

(1967) 05 SC CK 0009

In the Supreme Court Of India

Case No : ?Appeal (civil) 2586 of 1966

Secretary, Home (Endowments), Andhra Pradesh

APPELLANT

Vs

Digyadarsam Rajindra Ram Dasjee

RESPONDENT

Date of Decision : 03-05-1967

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 53, 53(1)

Citation : AIR 1968 SC 105 : (1967) 3 SCR 891

Hon'ble Judges : M. Hidayatullah, J;C. A. Vaidyalingam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vaidialingam, J.—This appeal by certificate, is directed against the order of the Andhra Pradesh High Court, allowing a writ petition, filed by the respondent, under Art. 226 of the Constitution.

2. The facts leading up to the finding of the Writ Petition, by the respondent, may be briefly indicated. In respect of Sri Swami Hathiramji Math, Tirumalai, Tirupati, disputes arose regarding the succession to the office of the Mahant of the Math, after the death in 1947, of the then Mahant Prayag Dossji. An agreement seems to have been arrived at, on October 29, 1947 laying down the procedure for choosing a successor to the office of the Mahant when a vacancy arises. The Akada Panchayat appears to have been constituted the supreme authority, in such matters. That agreement also provided as to who, among the respondent, and one Chetham Doss, was to succeed to the office of the Mahant, on the death of one Narayan Doss succeeded as Mahant on December 9, 1958 and Chetham Doss succeeded as Mahant. The respondent filed O. S 84 of 1958, in the Subordinate Judge's Court, Chittoor for a declaration that he is entitled to succeed in the office of Mahant. The suit was resisted by Chetham Dass on the basis that under the agreement of October 29, 1947 he was legitimately entitled to succeed as Mahant. Sometimes later, the respondent and Chetham Doss, entered into a compromise by virtue of an agreement, dated July 15, 1961. Both

of them agreed that Chetham Das was entitled to continue as Mahant, and that, after his death the respondent was to succeed as Mahant. In view of this agreement, the respondent got dismissed, as settled O. S 84 of 1958.

3. Chetham Dass died, on March 18, 1962, and the respondent claims to have succeeded as Mahant, in his own right. But, according to the appellant the Commissioner, H. R. & C. E., Andhra Pradesh, received telegram stating that there was a dispute about the person who was to succeed as Mahant. The Assistant Commissioner, H. R. & C. E., took action, under s. 53 of the Madras Hindu Religious & Charitable Endowments Act, 1951 (Act XIX of 1951), (hereinafter called the Act), which is applicable to the State of Andhra Pradesh, and assumed charge, on March 24, 1962, of the Math and its properties. The respondent filed, on March 26, 1962, O. S. 24 of 1962, for a declaration that he is the rightful successor to the office of the Mahant of the Institution in question. The Commissioner, H. R. & C. E. was made a party to the suit. The respondent also filed a revision before the Government on April 18, 1962, challenging the assuming charge of the Math, under s. 53 of the Act, by the Assistant Commissioner. The Government stayed further proceedings; and, in consequence, O. S. 24 of 1962, was withdrawn, by the respondent on June 4, 1962. The Government also passed an order, on June 5, 1962, stating that it was necessary to take action for making suitable arrangements for the proper administration of the Math and its endowments, till the civil court decided as to who should succeed to the office of the Mahant. In the connection, the State Government referred to an objection, received, from one Devendra Dass, stating that he is the proper person entitled to succeed to the office of the Mahant. Ultimately, by the said order, the Government appointed the respondent, as an interim Mahant, subject to the various conditions, laid down therein. Devendra Dass filed writ petition No. 602 of 1962, on June 21, 1962, in the High Court, challenging this order of the State Government, dated June 5, 1962. That writ petition was, dismissed on August 27, 1962. In the meanwhile, Devendra Dass, who was a minor, had instituted two suits, O. S. Nos. 50 of 1962 and 57 of 1962, to declare him as the person entitled to succeed to the office of the Mahant on the death of Chetham Dass. In the first suit he was represented by one Mukund Doss, as next friend, and in the second suit he was represented by one Bhagwat Doss, as the next friend. When Devendra Doss attained majority, later on he preferred to continue O. S. 50 of 1962, and therefore O. S. 57 of 1962 was dismissed, as unnecessary.

