

(2004) 10 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 14471 of 2001

P. Sheshagiri

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Karnataka Religious and Charitable Institutions Act, 1927 — Section 14

Citation : (2005) 1 KCCR 552

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : S.V. Shastri, Ravi Hegde and Ashwath Narayana Reddy, for the Appellant; H.S. Surendra, High Court Government Pleader for Respondents 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Petitioner is aggrieved by the order dated 14.5.1993 at Annexure-D and the order dated 7.2.2000 at Annexure-F passed by the 1st Respondent. Apart from seeking quashing of aforesaid two orders, Petitioner has sought for a direction to the Respondents to hand over the temple "Ammanaghatta Sri Jenukallamma Temple", a family deity, of the ancestors of one Venkatagiriappa and that religious ceremonies including pooja, are conducted by the members of the said family having at no point of time treated the deity as an institution or an endowment, created.

2. The petition averments disclose that by notice dated 17.12.1992 of the 4th Respondent, addressed to vahivatdar of the temple intimated the holding of an enquiry by the Assistant Commissioner on 18.12.1992 for the purpose of taking over the administration of the temple by the Government and called upon the Petitioner to produce documents. It is stated that one Sri Sridhar Rao, the eldest member of the family appeared in the enquiry and set out details as to the management of the temple by the members of the family. A written reply dated 24.12.1992 is said to be filed with the 3rd Respondent amongst other

documents. It is the assertion of the Petitioner that no Public Charitable Institution muchless endowment is created in respect of the said temple at any point of time and is undisputedly not a Muzarai Institution. After the enquiry by the Assistant Commissioner, it is alleged that the 4th Respondent issued another notice dated 3.9.1993 directing the Vahivatdar to submit particulars regarding movables and immovables of the temple on the ground that the Government has passed an order dated 14.5.1993 to take over the management of the temple, although no such order was served on the Petitioner. Having secured a copy of the said order of the Government, Annexure-D, the Petitioner instituted a writ petition before this Court in W.P. 33970 of 1993. This Court by order dated 16.1.1998 allowed the writ petition, quashed the order impugned, i.e., the Government Order dated 14.5.1993 produced herein as Annexure-D, with a direction to the Respondents to consider the reply of the Petitioner afresh and pass appropriate orders in accordance with law and in the meanwhile to maintain status quo regarding management of the temple. It is the further allegation of the Petitioner that after the enquiry, the authorities without considering the various contentions advanced by the Petitioner, by order dated 7.2.2000 at Annexure-F rejected the pleas of the Petitioner. Being aggrieved by the said order, the Petitioner is before this Court.

3. The petition is opposed by the Respondents by filing their statement of objections dated nil, on 12.7.2002, inter alia contending that after the enquiry, the temple was found to be a Religious and Charitable Institution, the management of which required to be taken over and accordingly, the Enquiry Officer sent a proposal to the Government to take over the temple. In addition, it is stated devotees of the temple having significantly contributed to the deity, it was essential that the temple be taken over by the Government. It is also stated that during the management of the temple by the Government, funds of the institution were raised up to Rs. 1,99,370/-.

4. Sri S.V. Shastri, learned Counsel for the Petitioner would contend that the order impugned is incompetent and without jurisdiction. In addition, learned Counsel would contend that the deity is a family deity administered and managed by the members of the family of late Venkatagiriappa and not being a Trust, could not be taken over by the State u/s 14 of the Karnataka Religious and Charitable Institutions Act, 1927 ("the Act" for short). The learned Counsel would go a step further to contend that the temple was not a Muzarai temple coming under Chapter II or a Public Religious and Charitable Institutions other than Muzarai Institutions coming under Chapter III nor Maths and similar Institutions coming under Chapter IV and that therefore, the order impugned is arbitrary and based on perverse finding of the enquiry officer.

5. The learned High Court Government Pleader would seek to sustain the order as been well merited not calling for interference and would maintain that the temple visited by devotees who are public at large contributed to its management, necessitated the taking over the management of the temple by the

Government.

6. The question that requires to be answered is what is the source of power for the State to take over the management of Ammanaghatta Sri Jenukallamma Temple. If the order dated 14.5.1993 at Annexure-D, is a guiding factor, which is since quashed by the order in W.P. 33970 of 1993, it is evident that the source of power is Section 14 of the Act. I say so because Annexure-F, the order impugned does not disclose the source of power except to say that it is under the provisions of the Act. It is no doubt true that the State has the power to take over the management of a Muzarai Institution falling under Chapter II of the Act or the Public Religious and Charitable Institutions other than Muzarai Institutions falling under Chapter III and Maths and similar Institutions falling under Chapter IV. In the instant case significantly the State and its authorities have not answered the question as to whether the temple answers the description of anyone of the institutions falling under Chapter II, III or IV of the Act. It is difficult to decipher from the order impugned as to the source of power by which the State Government ordered the taking over the control and management of the temple. This question as to whether the temple would fall under any one of the Chapters was essentially to be decided before proceeding further. The Petitioner has categorically stated that the Vahivatedar was one Venkatagiriappa and thereafter his lineage and that the private worship of the deity did not partake the character of any kind of institution contemplated by the provisions of the Act. In the face of such a claim made by the Petitioner, it was for the State and its authorities to examine the nature of this temple and thereafter proceed to apply the provisions of the Act to exercise control and management over it. In my considered opinion, the order impugned does not address itself to this question which touches upon the root of the matter.

7. There is considerable force in the contention of Sri S.V. Shatri that the Respondents and State Authorities have no jurisdiction to impose, themselves, upon the temple and take over the control and management. In short, the impugned order is illegal and one without jurisdiction. Learned Counsel having placed reliance on a judgment of a Division Bench of this Court in the case of The Muzrai Officer and Assistant Commissioner, Chickmagalur v. C.R. Shivananda and Ors. reported in ILR 1974 Kar 635, would point out to the observations made therein to contend that it would apply to the facts of this case. His Lordship Govinda Bhat, CJ as he then was, observed thus:

In order to invoke the jurisdiction under the Act the Muzarai officer ought to have arrived at a finding that the land in question is an inam land granted by the Government to the institution. The land in question is not an inam land granted by the Government to the institution and, hence, the order of the Muzrai officer is without jurisdiction.

Though this finding does not apply to the facts of the case by way of straight way jacket formula, but the principle enunciated therein that the Muzrai officer could take control and management of the temple only if and when a finding is

recorded that the land belonged to the Government, in my opinion would apply. As pointed out supra, there is no finding as to whether this temple falls under any one of the institutions enumerated in Chapters II, III and IV of the Act. In this view of the matter, the State and its authorities could not have invoked Section 14 much less any other provision of the Act in respect of this temple, as admittedly, the temple is not a Muzrai institution.

8. The first prayer of the Petitioner to quash Annexure-D does not survive for consideration for the simple reason that this Court in W.P. 33970 of 1993 by order dated 16.1.1998 quashed the said order. What survives for consideration is the second relief for quashing Annexure-F.

9. It is brought to the notice of this Court that the Act has since been repealed by Karnataka Religious and Charitable Institutions Act, 1927 (Karnataka Act No. 33 of 2001) which provides for saving of action taken under the repealed Act.

In the result and for the reasons set out supra, the writ petition is allowed, the order impugned dated 7.2.2000 at Annexure-F is quashed. A direction is issued to the Respondent-State and its authorities to hand over the control and management of the temple to the Petitioner within a fortnight from the date of receipt of a certified copy of this case.