

(2016) 01 AP CK 0031
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2594 of 2016

Rachamalla Sridhar Murali Krishna

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 87(4)

Citation : (2016) 2 ALT 623 : (2016) 3 AndhLD 17

Hon'ble Judges : C.V. Nagarjuna Reddy, J.

Bench : Single Bench

Advocate : V. Venugopala Rao, for the Appellant;

Final Decision : Disposed off

Judgement

C.V. Nagarjuna Reddy, J.—1. This Writ Petition is filed for a Mandamus to declare the action of respondent No. 3 in not considering the petitioner, who is a member from the founder family, for appointment as trustee to respondent No. 5-temple as illegal and arbitrary.

2. I have heard Mr. V. Venugopala Rao, learned counsel for the petitioner, the learned Assistant Government Pleader for Endowments (Andhra Pradesh) appearing for respondent Nos. 1 to 4 and Mr. Ambati Srikanth Reddy, learned Standing Counsel for Endowments (Andhra Pradesh), appearing for respondent No. 5.

3. The facts, which are not in dispute, disclose that the Regional Joint Commissioner, Multi Zone-II, Endowments Department, Tirupati, Chittoor District, by a detailed order, dated 05.10.2002, in Revision Petition No. 10 of 2002, while setting aside the order of the Assistant Commissioner, appointing a third party as trustee to respondent No. 5-temple ignoring the claim of the petitioners father, declared the latter as the member from the founder family of respondent No. 5-temple. The said order was questioned in Writ Petition No.

22134 of 2002 by the said third party. The said Writ Petition was dismissed by this Court by order, dated 17.12.2007, and accordingly, the order, dated 05.10.2002, of the Regional Joint Commissioner has attained finality. On the petitioners father approaching the Regional Joint Commissioner, he has passed an order on 06.02.2008 directing respondent No. 3 to implement his earlier order, dated 05.10.2002. Accordingly, the said order was implemented by appointing petitioners father as trustee to respondent No. 5-temple. After the demise of the petitioners father, his mother has filed O.A. No. 52 of 2009, renumbered as O.A. No. 1043 of 2010, before the Endowments Tribunal under Section-87(4) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short the Act), for declaring herself as the member from the founder family. On the observations of the Tribunal to the effect that a woman cannot be recognized as the member from the founder family, the petitioner and his brother got themselves impleaded as the petitioners in the said O.A. and that the same is pending.

4. At the hearing, Mr. V. Venugopala Rao, learned counsel for the petitioner, submitted that though as far back as 05.10.2002, the competent authority, i.e., the Regional Joint Commissioner, Tirupati has recognised the petitioners father as the member from the founder family, after his demise, the Endowments Department has not been considering any of the family members of the petitioner for being appointed as a trustee of respondent No. 5-temple and that therefore, the petitioners mother was constrained to file the above-mentioned O.A. He has relied upon the judgment, dated 23.7.2014, of this Court in C.M.A. No. 590 of 2012, and submitted that in the said judgment, this Court has laid down the ratio that neither the Deputy Commissioner nor the Endowments Tribunal has jurisdiction to entertain the claim of any person for recognition as the member from the founder family in respect of the institutions existing prior to the commencement of the Act and that, in such cases if there exists evidence to show that the person is from the founder family of an institution, he can approach the competent authority for considering his case for appointment as a trustee of a non-hereditary trust board.

5. Learned Assistant Government Pleader for Endowments (Andhra Pradesh) and the learned Standing Counsel appearing for respondent No. 5 have not disputed the fact that the petitioners father was already recognised as the member from the founder family. They have also not contradicted the submission of the learned counsel for the petitioner based on the ratio laid down by this Court in CMA. No. 590 of 2012. Therefore, in my opinion, O.A. No. 590 of 2012 filed by the petitioner and his family members is not maintainable in the light of the judgment, dated 23.7.2014, in CMA. No. 590 of 2012, wherein it is held that if a person or his predecessors were already recognised as the members from the founder family, the authority competent to constitute the trust board is empowered to consider such person for appointment as trustee of a non-hereditary trust board.

6. In the light of the fact that the petitioners father was recognised as the member from the founder family of respondent No. 5-temple and he was appointed as trustee in pursuance thereof, one of the members of his family including the petitioner is entitled to be considered for appointment as a trustee of the proposed trust board of respondent No. 5-temple.

7. Learned Assistant Government Pleader and learned Standing Counsel have submitted that as the petitioners father has left behind not only the petitioner but also his widow and another son, the claim of the petitioner alone cannot be considered for appointment as trustee to respondent No. 5-temple.

8. Mr. V. Venugopala Rao, learned counsel for the petitioner, submitted that the petitioners mother and brother have, in fact, given their respective affidavits in favour of the petitioner.

9. In my opinion, it would be appropriate if respondent No. 3 issues notices to the petitioner and his brother before constituting the trust board of respondent No. 5-temple in pursuance of notification, dated 14.8.2015. On receipt of such notices, the petitioner shall appear along with his brother and based on the consensus reached among them, respondent No. 3 shall appoint one of the founder family members as a trustee to respondent No. 5-temple.

10. Subject to the above directions, the Writ Petition is disposed of.

11. As a sequel to disposal of the Writ Petition, WPMP. No. 3254 of 2016 shall stand disposed of as infructuous.