4. On August 22, 1964, the Government passed an order, directing the respondent to show cause by why its previous order, dated June 5, 1962, appointing the respondent, as interim Mahant, should be cancelled. This appears to have been issued by the State Government, in view of the fact that the respondent was taking a particular attitude regarding the pada kanikkas received by him. In the said order, the Government also proceeded on the basis that it has no jurisdiction to appoint an interim Mahant when action is taken, under s. 53 of the Act.

5. On receipt of this notice, the respondent filed writ petition No. 1534 of 1964 challenging the said order. His claim appears to have been that he had succeeded to the office of Mahant, in his own right, after the death of Chetham Dass, and that no action can be taken, under s. 53 of the Act, and therefore, the question of the Government, either appointing him as interim Mahant, or taking any action to cancel such an order, does not arise. It is seen that further proceedings in pursuance of the notice, issued by the Government were stayed by the High Court, pending the disposal of the writ petition. The State Government passed an order, on September 9, 1965, framing certain charges, as against the respondent, and directing him to furnish his explanation, regarding the same and, at the same time, placed him under suspension. The respondent filed, writ petition No. 1589 of 1965, challenging this order of the Government, placing him under suspension. In view of this writ petition, the earlier writ petition, no. 1534 of 1964, was dismissed, as infructuous, on April 14, 1966.

6. In the meanwhile, Bhagwant Doss, who had originally instituted O. S. no. 57 of 1962, as the next friend of Devendra Dass, and which suit was got dismissed by the minor, after attaining majority, instituted another suit, O. S. no. 69 of 1965 on September 29, 1965, claiming in his own right to be the person entitled to succeed to the office of Mahant. This suit appears to be still pending. But O. S. 50 of 1962, which was decided to be continued by Devendra Doss, was contested by the respondent and ultimately dismissed, on April 28, 1966. It is stated that an appeal, A. S. No. 476 of 1966, has been filed on November 17, 1966, against this decree and it is still pending.

7. The main contention taken by the respondent in writ petition no. 1589 of 1965, was that he had already in law succeeded as Mahant, on March 18, 1962, when the presiding Mahant, Chetham Doss, died. Therefore, according to him, there was no vacancy which can be said to have occurred in the office of the trustee of the Math, so as to give jurisdiction to the Assistant Commissioner, or the Commissioner, H. R. & C. E., to take action, under s. 53 of the Act. The respondent also relied upon the circumstances that the suit filed by Devendra Doss, O. S. 50 of 1962, had been dismissed and the Court accepted his title to hold the office of the Mahant on the basis of the Panchayat Agreement, dated October 29, 1947, as well as the agreement, dated July 15, 1961, entered into between him and the then Mahant, Chetham Dass. The respondent also relied upon the circumstances that his assumption of office, as Mahant, on the death of the Chetham Dass, has been approved on March 18, 1962, by the supreme authority, namely, the Akada Panchayat.

8. The appellant resisted the claim of the respondent, on the ground that when Chetham Doss died, and the respondent attempted to take charge as Mahant, a claim was made by one Devendra Doss, that he was the person, lawfully entitled to succeed to the office of the Mahant. On the death of the Chetham Doss, on March 18, 1962 a vacancy occurred, in the office of the trustee of the math, and there is also a dispute, between the respondent and Devendra Doss, regarding

the right of succession to such office. In view of the fact that necessary conditions, for invoking s. 53 exist, the assumption of management of the Math was taken over by the Assistant Commissioner, H. R. & C. E., for the proper management of the institution. It was also pointed out that the suit instituted by Bhagwant Doss, O. S. no. 69 of 1965, claiming in himself the right to succeed, as a trustee, was still pending and that also shows there is a dispute regarding succession to the office of the trustee. The appellant has also urged that in any event inasmuch as the respondent has been appointed to manage the institution, by the department, under s. 53 of the Act, and, as he was continuing in such management by virtue of such appointment, the State had ample jurisdiction to pass orders either of suspending, or even dismissing the respondent.

