer the power on the Commissioner to remand the matter to the Deputy Commissioner for de novo enquiry. It is open to the Commissioner to reject, to confirm the order passed by the Deputy Commissioner.

8. Therefore, for the above reasons, the impugned order is unsustainable. The same is set aside and the matter is remitted to the Commissioner for

Endowments to pass appropriate orders u/s 87(5) of the 1987 Act in accordance with law within a period of three weeks from the date of receipt of a copy of this order.

9. The writ petition is allowed accordingly. No costs.