

*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

+ Civil Miscellaneous Appeal No.424 OF 2013

% 07.02.2024

Between:

Maddikunta Narsimha Rao

Appellant

Vs.

M. Chandra Shekar and four others

Respondents

! Counsel for Appellant

: N.M. Krishnaiah

^ Counsel for Respondents

: M. Srinivasa Rao
G.P. for Arbitration
J.R.Manohar Rao

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? Cases referred :

1. Appeal (civil) No. 5093 of 1998 decided on 07.05.2004
2. 1986 AIR 1158

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

Civil Miscellaneous Appeal No.424 OF 2013

JUDGMENT:

Aggrieved by the Judgment (Award) dated 31.12.2012 (hereinafter will be referred as 'impugned judgment') in O.A.No.749 of 2010 (Old O.A.No.22 of 2009) passed by the learned A.P. Endowments Tribunal at Hyderabad, the Opposite Party No.3 filed the present Civil Miscellaneous Appeal to set aside the impugned judgment.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned A.P. Endowments Tribunal at Hyderabad (hereinafter will be referred as "Tribunal").

3. The brief facts of the case, which necessitated the applicants to file the present Civil Miscellaneous Appeal, are as under:

a) The petitioners/applicants filed an application under Section 87 (1) (h) of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 to recognize them as members of founder family of opposite party No.2/temple Sri Lakshmi Narasimha Swamy Temple, Garlavoddu Village, Enkur (M), Khammam District. The brief

averments of the application are that the grandfather of applicants by name Maddikunta Tirupathaiah constructed opposite party No.2 temple in his own land and with own funds and the same was appreciated and upheld by the Deputy Commissioner of Endowments, Hyderabad in O.A.No.13 of 1995 filed under Section 77 of the Act. The said Maddikunta Tirupathaiah, who was declared as hereditary trustee was managing the affairs of the temple during his life time. On the abolition of hereditary trusteeship and on the pronouncement of judgment of the supreme Court, the family members of Maddikunta Tirupathaiah have submitted a representation to the Assistant commissioner of Endowments, Khammam seeking declaration as members of founders family and accordingly the Assistant Commissioner was pleased to declare the opposite party No.3 as member of founders family to opposite party No.2 temple under Section 17 of the Act vide proceedings dated 11.06.2000 in RCNo.C/2966/1996. The applicants herein are the sons of Maddikutna Rama Rao, who expired on 27.12.1993. Maddikunta Rama Rao, who is the elder brother of opposite party No.3 is entitled for recognition as members of founder's family as mentioned in the genealogical tree shown in the recognition orders of founder family member passed by opposite party No.1 in proceedings dated 11.06.2000. Hence, prayed to

declare and recognize the petitioners as members of founder family of Sri Laxmi Narasimha Swamy Temple.

b) The opposite party No.1 filed counter contending that the temple was a “swayambhoo”. The history of the temple shows that about 60 years back a big stone consisting of 6’ x 15’ fell from a hill, which was at 500’ height with a big sound on the land. On the date of falling of the big stone in the shape of Lord Lakshmi Narsimha Swamy Temple, the entire climate had changed into very dangerous and on that night the Zamindar of the village Sri Kalluri Venkata Apparao had a dream that Lord Sri Lakshmi Narasimha Swamy as swayambhoo self manifested in the place. From then the villagers started performing poojas. The land on which the said Lord self manifested does not belong to M. Tirupathaiah and as per record, it belongs to Kalluri Ramchander Rao and others. The 12th column of pahani for the year 2005-06 is showing the names of Smt. Kalluri Sarojini. The name of M. Tirupathaia was not shown in any revenue record from the beginning. M. Thirupathaiah cannot purchase a temple or land on which the said temple as swayambhoo manifested. The history of the temple mentioned in column No.15 of register maintained under Section 43 of the Act showing that the temple was under management of Sri Kalluri

Venkata Narasimha Rao and M. Tirupathaiah with the cooperation of villagers given a shape to Sri Lakshmi Narasimha Swamy. An order was given by the Commissioner in his circular No.L/366330/1997, dated 04.10.1997 not to declare the founder family member to 'swayambhoo self manifest'. The then Assistant Commissioner passed an order stating that the first petitioner has given his no objection and second petitioner is residing in states and third petitioner was adopted. Hence, prayed to dismiss the claim.

