

(2015) 09 KAR CK 0298

In the Karnataka High Court

Case No : Writ Petition No. 25581 of 2009 (GM-R/C)

The Commissioner, Hindu Religious and Charitable
Endowments and Others

APPELLANT

Vs

Superintending Archaeologist Archaeological Survey of India
and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 19, 20

Citation : (2016) 1 AKR 814 : (2015) 6 KarLJ 591 : (2016) 1 KCCR 219

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

Bench : Single Bench

Advocate : E.S. Indires, HCGP, for the Appellant; H.C. Sundaresh, CGC,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J—The petitioners namely the Commissioner, Hindu Religious & Charitable Endowments and other authorities under the said Department are before this Court assailing the order dated 17.04.2009 passed in Petition No. 1/2008-2009 by the first respondent herein.

2. The issue relates to the installation of the Hundi and collection of Seva fee in the Kolaramma and Sri Someswara Temples which are admittedly, Muzarai Institutions under the Karnataka Hindu Religious Institutions And Charitable Endowments Act, 1997 (hereinafter referred to as "HRCE Act 1997" for short). At the first instance, when the Deputy Commissioner had passed an order dated 16.08.2003 to that effect, the private respondents herein were before this Court in W.P. No. 27072/2004. This Court while disposing of the petition on 02.01.2007, on taking note of the prayer made in the petition not being pressed, had however, observed that the Temple being an ancient Temple and since thousands of devotees are visiting the Temple, it is required to be maintained in an appropriate manner. In that view, since the challenge to the order dated

16.08.2003 was not pressed, it impliedly stood approved.

3. Though the said matter rested at that, the private respondents were once again before this Court in W.P. No. 13854/2008 contending that they are the devotees/Dharmadarshies of the said Temples and in that light, they are aggrieved by the Official Memorandum dated 16.09.2008 by which the Seva fees was introduced. This Court, though did not interfere in the matter, had reserved the liberty to the petitioners to redress their grievance before the fourth respondent viz., the Superintending Archaeologist, Archaeological Survey of India. An order to the same effect dated 26.09.2008 was passed by this Court in W.P. No. 4232/2008 and connected petition. It is in that light, the proceedings were held before the respondent No. 1 herein, based on the representations that had been made by the private respondents, in view of the liberty granted by this Court by the order dated 11.11.2008 in W.P. No. 13854/2008 and dated 26.09.2008 in W.P. No. 4232/2008.

4. The petitioners herein who were arrayed as respondents No. 1 to 3 in the said proceedings had put forth their contentions before respondent No. 1 herein seeking to justify the order passed by the Deputy Commissioner permitting the installation of the Hundi and the Seva fees to be collected in the said Temples. A detailed consideration, no doubt, has been made by the first respondent and in that light, has arrived at the conclusion that the notification and the permission granted to install the Hundi and to levy any Seva fees cannot be permitted, as it will amount to introduction of a new practice by making new additions and installations in the protected area. In that light, the permission refused by the first respondent himself earlier preventing the same was upheld. The petitioners therefore, claiming to be aggrieved by the order dated 17.04.2009 are before this Court in this petition.

5. The learned Government Advocate while assailing the order impugned would contend that though the Temples in question are ancient monuments and are situate in the protected areas, by installation of a Hundi in such Temples, it cannot be construed that there is any additional construction or alteration with regard to the existing construction in the purport of the provisions contained in The Ancient Monuments and Archaeological Sites and Remains Act, 1958. It is contended that though the "ancient monument", "prohibited area" and "protected area", as also the "protected monument" are defined under The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as "the AMASR Act 1958" for short) and restrictions are imposed in respect of the constructions in the protected areas as contemplated under Section 19 of the Act 1958, the present order issued by the Deputy Commissioner for installation of a Hundi, not being a construction as contemplated under the Act 1958 or the Rules, the permission as required under The Ancient Monuments And Archeological Sites and Remains Rules, 1959, (hereinafter referred to as the "Rules 1959" for short) was also not attracted. The Rule 8 of the Rules 1959, is not attracted, since the nature of the activities

which are prohibited has been spelt out therein, which does not indicate that the present order passed by the Deputy Commissioner for installation of a Hundi or Seva fee is prohibited and therefore the permission under Rule 10 of Rules 1959, would not arise.

6. In that light, a perusal of the order impugned, though gives an impression that the same is exhaustive, the major portion of the order even in the reasoning portion is devoted to refer to the earlier proceedings before this Court due to which the present order is being passed, in view of the liberty having been granted by this Court. Further, a perusal of the order would disclose that there is no dispute to the fact that the Temple is governed under the provisions of the HRCE Act 1997. It is in that light, the petitioners are managing the Temples out of the funds provided by the Government and also the contribution made by the devotees. It is in that view, the Deputy Commissioner was of the view that the installation of a Hundi and collection of Seva fee in the Temple would be necessary in furtherance of the religious practice. It is no doubt true that the permission had been sought from the first respondent in that regard earlier and had been refused. In such circumstance, the question for consideration is as to :

"whether in the facts and circumstances arising in the instant case, where no other construction and alterations are being made, but only a Hundi was installed and Seva Fee was introduced, whether it would offend the provisions of the AMSAR Act 1958 and the Rules 1959?"