9. The learned Judges of the High Court have held that the respondent has succeeded as Mahant, on March 18, 1962, on the death of Chetham Dass, by virtue of the Panchayat Agreement of October 29, 1947, and the compromise agreement, dated July 15, 1961. Therefore, it cannot be said that there was any vacancy in the office of the trustee of the Math, so as to enable the appellant to take action, under s. 53 of the Act. The High Court has, in this connection, referred to the findings recording by the Subordinate Judge's Court, in favour of the respondent, in O. S. 50 of 1962. The mere circumstances that after a person has succeeded to the office of the trustee, other people by claims to that office, and institute litigation for that purpose, will not, according to the High Court, give jurisdiction to the appellants to take action, under s. 53 of the Act. The High Court is further of the view that the appellant's action, in placing the respondent under suspension, is contrary to the directions given by the High Court, on April 9, 1965 pending the disposal of the writ petition. The High Court is further of the view that the stand, taken by the appellants is quite contrary to the earlier stand, taken in their order, dated June 5, 1962, wherein they had categorically stated that the Civil Court's decision will be conclusive and final, regarding the succession to the office of the Mahant. This reason is given by the High Court, as it was of the view that the appellant should give due respect to the decision, in O. S. 50 of 1962 on these grounds the High Court quashed the order passed by the State Government dated September 9, 1966, placing the petitioner, under suspension.

10. Mr. Ram Reddy, learned counsel appearing for the appellants, has raised the same contentions that were taken, before the High Court. In addition, counsel has also pointed out that the decision, in O. S. 50 of 1962, has not become final, inasmuch as Devendra Doss, who lost that litigation, has filed A. S. No. 476 of 1966, which is still pending. Counsel further points out that, in view of the dispute raised, by Devendra Doss, by making a claim for the trusteeship of the Math, before the Government, the writ petition No. 602 of 1962, filed by the said party, as well as the various suits, referred to above,, will show that there is a dispute regarding the succession to the office of the trustee of the Math, when a vacancy occurred, on the death of Chetham Dass, on March 18, 1962. Therefore, action taken by the appellant, in the interests of the institution, was perfectly

valid. Counsel also urged that inasmuch as the respondent is functioning as Manager of the institution, by virtue of his appointment, on June 5, 1962, by the Government subject to the conditions mentioned therein, the Government was competent to take disciplinary action, as against the respondent, for breach of those conditions.

11. Mr. I. V. Rangacharya, learned counsel for the respondent fully supports the reasons given by the learned Judges of the High Court, for accepting the claim made by his client, in the writ petition.

12. The short question that arises, for considerations, is as to whether the Assistant Commissioner, H. R. & C. E., had jurisdiction to assume management of the Math, in question, under s. 53 of the Act. That will depend on the further question as to whether the State Government had jurisdiction to place the respondent under suspension, as they have purported to do, by their order, dated September 9, 1965. The answer to the above question is to be decided, by reference to s. 53 of the Act. Section 53 of the Act, occurs in Chapter IV, relating to Maths. Sub-s(1) of that Section enables the commissioner or any two or more persons having interest and having obtained the consent in writing of the Commissioner,, to institute a suit to obtain a decree for removing the trustee of a math or a specific endowment, attached to a math, for any one or more of the grounds mentioned in cls. (a) to (f) therein. Section 53, which is the material section, in and which relates to filling of vacancies, is as follows :

"53. (1) When a vacancy occurs in the office of the trustee of a math or specific endowment attached to a math and there is a dispute respecting the right of succession to such office or,

when such vacancy cannot be filled up immediately or

when the trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or

when the trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unable to discharge the functions of the trustee,

the Assistant Commissioner may take such steps and pass such order as he thinks proper for the temporary custody and protection of the endowments of the math or of the specific endowment, as the case may be, and shall report the matter forthwith to the Commissioner.

(2) Upon the receipt of such report, if the Commissioner, after making such inquiry as he deems necessary, is satisfied that an arrangement for the administration of the math and its endowments or of the specific endowment, as the case may be, is necessary, he shall make such arrangement as he thinks fit until the disability of the trustee ceases or another trustee succeeds to the office, as the case may be.

(3) In making any such arrangement the Commissioner shall have due regard to

the claims of the disciplines of the math, if any.

(4) Nothing in this section shall be deemed to affect anything contained in the Madras Court of Wards Act, 1902."

