

(2002) 12 AP CK 0033

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 463 of 2002

V. Ramajogeswara Rao

APPELLANT

Vs

Sri Someswara Swamy Temple and Another

RESPONDENT

Date of Decision : 26-12-2002

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 113(2), 133(2), 133(3)
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 1 ALD(Cri) 319 : (2003) 2 ALT(Cri) 153 : (2003) CriLJ 2159

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : V.V.L.N. Sarma, for the Appellant; Y. Chandra Sekhar, (for No. 1) and Public Prosecutor (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

S.R.K. Prasad, J.—The petitioner, who is said to be member of founder's family of Sri Someswara Swamy Temple at Sajjapuram, Tanuku, West Godavari District, seeks quashing of the orders dated 2-11-2001 in C. R. P. No. 55 of 1999 on the file of the I Additional Sessions Judge, West Godavari District, Eluru, confirming the orders dated 22-6-1999 passed in CrI. M.P. No. 6 of 1999 on the file of the II Additional Judicial Magistrate of First Class, Tanuku. Suffice it to say that on the strength of the certificate issued by the Deputy Commissioner of Endowments u/s 133 of A. P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act No. 30 of 1987), hereinafter referred to as "the Act", the II. Additional Judicial Magistrate of First Class, Tanuku, entertained CrI. M. P. No. 6 of 1999 and issued notice to the petitioner and subsequently it was ordered. Against the said order, a revision in C. R. P. No. 55 of 1999 was preferred before the I Additional Sessions Judge, Eluru. The said revision was dismissed without mentioning any reasons. Subsequently, the matter was carried before this court in CrI. P. No. 3107 of 2000 and the same was allowed and the matter was remitted back to the revisional court. The revisional court once again confirmed the order of the

lower court. Aggrieved by the same, this criminal petition is filed.

2. The learned counsel for the petitioner mainly assails the order on two grounds. Firstly, he contends that the Commissioner of Endowments has not issued a certificate as contemplated u/s 133 of A. P. C. & H. R. I. and Endowment Act 30 of 87 and hence the certificate issued by the Deputy Commissioner of Endowments is not valid and unenforceable. The second contention canvassed is that the term of the Executive Officer has expired on the constitution of the Trust Board and he has no jurisdiction to move in the matter. Reliance is also placed on the strength of the orders passed by the Regional Joint Commissioner of Endowments, Multi Zone-I, recognizing the petitioner as member of the founder's family.

3. The learned counsel appearing for the first respondent contends that it is not a case where inherent powers can be exercised to quash the proceedings and it is a case where records are not handed over. He also tries to rely on the subsequent orders passed by the Government setting aside the orders passed by the Regional Joint Commissioner.

4. The learned Public Prosecutor contends that the Deputy Commissioner is competent enough to issue a certificate and the court has rightly proceeded for non-delivery of the records etc. It is not a fit case where the proceedings can be quashed.

5. Adverting to the said contentions, at the time of hearing it is noticed that the certificate was issued by the Deputy Commissioner of Endowments. Before adjudicating the power to issue such certificate, it is necessary to have a look at Section 133 of A. P. C. & H. R. I. and Endowments Act 30 of 87, which reads hereunder :

"Section 133. Duty of trustees, etc., to handover charge to successor and procedure for recovery of possession of institution, etc., in case of default:--

(1) Where a person, who--

(a) is or has been a trustee on the ground of succession of an institution or endowment; or

(b) is appointed as trustee, Executive Officer, Officer-holder or servant of such institution or endowment;

or

(c) is appointed to discharge the functions of a trustee of such institution or endowment in accordance with the provisions of this Act in any scheme in force at the time of commencement of this Act,

ceases to be such hereditary trustee, trustee, Executive Officer, Office-holder or servant or ceases, to discharge the functions of the trustee (hereinafter referred to as the "ex-office holder"), on account of the expiry of his term of office or by

reason of his suspension, removal or dismissal from office, it shall be the duty of such ex office-holder, to handover charge of his office and deliver possession of the records, accounts, properties of the institution or endowment including cash to the person who succeeds him or is appointed in his place (hereinafter called the "successor") or to the Executive Officer within seven days from the date of service in the prescribed manner of the order directing him to hand over charge of the office to his successor or to the Executive Officer, and if he fails to do so without sufficient cause, he shall be punishable with fine which may extend to one thousand rupees.

(2) (a) where the successor or the Executive Officer is resisted in or prevented from obtaining the possession of the records, accounts or properties of the institution or endowment by such ex-office-holder or by any person claiming or deriving title from him or by any person who is otherwise not entitled to be in such possession, any Magistrate of the First Class having jurisdiction shall, on any application made by the successor or the Executive Officer, by an order after notice to the ex-office-holder direct delivery of the possession of such records, accounts and properties of the institution or endowment, to the successor or to the Executive Officer within the time specified in such order.

(b) Every application made under Clause (a) shall be accompanied by a certified copy of the order of appointment of the successor along with a certificate issued by the Commissioner in such form and after following such procedure as may be prescribed stating that the records, accounts and properties specified therein belong to the institution or endowment.

(3) where the ex-office-holder fails to deliver possession of the records, accounts or properties within the time specified in the order of the Magistrate under Sub-section (2), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both; and the Magistrate shall cause the possession of the records, accounts or properties to be delivered to the successor, taking such police assistance as may be necessary.