7. It is to be noticed that while concluding with the order, the first respondent has indicated that the Temples in question are owned, protected, preserved and maintained by the Archeological Survey of India. There is no material on record to indicate that a notification as contemplated under Section 20 of the Act 1958, has been issued and the Temples have been acquired in accordance with law. If that be the position, at this stage, it cannot be said that the said Temples are owned by the Archeological Survey of India, but however, the Temples being ancient monuments and being within the protected area as notified, certainly, the protection by way of restrictions to that extent would be justified. Even if the Temples are in the protected area, certain restrictions under the Act and Rules, no doubt, would apply even if the Temples are not owned by the Archeological Survey of India.

8. Be that as it may, the consideration required is as to whether if any particular act is being done by the owners of the property within the protected area, whether the same would be contravening the Act and Rules, so as to alter the existing position within the protected area.

9. In the instant case, the order passed by the Deputy Commissioner on 16.08.2003 and 16.09.2008 are not for the renovation or alteration or construction in the Temple premises which is within the protected area. However, by the order impugned before the Respondent No. 1, the Deputy Commissioner has only permitted the installation of Hundi within the Temples and has

introduced the Seva fees to carry on with the religious practice, which cannot be considered as an alteration made to the Temples nor can it be considered as a new religious practice. A Hundi is kept to enable the devotees to offer their seva by dropping the money in the Hundi and the Seva fee is to secure performance of the pooja which is a religious practice. It would ultimately be available to the petitioners for the maintenance of the Temples and to bear the salary of the Archaks and Staff.

10. In fact, this Court at the first instance while disposing of W.P. No. 27072/2004 dated 02.01.2007 had taken note of the circumstance that the Temples in question are ancient Temples where thousands of devotees visit the Temples and therefore, the same is to be maintained properly. In any event, with regard to the maintenance of the said Temple it is within the protected area, hence within the jurisdiction of the respondent No. 1 herein. The maintenance would also be made in accordance with the AMSAR Act 1958 and the Rules 1959. The challenge to the order dated 16.08.2003 for installation of Hundi was not pressed in W.P. No. 27072/2004 and the Respondent No. 1 herein who was a party to that petition did not object either. Therefore, insofar as the installation of the Hundi, it cannot be considered that the same would be contrary to the Act 1958, so as to set aside the order passed by the Deputy Commissioner. If any other construction or alteration is to be made, certainly the petitioners cannot make such alterations or constructions without due approval from the first respondent.

11. The learned Senior Counsel for the private respondents, no doubt would argue to the contrary. However, I have already indicated that Temple being in a protected area under the Act, though the authorities under the AMSAR Act 1958, would have the jurisdiction to regulate, in the present facts, since I have indicated that the nature of the activities sought to be brought into action by the order of the Deputy Commissioner does not violate the prohibitions that have been imposed under the provisions of the Act, I am of the opinion that the conclusion reached by the Respondent No. 1 is not justified.

12. With regard to the Seva fee that has been levied, though the private respondents had contended before the respondent No. 1 that levying fee by other agencies in the name of religious activities would defeat the purpose of AMSAR Act in providing free access to all visitors to all parts of the monument, there is no specific consideration of that aspect to come to a conclusion the effect of introduction of Seva fee is the same as entry fee. Though Rule 6 of Rules 1959 provides for entrance fee, but the Seva fee presently introduced by the petitioners is not for the entrance but for the performance of different pooja and religious ceremonies. In fact, the basis on which the respondent No. 1 has proceeded and the observation made in para-11 of the order will resolve this aspect. It reads as hereunder:

"Sri Kolaramma temple has been declared as a Protected Monument of National Importance and the same is being governed under the provisions of the AMASR

Act and Rules. In view of the fact that the customary religious practice in vogue at the time of its declaration as the Protected Monument of National Importance, the religious affairs conducted were allowed to continue by the ASI Except for maintaining and continuing the customary religious practices mentioned in the said Act, the Department of Endowments of the Government of Karnataka has no jurisdiction and legal authority to introduce new customs/practices or observances or add any thing or construct or installations in the temple or introduce Seva fee in the temple without the specific permission of the Central Government (ASI)."

The above will make it clear that admittedly customary religious practice was in vogue even as on the date of declaration of the temples as a protected monument. What is now being charged is a Seva fee from such of those devotees who may want certain Seva to be performed as a religious practice and it is not an imposition on every visitor to the Temple.

13. Accordingly, the order dated 17.04.2009 is set aside. Insofar as the installation of the Hundi and fixing the seva fee in respect of the pooja activity, the same not being contrary to the Central Act or being in conflict thereof while discharging the functions under HRCE Act, 1997, the action of the Deputy Commissioner is upheld.

Petition is accordingly disposed of.