

(2014) 02 KAR CK 0335

In the Karnataka High Court

Case No : Writ Petition No. 6542 of 2009 (GM-R/C)

Sriman Niranjan Jagadguru Dr. Tontada Siddalinga
Mahaswamiji

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Citation : (2014) 3 AKR 324 : (2014) 2 KarLJ 610 : (2014) 4 KCCR 3486

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, Senior Counsel for Sri Reuben Jacob, Advocate for the Appellant; H. Kantharaj, Additional Advocate General, Sri Vijayakumar A. Patil, High Court Government Pleader and Sri S.P. Kulkarni, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—The petitioner is before this Court seeking for declaration that the provisions of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 (hereinafter referred to as "the Act 1997") are not applicable to Yedyur Siddalingeshwara Swamy Mutt and the Mutt at Kaggere, Kunigal. The petitioner is also assailing the order dated 15-12-2008 at Annexure-M and the notification dated 30-4-2003 at Annexure-J. The petitioner contends to be the great Viraktha Swamiji and the founder of "Viraktha Parampare" which is a tradition among the "Veerashaivas". Siddalingeshwara Swamy is stated to be a saint with large following of disciples. Several authoritative publications on the life and work of Siddalingeshwara Swamy is stated to be made. The Swamiji is stated to have made Yedyur/Kaggere as the centre of his activities and ultimately entered the "Jeevasamadhi" at Yedyur Mutt and the "Gadduge" is situate at Yedyur. The inscriptions in the Mutt premises is claimed as testimony to urge these contentions. It is further contended that there is no temple or idol of any deity in the premises. The pooja offered by the disciples is to the Samadhi or Gadduge of Sri Siddalingeshwara Swamiji. The nature of activity carried on in

that regard is stated with reference to the earlier activities and there being some disputes with regard to the successor during the year 1900. In that regard, an order dated 10-6-1904 was passed whereunder the management of Yedyur Mutt was directed to be assumed by the Muzrai" Department to enable the Government to regulate its financial management, which according to the petitioner is only an arrangement to protect the property. The first respondent thereafter framed Sri Yedyur Siddalingeswaraswamy Muzrai Institution (Management) Rules, 1967, under the Mysore Religious and Charitable Institutions Act, 1927. The petitioner contends that the Mutt does not come under the definition of a shrine or temple. Reference is also made to a suit in O.S. No. 100 of 1970 (renumbered as O.S. No. 39 of 2001) filed by Archaks claiming absolute right to carry on the pooja of Gadduge, which is pending consideration.

2. It is stated that the petitioner was taking interest in the affairs of the Mutt by attending important functions and also communicating with the officials. When this was the position, the Act 1997 was brought into force with effect from 1-4-2003 and the impugned notification u/s 23 of the Act 1997 was made. The said Act, according to the petitioner is not applicable to the Mutt. The petitioner made a detailed representation dated 5-1-2004 requesting to delete the institution from the notification. Though the petitioner was informed that the matter is under consideration, no further progress was made and as such, the petitioner again made representations dated 7-1-2006 and 14-5-2007. Another representation dated 13-1-2008 was submitted. In the said representations, all these issues were raised by the petitioner. The first respondent by the communication dated 15-12-2008 intimated the petitioner that the denotification would not be possible. The petitioner is therefore before this Court.

3. The respondents have filed their objection statement and have disputed the case of the petitioner. It is contended that though there is no idol of any kind in the premises and the disciples in fact offer pooja to the Samadhi or Gadduge, Gadduge is also included in the definition of temple u/s 2(27) of the Act 1997. Hence, it is not a Mutt but it is a temple as defined in the Act. The Government order dated 1-6-1904 is relied to contend that there was mismanagement and misappropriation of income of the temple by the Archaks who were performing pooja in the temple which resulted in the said Government order and taking over of management of the temple. The said, order itself has specified the institution as temple. With regard to the denotification of Gokarna Sri Mahabaleshwara Temple, it is stated that the said issue is pending before this Court in writ appeal. It is the case of the respondents that Sri Yedyur Siddalingeshwara Swamy shrine does not belong to any particular community as contended. The said institution was being administered under the provisions of the Mysore Religious and Charitable Institutions Act, 1927 as the temple had inam lands and as such there is no illegality in notifying the temple under the Act 1997. The action in issuing the impugned communication dated 15-12-2008 is sought to be justified.

