

(1994) 02 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No's. 4952 and 9623 of 1988

Pundalikaprabhu

APPELLANT

Vs

Additional Land Tribunal

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Citation : (1994) ILR (Kar) 1053 : (1994) 2 KarLJ 475

Hon'ble Judges : S. Venkataraman, J;S. Rajendra Babu, J

Bench : Division Bench

Advocate : M. Ram Bhat and P. Ganapathy Bhat, for the Appellant; K. Vishwanath, HCGP, B.M. Krishna Bhat and A.S. Bopanna, for the Respondent

Judgement

Rajendra Babu, J

1. These Petitions are directed against an order made by the Land Tribunal on 3.1.1979. In that proceedings, there were two applicants who had tiled Form No. 7 claiming registration of occupancy rights in respect of certain lands. The Tribunal enquired into the matter and held that the claim of one Smt. K. Sharada Ganesh Bhat cannot be granted and her application was rejected while the claim of respondent No. 5 K. Anantha Shenoy (in W.P.No. 9623/1988 who is R3 in W.P.No. 4952/1988) was allowed and directed registration of occupancy rights in respect of various items of lands. W.P.No. 9623/1988 is filed by certain persons claiming to be the devotees of the respondent No. 4 - Temple. It is alleged that the said Temple is governed by the provisions of Madras Hindu Religious and Charitable Endowments Act. The contention advanced on behalf of the petitioners is that the Temple is under the management of hereditary trustee by members of "Karthika" family to which the fifth respondent belongs and he is one of the members of the said family and there was a partition in the year 1963 and the rights of hereditary trusteeship fell to the joint shares of Amrutha Shenoy and the fifth respondent and the said Amrutha Shenoy is none other than the paternal uncle of the fifth respondent. He died on 10.4.1978 and he was ill for a long time and therefore was unable to manage the Temple affairs or its

properties and in fact the fifth respondent himself was managing the affairs of the Temple. After the death of the said Amrutha Shenoy, the fifth respondent made a representation to the Endowment Department that he should be appointed as a hereditary trustee. In the year 1986, the devotees elected a Board of Trustees and a new Board of Trustees came into existence and that one Vaman Prabhu was appointed as a Managing Trustee and the fifth respondent is also one of the members of the new Board of Trustees.

2. It is further contended that the lands in question were being cultivated by the hereditary trustee for and on behalf of the deity and its income was utilised solely for the purpose of "viniyogas" and performance of "sevas" to the Lord of the Temple and at no time the lands had been leased to the fifth respondent. The fifth respondent, taking advantage of his position, filed Form No. 7 in respect of the lands in question and submitted that the properties were under the management of his uncle as hereditary trustee though there was no relationship of landlord and tenant between him and his uncle. The fifth respondent himself represented the said Amrutha Shenoy and thus obtained the order impugned herein. It is submitted on behalf of the petitioners that the fifth respondent has played fraud in not only usurping the properties of the Temple but also in participating in the proceedings both as a claimant and also as a land owner representing the Temple in question. It is therefore submitted that the entire proceedings before the Tribunal deserves to be quashed, including the impugned order. It is also submitted that the application of the petitioners claiming occupancy rights itself was rejected.

3. On behalf of the fifth respondent, statement of objections have been filed denying the allegation that he was managing the affairs of the Temple and that he was appointed as a hereditary trustee. Though he had made a claim to be appointed as a hereditary trustee, he had never been appointed as a hereditary trustee. It is submitted the fact that he belonged to the family of hereditary trustees of the Temple or there was partition in the family, are not relevant for the purpose of the present case. The fifth respondent disputes that the petitioners are the devotees of the fourth respondent - Temple. The fifth respondent contends that the Managing Trustee had the power to lease the lands and in that capacity, lands had been leased to him while he was not in the management of the Temple in question and therefore the allegation of fraud alleged against him cannot be accepted. It is contended that the petitioners are strangers to the proceedings before the Tribunal and such persons cannot maintain a Writ Petition before this Court and relies upon a Decision of this Court in Ramanna Vs. State of Karnataka, and W.P.No. 16437/89 2. WP.No. 16437 of 1989 which followed the said Decision.