c) The opposite party No.3 filed counter contending that as per the directions of the High Court in W.P.Nos.25274 and 23444 of 1997, the opposite party No.3 filed an application before the Assistant Commissioner of Endowments for fresh declaration and the said authority declared him as Founder Family Member as per Section 17 (1) of the Act. As the appointing authorities should consider the founder wishes, he is only to succeed the founder trustee office. After his lifetime the founder trustee office devolved among his successors and his brother successors according to law and procedure and it was clearly stated by the Founder in his affidavit dated 05.08.1995 and evidence in O.A.No.13 of 1995 that the question of founders family members declaration does not arise. The petitioners have

no interest in the temple development. At the instance of the political people in the village who are having grudges with founder and the opposite party No.3, petition was filed to harass the opposite party No.3. The Assistant Commissioner in his order stated that the petitioners are not eligible to be declared as founder family members. According to records, the High Court in a common order in W.A.No.1507 of 2004 and W.P.No.12452 of 2002 directed the petitioners to file an application before the Deputy Commissioner. The Deputy Commissioner of Endowments, Warangal vide order dated 30.12.2005 in O.A.No.18 of 2004 dismissed the application as time barred. According to the Endowments Act, whatever order passed under Section 45 of the Act would be deemed to be order passed under Section 87 of the Act against which appeal under Section 88 lies to the District Court. It was held by the High Court in above W.A.No.1507 of 2004 and W.P.No.12452 of 2002. The Deputy Commissioner of Endowments, Warangal appointed opposite party No.3 as Chairman after considering him as Founder Trustee vide order proceedings No.A4/3426/2005 dated 12.03.2007 while appointing Trust Board to the said temple and thus, prayed to dismiss the claim of the applicants.

d) Opposite party No.3 filed additional counter contending that petitioners' grandfather constructed subject temple with his own funds; opposite party No.1 without observing the orders passed in O.A.No.13 of 1995 by the Deputy Commissioner and his office orders in R.Dis.No.6/1966/96 dated 11.08.2000 falsely answered; the opposite party No.1 in his letter No.C/631/95 dated 31.03.1995 as counter in O.A.No.13/95 and opposite party No.2 in his deposition in O.A.No.13/95 admitted that the father of opposite party No.3 M. Tirupathaiah got constructed the subject temple with his own funds in his own land, thus, they cannot go against their predecessor authorities as rule of estoppel applies. The original pattedar of the temple situated land was Kalluri Ramchander Rao. The land was alienated to the founder M. Tirupathaiah through a gift exchange deed and all relevant documents filed in O.A.No.13/1995 that after enquiry only declared father of opposite party No.3 as founder and opposite party No.3 is thus, member of founder family. In LTR case proceedings No.240/2008/ENK, the Special Deputy Collector (TW), Bhadrachalam passed a clear order in favour of opposite party No.3 over subject temple land. The pattedar M. Tirupathaiah never alienated any land in favour of the temple. Before the temple management was taken by the Endowments Department

in 1977, the subject temple was private temple and after temple construction only the poojas were offered to the said deity by M. Tirupathaiah with his own funds and being treated the deity as “ilavelpu”.

e) The additional counter filed by opposite party No.3 further reveals that after construction of the temple, the father of opposite party No.3 made many efforts by his hard earnings and developed the temple and conducts Swamy Vari Kalyanam every year with his own earnings. By his efforts only the temple's existence spread to surrounding villages and became popular. The Deputy Commissioner as well as the Assistant Commissioner held this fact in their decisions made under said OA and R.Dis.No.C/2966/96. One Ramiseti Madhava Rao was appointed as EO to the subject temple previously and he is relative of Settipalli Venkateswara Rao – Ex-Chairman and with a *mala fide* intention to show that founder is encroacher of subject temple land got created a forged gift deed with the help of one Kalluri Venkata narsimha Rao, who is the brother of pre-deceased owner of temple located land and filed the same gift deed before MRO, Enkur for mutating the temple in the revenue records i.e. the pahanies. It is objected by the founder M. Tirupathaiah that after thorough enquiry the MRO vide his

orders in D.Dis.No.A/1102/90 dated 30.03.1991 declared the said deed as forged document. The said document is also marked as Ex.B16 in O.A.No.13 of 1995 as well as in Assistant Commissioner Proceedings No.C/2996/1996 that the 43 register was prepared by said Madahva Rao is not valid in the eye of law. The alleged 43 register is nothing but totally copied from the earlier 38 register proposals dated 29.10.1985, which is prepared by one Krishna, EO in the year 1985. The said proposal was not approved by the then Assistant Commissioner as Founder M. Tirupathaiah objected the same. The said Madhava Rao fabricated the matter adding the words i.e., "praja sahakaramtho'. In the earlier section 38 proposals the alleged letter No.1/3940/1975 dated 18.11.1975 issued by the Assistant Commissioner, Endowments, Khammam was not mentioned by the said EO either in O.A.No.13 of 1995 proceedings or in C/2966/1996 proceedings. The said Madhava Rao with a criminal intention added the said words and committed crime under Section 195 (1) of IPC and opposite party reserved his right to file a separate petition against him and concerned person before the Tribunal and prayed to dismiss the claim.

