

(2006) 03 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 4279 of 2006

Sri P. Ramesh Baipadithaya

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 57

Citation : (2006) 3 KCCR 1634

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : O. Shivarama Bhat, for the Appellant; B.N. Prasad, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal, J.—In this petition, the petitioner is seeking a writ of mandamus to the Deputy Commissioner-2nd respondent to consider the representation dated 10-3-2006, in the proceedings initiated by the 3rd respondent. The said representation is to be found at Annexure "A".

2. The facts in brier can be stated as under:

There is a temple known as Channakeshava Temple situated at Sullia Taluk, Dakshina Kannada District. It is governed by the Madras Hindu Religious and Charitable Endowments Act, 1951. The said temple is also declared as a public temple as contemplated under the said Act. It is the case of the petitioner that one Thudiyadka Vishnayya got himself declared as hereditary trustee of the said temple by making an application to the Deputy Commissioner, D.K. Mangalore as provided u/s 57 of the Act and he continued as a trustee of the said temple, without the knowledge of the petitioner, though the father of the petitioner was entitled for the said trusteeship. It is not in dispute that the 2nd respondent had appointed the said Thudiyadka Vishnayya as hereditary trustee of the temple in the year 1991. After the death of the said Vishnayya, his son i.e., the 3rd

respondent has made an application, a copy of which is produced at Annexure "D" to the effect that after the death of his father on 27-12-2005, he be appointed and continued as a Moktesar/trustee of the said temple. He would also state in the said application that he is the eldest son of the said Vishnayya. It is the further case of the petitioner that his father was appointed as a Moktesar/trustee in the year 1929. He would also state that the entire proceedings culminating in appointing the father of the 3rd respondent as Mukthesar/trustee is without notice to him. In the circumstances, the petitioner would submit that the representation given at Annexure "A", be heard along with the application of the 3rd respondent.

3. Mr. Shivaram Bhat, Learned Counsel appearing for the petitioner submits that in the given set of circumstances, since there is unimpeachable evidence in favour of the petitioner that the petitioner's father was appointed as a trustee/Muktesar in the year 1929 his application also be considered for appointment as a Muktesar.

4. Mr. B.N. Prasad, Learned HCGP submits that the petitioner does not have any right to be heard in the proceedings in as much as, at no point of time after the death of the petitioner's father, the petitioner has participated in the proceedings.

5. It is no doubt true that as a normal rule, whenever, a representation is given mandamus or a direction is always issued to the authority to consider the said representation. It is also true that any order cannot be passed in violation of the principles of natural justice. But however, the question is when a writ of mandamus is required to be issued, or for that matter whether any denial of opportunity of being heard in the proceedings, would be detrimental to the interest of the parties concerned. To issue a writ of mandamus, a person should have a subsisting right in the proceedings or in the lis. By making a mere representation, he cannot insist upon adjudication be done in respect of his imaginary alleged rights. Before a writ of mandamus could be issued, the petitioner has to satisfy the Court that he has a legal right, the application is made in good faith. The condition precedent for the issue of mandamus is that there is one claiming a legal right to the performance of a legal duty by one against whom it is sought.

In case of Mani Subrat Jain and Others Vs. State of Haryana and Others, , the Apex Court has observed as under:

It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus.

Thus what can be enforced by a writ of mandamus is a legal right of the petitioner and not a moral or equitable obligation on the part of respondent.

6. In the case on hand, it is to be noticed that the case of the petitioner is that

his father was appointed as Muktesar in the year 1929. His father died in the year 1992 but however, no effort is made by the petitioner to get himself appointed as a successor to the said temple as a Muktesar. If it is the case of the petitioner that his father was a Muktesar, it is trite that he would not make an attempt to get himself appointed as Muktesar of the said temple, after the death of his father in the year 1992. Apparently, it is also not in dispute as has been admitted by the petitioner in the memorandum of the writ petition that the 3rd respondent's father was appointed as Muktesar/trustee in the year 1991. The petitioner, if really were to be an interested person, he would have certainly challenged the said order of the year 1991 much earlier. That has not been done. This factual aspect would necessarily mean that the petitioner was kept out of the administration of temple in any capacity for over a period from 1992, which is close to 15 years as on today. In the circumstances, I am of the view that the question of issuing a writ of mandamus to the 2nd respondent to consider the representation of the petitioner does not arise. If such a direction is given to consider his representation, it would be virtually opening a Pandora's box and a leverage would be given to the petitioner to exercise his rights in respect of stale and lost claim. The petitioner cannot be permitted to agitate his right. There is nothing on record to show that the petitioner's father was continued for any period of time after his appointment as Mokthesar after 1929 assuming it is true. The petitioner cannot be allowed to agitate a lost cause. If the prayer sought for is granted, it would relate back to the appointments of 3rd respondent's father as Mokthesar which is impermissible as it would mean permitting the petitioner to question the very appointment of 3rd respondent's father. The petitioner has not shown that he has any right entitling him to get an appointment and if he does not have the right he cannot come to the Court and ask for a writ of mandamus.

In so far as the right of hearing in the proceedings is concerned, once it is held that the petitioner does not have a legal right, the question of violation of principles of natural justice does not arise.

Petition stands rejected.

But however, this shall not preclude the petitioner from getting his rights adjudicated in any appropriate proceedings elsewhere.