13. Section 53(1) contemplates four contingencies, under which the Assistant Commissioner may take steps for the temporary custody and protection of the math. We are concerned, in this case, only with the first contingency referred to in that sub-section. Before that provision can be invoked, two conditions are necessary, viz., (a) a vacancy must have occurred in the office of the trustee of a math; and (b) there must be a dispute, respecting the right of succession to such office. In this case, it is possible to say, in view of the claim made by Devendra Dass and the litigations referred to, above, that there was a dispute respecting the right of succession to the office of the Mahant. But in order to give jurisdiction to the appellant to take action, under the first contingency, referred to in sub-s. (1) of s. 53, the two conditions adverted to above, will have to exist. In this case, it is the claim of the appellant that there was a vacancy in the office of the trustee of the Math, on March 18, 1962, when Chetham Dass died. On the other hand, according to the respondent there was no vacancy in the office of the Mahant, at that time, because, on the death of Chetham Dass, the respondent succeeded to the office of the Mahant. Therefore, the point to be considered is, to whether a vacancy has occurred in the office of the trustee of the Math, on March 18, 1962. That there must be an actual vacancy un-filled is clear, from the wording of s. 53 (1), when it deals with two different contingencies, providing for the assumption of management. Under the first contingency a vacancy should have occurred in the office of a trustee of a Math and there is a dispute in respect of the succession to such office. That is, the office has not been filled in by anybody having a prima facie legal, right to assume management. Similarly, the second contingency, contemplated under s. 53(1) when assumption of management can be made by the Department, is when a vacancy occurs in the office of a trustee of a Math and when such vacancy cannot be filled up immediately. This clearly shows that there must be a vacancy as a fact, in the sense that nobody with any legal right has assumed office of the trustee of a Math.

14. In this case, as we have pointed out earlier, the High Court has accepted the claim of the respondent that by virtue of the Panchayat agreement dated October 29, 1947, and the compromise agreement dated July 15, 1961, the respondent has succeeded to the office of the trustee of the Math, on March 18, 1962, on the death of Chetham Dass. The supreme authority according to the High Court the Akada Panchayat, has also approved of the said appointment by resolution of the same date. We do not propose to consider the findings recorded in O. S. 50 of 1962 which are no doubt in favour of the respondent because that decision is the subject of an appeal, in A. S. No. 476 of 1966. Nor do we propose to consider the claim of Bhagwant Doss in O. S. 69 of 1965, which is still pending adjudication at the hands of the Court. But even without reference to those litigations, the view

of the High Court that there is no vacancy in the office of the trustee of the Math which alone will give jurisdiction go the appellant to take action under s. 53 (1), can be accepted as correct, for the other reasons, mentioned by us, earlier.

15. Mr. Ram Reddy, learned counsel for the appellants, further points out that, in this case, the respondent is in management of the Math, by virtue of the appointment made, by the State Government on June 5, 1962, and therefore, the State Government is entitled to take disciplinary action against him for breach of conditions, under which he was holding that office. Counsel also invited our attention to the averments made by the respondent himself, in Writ Petition No. 602 of 1962, that the State Government has appointed him as interim Mahant. The stand taken by the respondent, in writ petition no. 602 of 1962, cannot assist the appellant, because he was interested then in fighting the claim made by Devendra Dass, in the said writ petition. In resisting such claim, he has, no doubt, made reference to the fact that his right to function as Mahant, cannot be disturbed, as the State Government has appointed him as interim Mahant. Therefore, the stand taken by the respondent, in the said writ petition, must be understood in the said context.

16. No doubt, normally, if it is established that the respondent's only right to function as Manager of this institution, is exclusively on the basis of the Government order, dated June 5, 1962, there will be considerable force in the contention of learned counsel for the appellant that the State Government has got jurisdiction to take disciplinary action, against the respondent. But the facts in this case show that the position is entirely different. If the respondent, as held by the High Court-with which view we are in agreement-has succeeded to the office of the trustee of the Math, on the death of Chetham Dass, on March 18, 1962, in this own right, the mere circumstances that the Government also passes an order appointing him as interim Mahant, or Manager, later will not take away the right of the respondent to function as trustee, on the basis of the original right. Once it is held that the respondent is not holding the office of Mahant, exclusively on the basis of the order of Government, dated June 55, 1962, it follows that the appellant has no jurisdiction to pass an order, placing the respondent under suspension, as that virtually amounts to a removal of the trustee of a Math. The removal of a trustee of a Math can be done only in the manner, and in the circumstances, mentioned in s. 52 of the Act. Therefore the view of the High Court that the order of the Government, placing the respondent under suspension, is not valid, is correct.

17. The result is, that the appeal fails, and is dismissed. In the circumstances of the case, there will be no order as to costs.

18. Appeal dismissed.