4. The impleaded respondents 4 to 14 claim to be the devotees. They have filed detailed objection statement and the additional objection statement producing documents to contend that the case as put forth by the petitioner is not justified, but the documents indicate the position to be otherwise. The notification issued u/s 23 of the Act 1997 is sought to be justified. The proceedings in W.P. No. 11844 of 2008 and the order passed on 24-9-2008 is referred, wherein the impleaded respondents were before this Court apprehending denotification of Sri Yedyur Siddalingeshwara Swamy Kshetra yielding to the request of the petitioner. Though the petition was disposed of, the representation made by the impleaded respondents objecting to the denotification was also ordered to be considered and in that direction, it is contended that the impugned endorsement dated 15-12-2008 is a result of such consideration since the respondents also had produced sufficient material to indicate that the notification was justified. The said respondents have also referred to the Government order dated 10-6-1904 and the manner in which the subsequent activities have taken place to point out that the petitioner had no right whatsoever and in contrast to the materials relied on by the petitioner, the materials produced by the respondents would disclose that the "Kshetra" was in existence independently even earlier to independence. Several functions that have been held wherein thousands of devotees gather and get the blessings of the Swamiji are also referred and as such the claim that the said "Kshetra" is a part of Gadag Mua is also seriously disputed. In that view, it is contended that the writ petition is liable to be dismissed.

5. Heard Sri Jayakumar S. Patil, learned Senior Counsel along with Sri Abhinay P. Patil, learned Counsel for the petitioner, Sri H. Kantharaj, learned Additional Advocate General along with Sri Vijayakumar Patil, learned Government Advocate for respondents 1 to 3 and Sri S.P. Kulkarni, learned Counsel for respondents 4 to 14 and perused writ petition papers.

6. The learned Senior Counsel for the petitioner though has referred to the entire sequence from the period prior to 1904 and the materials based on which the petitioner is seeking to justify its claim over the Mutt in question, stress at present is however laid on the invalidity of the impugned communication dated 15-12-2008 (Annexure-M). It is contended that though the petitioner is aggrieved by the continuation of the order dated 10-6-1904 which was in fact made as a temporary measure to protect the properties of the Mutt and further aggrieved by the notification dated 30-4-2003 whereby the Mutt has been notified u/s 23 of the Act 1997, those aspects were required to be considered appropriately by the statutory respondents while issuing the reply dated 15-12-2008. Since the same has not been done, the said reply would not be sustainable. In that view, if an appropriate consideration is ordered by the same authority or the Rajya Dharmika Parishad after quashing the reply dated 15-12-2008, the contentions of the petitioner on those aspects also will be considered therein. In an attempt to justify such contention, the learned Senior Counsel for the petitioner has referred to the documents at Annexures-A to H2 to

the petition to contend that the inscription on the walls, the literature and the proceedings recorded relating to the renovation has reference to the petitioner having had interest in the Mutt. All these aspects had been brought to the notice of the statutory respondents and to the notice of the Government in all the earlier representations and more particularly in the representations which was noticed in the recommendation dated 8-2-2008 subsequent to which the impugned reply has been issued. Hence, it is contended that if in that light the impugned reply dated 15-12-2008 is seen, the non-application of mind is manifest. In fact an irrelevant enactment has been mentioned therein. It is therefore liable to be quashed and reconsideration is necessary is the contention.

7. The learned Additional Advocate General and the learned Counsel for the private respondents would in fact question the very locus standi of the petitioner. Therefore, even if the impugned communication is cryptic, the petitioner cannot assail the same is the contention. The objection statement of the respondents 1 to 3 and the documents produced by the private respondents are relied to contend that there are several disputed questions which cannot be decided either by this Court in writ proceedings or even by the Statutory Authority even if remanded. The question is not only of the notification issued u/s 23 of the Act 1997. It has been treated as a Muzrai institution and the order dated 10-6-1904 was passed and it has remained in force ever since. That apart the Rules were framed in 1967 with regard to the management of the institution, the Archaks have been appointed and tasdik allowance has also been provided. The notification u/s 23 of Act 1997 was only a natural consequence on the new Act coming into force. The suit filed by Archaks raising similar questions are already pending consideration. Even otherwise "Gadduge" is also included in the definition of temple in Section 2(27) of Act 1997. Petitioner can raise all these issues only before the Rajya Dharmika Parishad or before a Civil Court. Hence, it is contended that the petition is liable to be dismissed.

