
(1983) 06 AP CK 0010

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 413 of 1982

Y. Gopal Krishna Prasad

APPELLANT

Vs

Yenduri Subbarao and Another

RESPONDENT

Date of Decision : 10-06-1983

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966
— Section 93(1), 93(2)

Citation : (1983) 06 AP CK 0010

Hon'ble Judges : Ramaswamy, J

Bench : Single Bench

Advocate : E.S. Ramachandra Murthy, for the Appellant; I. Ayyanna Panthulu, for the Respondent

Judgement

1. The petitioner is admittedly a hereditary trustee of Sri Yenduri Subbarao's Vysya Students' Hostel Trust, Vijayawada, a notified endowment created by his father. Action was taken to appoint a Board of Trustees under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act (17 of 1966), hereinafter called "the Act", and a certificate was issued as required under sub-section (2)(b) of S. 93 of the Act, specifying the property in A and B Schedules. He was directed to deliver possession of them to the successor Board of Trustees and it was served in the manner prescribed. Yet the properties were not delivered by the petitioner within seven days therefrom nor shown any sufficient cause therefore. Therefore, an application has been filed u/s 93(2) of the Act before the lower Court for an order to deliver possession of the property, since the petitioner did not deliver possession thereof. Initially, in Criminal M.P. 750/1979, the Magistrate ordered delivery of possession specifying the period for handing over records, etc. Against that order, Criminal M.P. Nos. 1456 of 1980 and 1458 of 1980 were filed in this Court and while those proceedings were pending, the term of office of that Board expired by efflux of time. Therefore, while disposing of those petitions, this Court has ordered :

"The last submissions made by the learned counsel for the petitioner is that the previous Board was appointed only till January, 1980 and there is no board now to represent the Trust for purposes of taking delivery of the properties. In the counter it is stated that a fresh board of trustees has been constituted and being so it is for the Board of Trustees to take such steps as are open to them to receive the properties ordered by the Magistrate to be delivered."

2. Thereafter, respondent No. 1-Trust Board was constituted. The properties were not handed over to the new Board. Therefore the present Board laid action u/s 93(3) before the trial Court in Criminal M.P. No. 1467/1981 and that petition was dismissed. As against that order, a revision has been filed before the Court of Session at Vijayawada and the learned Additional Sessions Judge allowed the revision holding that without obtaining a fresh certificate, the first respondent is entitled to continue the proceedings and that the action initiated is valid in law. As against that order, the present revision case has been filed.

3. Sri Srirama Chandra Murthy, learned counsel for the petitioner, contends that by efflux of time the term of the previous Board headed by Sri Kasiviswanadham came to an end. The certificate issued to that Board also ceased to have any effect and unless the successor Board obtains a fresh certificate from the Endowments Department and an order is also passed under S. 93(2), the present proceedings cannot be continued. He laid emphasis upon the language employed in sub-section (2)(b) of S. 93 of the Act.

4. Sri Ayyannapanthulu, learned counsel for the first respondent, on the other hand, contends that the certificate issued by the Endowments Department specifying items A and B as required under sub-section (2)(b) of S. 93 is still valid and continuing and what was required was only substitution of the present Board in the place of the Board previously appointed and since admittedly the petitioner did not hand over the records and property to the new Board, the question of obtaining a fresh certificate does not arise, and consequently the continuation of the proceedings under S. 93(3) is valid.

5. Upon these rival contentions, the question that arises for consideration is whether it is necessary for the first respondent to obtain a certificate as required under sub-section (2)(b) of S. 93 once over as contended for ?

6. Section 93(2) reads thus :

"(2)(a). Where the successor is resisted in or prevented from, obtaining the possession of the records, accounts or properties, of the institution or endowments by such ex-office-holder or by any person claiming or deriving title from him by any person who is otherwise not entitled to be in such possession, any Magistrate of the First Class having jurisdiction shall, on an 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 the institution or endowments and properties of the institution or endowment to the successor 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."

7. Section 93(1) casts an obligation and duty upon the ex-office-holder to entrust the records, accounts and property of the institution or endowment in their possession to the successor Board within seven days from the date of service on them of the order directing to hand over the records and in the manner prescribed. On their failure to do so, unless sufficient cause is shown therefore as required under sub-section (1) of Section 93, the ex-office-holder is made punishable with a fine which may extend to rupees one thousand under sub-section (2) of S. 93 of the Act. Where the successor is resisted or prevented from obtaining the possession of records, accounts or properties of the institution or endowment by such office-holder, power has been conferred on the Magistrate of First Class having jurisdiction, on an application made by the successor Board or the Executive Officer, under sub-section (2)(a) of S. 93 to issue an order after notice to the ex-office-holder directing him to deliver possession of such records, accounts and property of the institution or endowments, within the time specified in the order. Even then, if the order is not complied with, then further power is given under sub-section (3) of S. 93 to impose punishment with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both. The Magistrate is also empowered to cause the possession of the records, accounts or properties to be delivered to the successor, taking such police assistance as may be necessary.