4. The first question that arises for consideration is whether the petitioners have sufficient interest to maintain a Writ Petition. In the Decision in Ramanna's case referred to supra, this Court observed that under the scheme of the Act i.e. Karnataka (Religious and Charitable) Inams Abolition Act, 1955, the devotees

have no place at all and they do not get any right under the said provisions of the Act. Further, it is also observed in that Decision as under :-

"No doubt in cases where temple is involved, the devotees could maintain the action for eg., Hindu Religious and Charitable Endowments Act; but disregarding of the above statutory provision, no devotee can ever come up."

In that case, the Tahsildar, who was the Muzrai Officer was representing before the Tribunal and he, as a Muzrai Officer, represented the Temple. But that is not the position in the present case at all. In this case, the Temple had not been represented by any Muzrai Officer, much less by any Administrator as such. In fact, whether notice had been served upon by any Administrator of the Temple, itself is in doubt. Above all, it has to be noticed that the Supreme Court in *Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others*, and in *Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others*, noticed certain legal concepts in relation to a devotee having a right to sue for protection of idols' property and such right founded upon their own interest namely right of worship apart from independent idols' right to sue for protection of its own interest. These rights are protected under the ordinary Law of Endowments. As a matter of law, the only person who can represent Deity is the Trustee/Administrator and although the Deity can hold property and is a juristic person, that is only in an ideal sense. The possession and management of the property with the right to sue in respect thereof are in the course vested in the Administrator or Trustees of the Temple but where however Trustee/Administrator himself is the guilty party against whom the Deity needs protection, it is open to worshippers or other persons interested in the endowment to sue for protection of the trust property. It is open in such a case to the Deity to file suit through some person for recovery of property improperly alienated or for other relief. Ramanna's case referred to supra is of a normal nature where Deity was represented by Administrator of the Temple namely Muzrai Officer. There was no allegation in that case that Muzrai Officer was acting against the interests of the Deity. Fraud is an exception to normal course of human conduct, and if an allegation of fraud is made against Trustee/Administrator, certainly Deity can sue. It cannot be said that the Karnataka Land Reforms Act excludes the Deity from challenging an order made by the Land Tribunal. If Deity itself cannot appear before Court, the worshippers can sue on behalf of Deity. The worshippers as such do not have an unqualified right to sue with reference to property of Deity except in cases where the trustee is negligent or alienates property in breach of trust, the worshippers may have a right. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can be clothed with an ad hoc power of representation to property and its interest. A worshipper need not file suit for removal of trustee or for appointment of another trustee in order to enable him to recover the property. He can represent the Deity and sue for possession of property on behalf of endowment. Such a question was not involved in Ramanna's case and hence that Decision can have no application to

the case on hand.

5. It is well-settled principle of law that fraud vitiates everything and no action taken on the basis of fraud could be maintained or accepted. In the present case, the principal ground upon which the petitioners attack the order impugned herein is that the fifth respondent had played fraud, he himself being the incharge of the administration of the Temple, had usurped the property and represented the trustee also in proceeding before the Tribunal. Whether it is so or not will have to be necessarily examined and if the allegations made by the petitioners are correct, it cannot be said that their Petitions cannot be maintained. Before the Tribunal, there being no proper representation on behalf of the Temple, it goes without saying that the proceeding culminating in the order impugned herein, cannot be sustained, and it becomes vulnerable. Therefore the order impugned herein is liable to be and is quashed and the matter remitted to the Tribunal for fresh consideration in accordance with law after due notice to all the parties concerned including the Endowment Commissioner and the Temple Administrator. But it is unnecessary for the Tribunal to investigate the claim of the petitioners in regard to the lands in question in so far as items - S.No. 271/5 of Balthila village of Bantwal Taluk, D.K. measuring 0-33 cents, S.No. 271/11 of same village measuring 0-11 cents, S.No. 271/8 of the same village measuring 0-54 northern portion, S.No. 272/2B of the same village measuring 1-10 northern portion and S.No. 273/3 of same village measuring 0-25 eastern portion because the fifth respondent himself than agreed to give up his claim in regard to lands comprised therein and the claim filed by the petitioners in Form No. 7 in so far as these items of lands are concerned shall stand dismissed. In regard to the other items, it is but appropriate for the Tribunal to investigate the matter and redetermine the same in accordance with law. If the petitioners so desire, they may implead themselves before the Tribunal.

6. In view of the order made in W.P.No. 9623/1988, the claim made in the petition in W.P.No. 4952 of 1988 becomes unnecessary because the claim made by the petitioner had been conceded by the third respondent in that Petition and the Petition shall stand disposed off accordingly.