8. In the backdrop of the rival contentions, a perusal of the impugned communication dated 15-12-2008 (Annexure-M) would state that the representation made by the petitioner to exclude the "Gadduge" has been considered. It further states that since the Hyderabad Endowment Regulation has been repealed and Act 1997 has come into force and since it has been notified u/s 23 of that Act, it cannot be excluded. The said communication is in reply to the representations made by the petitioner at Annexure-K series to the petition. Since the impugned reply is subsequent to the communication dated 8-2-2008 (Annexure-L to the petition), addressed by the Commissioner, Religious Endowments to the Secretary to the Government, Revenue Department (Endowments), it is contended by the learned Senior Counsel for the petitioner that the proposal put forth by the Commissioner should have been considered appropriately.

9. In order to consider that aspect, a perusal of the same would indicate that the Commissioner, on taking note of the representations of the petitioner had in fact

made specific reference to the documents at Sl. Nos. 1 to 7 which according to the petitioner would establish their right to the "Kshetra". In that view, it is requested therein that it is to be excluded from the notification as the Mutt or the "Kshetra" belonging to the Mutt is exempted and the same be handed over to the applicant. In that light, if the impugned communication dated 15-12-2008 is perused, the same does not articulate the consideration that has been made before the reply is issued. It also refers to an irrelevant enactment which is certainly cryptic and in a normal circumstance, it would have been quashed even without batting an eye lid and reconsideration could have been ordered.

10. Be that as it may, the issue to be considered is whether such course should be adopted herein despite taking note of the rival contentions. I should also hasten to add that the position of law is well-established that an order made by the authority should speak for itself and the reasons in justification cannot be supplied in the form of affidavit or objections in the proceedings before the Court when such order is under challenge. Notwithstanding the same, in the instant facts, from the very case put forth by the petitioner themselves, it is seen that the issue is not only as to whether the "Gadduge" as claimed by the petitioner has been wrongly notified u/s 23 of the Act 1997 or not. If that was the only issue, a reconsideration by the authority who issued the impugned communication dated 15-12-2008 or by the Rajya Dharmika Parishad as provided u/s 20-A of the Act 1997 to consider the contention of the interested parties and make recommendation as contemplated under sub-section (2)() would have been sufficient.

11. However, in the instant case, though by the impugned communication the request has not been rejected by questioning the right of the petitioner to make such request, not only the contentions raised in the objection statement relating to the manner in which the institution is being managed from the year 1904, the Rules framed in 1967, grant of tasdik allowance etc., but the very nature of the claim made by the petitioner will prima facie indicate that the right of the petitioner to seek exclusion of the "Kshetra" from the notification needs consideration even before deciding whether the notification issued u/s 23 of Act 1997 is justified or not. The consideration made in respect of another Mutt by the order dated 12-8-2008 (Annexure-N), and whether the "Yediyur Kshetra" also should be treated similarly would arise only in that circumstance. If this aspect is kept in perspective, even though the petitioner has relied on the documents at Annexures-A to H2 to claim right and the respondents 1 to 3 have relied on documents at Annexures-R1 to R13 and the respondents 4 to 14 have relied on documents at Annexures-R1 to R37 to rebut such claim and have questioned the locus standi of the petitioner, the same cannot be adjudicated by this Court in writ proceedings when there are serious disputed questions on fact. Even the Statutory Authority under the Act will also not be in a position to decide the same in a summary proceedings more particularly in a circumstance where an Hon'ble Division Bench of this Court in W.P. No. 11844 of 2008 (GM-RES-PIL) (disposed of on 24-9-2008) has already directed that the representation of the

private respondents also should be considered if the consideration for denotification is made. In that situation, I am unable to persuade myself to accept the contention of the learned Senior Counsel that at this stage only the first hurdle of the notification made u/s 23 alone arises for consideration before the authorities. At the same time, I am also unable to accept the contention of the learned Counsel for the respondents and foreclose the right of the petitioner. These are all/oil issues which should be best left to be decided in a properly constituted suit where a decision could be taken based on the evidence that would be tendered by the parties to prove the documents relied on by them. Hence, the contents of the rival documents relied herein and the book said to have been published by the Muzrai Department are not referred in detail as all the questions will have to be left open. For all the aforestated reasons, I pass the following:

ORDER

- (i) The writ petition is dismissed.
- (ii) Liberty is however reserved to the petitioner to urge all the contentions in a properly constituted suit, if they choose to file the same.
- (iii) Parties to bear their own costs.