8. A reading of the above provisions would indicate that the object of the provisions are as follows :-

(1) The Legislature, with a view to eliminate the shortcomings encountered while working out the provisions of Section 87 of 1951 Act which itself has undergone several changes by amendments from time to time since Section 78 of 1927 Act. Therefore, the Court would endeavour to keep in mind the mischief rule which the Legislature intended to suppress and to advance the remedy so as to be in conformity with the intendment of the Act;

(2) On appointment of the Board of Trustees, a duty has been cast on the persons hereditary trustee of a charitable or religious institution or endowment or a trustee appointed or the Executive Officer or office-holder or servants of such institution or endowment to hand over the records, properties and accounts to the successor within seven days from the date of service of the order directing him to hand over them, unless sufficient cause is shown therefore, the object being that there shall not be any hiatus in the management of the institution or management;

(3) The ordinary mode of enforcement of a civil process was dispensed with and

the Legislature has devised the machinery by creating penal liability on the ex-office-holder for failure to hand over or deliver possession of the records, accounts or property of the institution or the endowment. An opportunity was given to the "recalcitrant ex-office-holder" to reconsider his attitude by providing the procedure under sub-section (2)(a) of S. 93. Even then if he "still continues to demonstrate contumacious conduct" he was made liable to imprisonment for the specified period or fine as the case may be or with both. It is the mandatory duty of the ex-office-holder in charge of the records, property etc. to hand them over to the successor Board, etc. immediately on constitution of a Board of Trustee or on expiration of the term for which it is constituted or otherwise ordered as per law, for the peaceful change over and successful management of the institution or endowment for which the Board of Trustees has been constituted. Unless the records or properties are entrusted, the management cannot effectively and efficiently carry out the purpose for which the institution or endowment is created. Thus, the Legislature intended to have smooth change-over of the administration of the institution or endowment without any interruption.

9. After the appointment of the new Board of Trustees headed by Kasi Viswanadham by the Commissioner of Endowments Department, the petitioner is under a legal obligation to hand over the properties specified in Schedules A and B of the Certificate. He did not hand them over. In spite of the order u/s 93(2), he persisted to continue in illegal possession of them. So long as the properties specified in Schedules A and B are not given possession of to the new Board of Trustees, the Certificate continues to be valid and operative and the order u/s 93(2) continues to be enforceable. Before that stage reached the term expired by efflux of time. Therefore the first respondent having succeeded, is entitled to continue the proceedings from the left over stage. If the contention of the counsel is given credence to, it not merely aids evasion of handing over the records, accounts and property of the institution or endowment but also feeds protraction of proceedings by adopting dilatory tactics; thereby it defeats the legislative intendment to have in possession expeditiously the records, accounts and property of the institution of endowment. Therefore, with a view to effectuate the purpose and object of the charitable or religious institution or endowment, it is enjoined on the Commissioner to specify properties in the custody of ex-office-holders; serve an order in the manner prescribed on him directing to hand them over to the successor Board, etc. Once these steps are followed but so long as the properties have not been delivered by the ex-office-holder to the successor-Board, there is no necessity to obtain a fresh certificate to continue the proceedings since the proceedings were already initiated by the intermediary Board of Trustees and order was passed u/s 93(2) of the Act by the Judicial Magistrate of First Class having jurisdiction to deliver possession of the properties, but before taking possession of the specified properties from the ex-office-holder, the term of the Board expired. Admittedly the petitioner is continuing to be in possession of the properties and did not hand over them to

the successor Board. That is the reason why this Court has held that the Board of Trustees (first respondent) may take such steps as are open to them to receive the properties ordered by the Magistrate to be delivered. In my view, the above observations of this Court in the earlier proceedings are in conformity with the view I have taken that the first respondent is entitled to continue the proceedings initiated u/s 93(2) of the Act. Accordingly, the successor Board is well justified in continuing the proceedings under S. 93 (3) and there is no need to obtain fresh certificate and to take action once-over to pass order u/s 93(2) (a). Therefore, the judgment of the Additional Sessions Court is perfectly legal and valid and the contention of the learned counsel is devoid of substance.

10. Accordingly the revision case is dismissed.

11. Revision dismissed.