(4) The order of appointment of the successor and the certificate referred to in Clause (b) of Sub-section (2) shall not be called in question in the proceedings before the Magistrate under this section.

(5) Nothing in this section shall bar the institution of a suit in a competent court by any person aggrieved by an order under this section for establishing his title to the properties specified in the certificate referred to in Sub-section (2)."

6. Section 133(2)(b) of the Act clearly makes a mention that the certificate has to be issued by the Commissioner and he has to follow such procedure as may be prescribed stating that the records, accounts and properties specified therein belong to the institution or endowment. My attention is drawn by the learned counsel for the petitioner about the non-mentioning of the details and the records in the certificate where he is supposed to hand over the same to the

temple authorities. It is necessary to consider whether the Deputy Commissioner can be treated as commissioner within the meaning of Section 133 of the Act and whether he is competent to issue such certificate. The language mentioned in Section 133(2)(b) of the Act clearly states that the Commissioner alone has to issue such certificate and he has to follow the procedure as may be prescribed. It is also mentioned that such certificate can be issued only by the Commissioner after giving a finding that the records, accounts and properties specified belong to the institution or endowment. It does not admit of any doubt that no other person can issue such certificate and the said provision does not empower the Commissioner to delegate such power to any subordinate of the Department. The statute does not contemplate delegation of such power of issuing certificate to the Deputy Commissioner. The certificate issued by the Deputy Commissioner in the present case is bad on two grounds. Firstly, a person who is competent to issue certificate has not issued the same. Secondly, the details of the documents to be produced or to be handed over are not mentioned.

7. It is contended by the learned Public Prosecutor that the certificate issued is final and cannot be questioned. It can only be questioned under writ jurisdiction. As writ jurisdiction is not invoked, this Court is not competent to exercise inherent powers to strike it down. It is a case where this Court is not resorting to the powers vested under writ jurisdiction under Article 226 of the Constitution of India. It is always entitled to declare the law by virtue of the inherent powers while interpreting the provisions. It is clear from Section 133 of the Act that the Commissioner alone is competent to issue a certificate. It also contemplates to conduct an enquiry by the Commissioner. No such thing has been done in this case. The Deputy Commissioner is said to have usurped the power of the Commissioner and passed orders which are not in accordance with Section 133(2) (b) of the Act. The court is always entitled to peruse the competence of the persons who issued the certificates and can refuse to act upon such certificates, which are not valid. If the Magistrate has acted upon the certificate, issued by the authority, who has no jurisdiction to issue the same, this court has inherent power to correct the mistake committed to avoid miscarriage of justice. This is a classic case where the Commissioner has not acted upon and instead in his place the Deputy Commissioner has acted upon and issued the certificate. When the competent person has not issued the certificate, it is for the court to quash the said certificate, namely, the proceedings emanated due to issuing of such certificate where he has no jurisdiction to issue the same. I state once again that u/s 133 of the Act the Commissioner alone is competent to issue a certificate. He has to do it only after due enquiry contemplated under the said provisions. No other person can issue the said certificate. If anybody were to issue such certificates, it shall be taken that they shall not have any authority to issue the same and no court shall act upon such certificates.

8. Coming to the other aspect, much water has flown beneath the bridge. The petitioner is driven from pillar to post and he also invoked writ jurisdiction very often in view of the passing of the order after order in the revisions and also the

orders passed by the Regional Joint Commissioner etc. It is unnecessary to refer them. This Court cannot take subsequent events into consideration while adjudicating the matters u/s 482 Cr. P. C. Time and again, this Court has stated that the subsequent orders cannot be taken into consideration. In that view, the matter has to be left open for trial. More over, the procedure that has to be followed by the Magistrate in case of certificate presented in court are not being laid down clearly either under the Act or under Rules. Section 133 of the Act contains a penal provision. It is not stated in any provisions of the Act referred to above that a separate procedure has to be followed for implementing Clause (3) of Section 133 of the Act. In the absence of any specific provision contemplated by the procedure that has to be followed, the procedure under the Code of Criminal Procedure for petty cases or summons procedure has to be followed by the Magistrate in all such cases where certificates are produced before the Court. A plea has to be recorded in the first instance and thereafter the necessary material has to be placed by conducting trial as contemplated under summons procedure. The procedure is also not followed in this case. A finding was given in haste. In that view of the matter also, the order is not in accordance with the provisions of the Act or in accordance with the provisions of the Code of Criminal Procedure. Hence, the certificate issued by the Deputy Commissioner and consequently the prosecution launched against the petitioner are liable to be quashed for the aforesaid reasons mentioned by me. To sum up, I find that the Deputy Commissioner of Endowments has no jurisdiction to issue a certificate u/s 133(2)(b) of A. P. C. & H. R. I. and Endowments Act 30/87. I also find that summons procedure is not followed by the Magistrate, which has to be followed, as it imposes a penal provision. For the aforesaid reasons, the proceedings are quashed including the certificate issued by the Deputy Commissioner of Endowments.

In the result, the criminal petition is, accordingly, allowed.

Leave asked by Public Prosecutor to move Supreme Court is granted as it involves interpretation of Section 133(2)(b) of the A. P. C. & H. R. I. and Endowments Act 30/87.