4. During the course of enquiry the petitioners got examined PWs 1 to 3 and got marked Exs.P1 to P4 and whereas on behalf of Opposite partys, the RW1 was examined and got marked Exs.R1 to R14.

5. After considering the rival contentions, the learned Tribunal has dismissed the application/petition holding that the petitioner and opposite party No.3 are not entitled to be recognized or even to be continued from any earlier orders as members of the founder's family of the subject temple. Aggrieved by the same, the opposite party No.3 has filed the present Civil Miscellaneous Appeal to set aside the impugned judgment/award.

6. Heard both sides and perused the record including the grounds of appeal.

7. The first and foremost contention of the learned counsel for the appellant/opposite party No.3 is that the learned Endowment Tribunal ought to have decided as to whether the applicants were entitled to be declared as founder family members or not but it ought not to have declared the opposite party No.3 as not entitled to act as founder family member without considering the aspect that the opposite party No.3 was

declared as founder family member of temple by the Assistant Commissioner of Endowments, Khammam vide order dated 11.08.2000. It is pertinent to note that the impugned order passed by the learned Tribunal was under Section 87 (1)(h) of the Act and the said Section prescribes that the Endowments Tribunal having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question as to whether a person is a founder or a member from the family of the founder of an institution or endowment. Thus, under the above Section, the Tribunal has the power to look into any dispute as to whether a person is a founder or a member from the family of the founder of an institution or endowment. It is not the case of the opposite party No.3 that without his knowledge the impugned order was passed. It is pertinent to note that the opposite party No.3 was served notice and thereafter he has contested the case. Though the impugned order was passed on the application filed by the petitioners, the dispute is revolving around the petitioners and opposite party No.3 with regard to recognizing them as members of founder family of the said temple. The main intention of not considering the relief which was not prayed for is that it might deprive the other side an opportunity to oppose or resist such relief. It is

not the case of the opposite party No.3 that he is not a party to the case in which impugned order was passed and that the impugned order was passed behind his back without his knowledge. In the case on hand, the notice was served to opposite party No.3 and based on such notice the opposite party No.3 has made his appearance, filed counter, adduced oral and documentary evidence and the learned Tribunal by giving opportunity to both sides and after considering all the aspects has passed the impugned order with a *bona fide* intention to protect the subject temple in the interest of justice.

8. The learned counsel for the appellant contended that the learned tribunal failed to appreciate Ex.R13 i.e., the order of the competent authority under the scheduled areas i.e., Special Deputy Collector (TW), Bhadrachalam in case No.240/2008/ENK, dated 05.11.2008, wherein the appellant herein and his father were declared as possessors of the land to an extent of Ac.4.08 guntas in Sy.No.154 of Enkor village based on the pahanies filed by them since 1961-62. A perusal of copy of Ex.R13, there is no whisper to show that either Thirupathaiah or M. Narsimha Rao is the owner of the disputed land. It is to be seen that in the said order the dispute was only with regard to 4.08 guntas in Sy.No.154. However, as per

Ex.R11 notary attested copy of Ex.B3 in O.A.No.13 of 1995 the lands in sy.Nos.200, 151, 154 and 157 are owned by the temple and there is nothing even to show that Tirupathaiah donated any land to the temple. Moreover, as rightly observed by the learned Tribunal it was only Ac.4.08 guntas out of total Ac.14.08 guntas in Sy.No.154 that was disputed and the remaining land to an extent of Ac.10.00 guntas belong to the owners with surname 'Kalluri' and Endowment was created for the said Ac.10.00 guntas to the deity in 1968.

9. The learned counsel for the appellant contended that the learned tribunal failed to appreciate the fact that the petitioners have challenged the orders of the Assistant Commissioner dated 11.08.2000 in O.A.No.18 of 2004 before the Deputy Commissioner of Endowments in pursuance of the orders of the High Court in W.A.No.1507 of 2004 and W.P.No.12452 of 2002 but the said OA was dismissed. No doubt the application filed by the applicants in O.A.No.18 of 2004 was dismissed but it is to be seen that the said application was dismissed on the technical ground that the applicants failed to file the application within the time prescribed by the High Court i.e., within six weeks from the date of common order in W.A.No.1507 of 2004 and W.P.No.12452 of 2002. However, it is to be seen that the

present appeal is filed by the opposite party No.3 and not by the applicants/petitioners. Thus, the impugned order passed by the learned Tribunal against the applicants is not being questioned in this appeal by the applicants and thereby this Court is not inclined to interfere with findings in the impugned to the extent of not declaring the applicants as members of founder family of opposite party No.2 temple.

10. The learned counsel for the appellant submitted that the learned Tribunal having extracted the provisions of the A.P. Endowments Act, erred in holding that opposite party No.1 is not entitled to continued as founder family member in view of the amendment Act, 33 of 2007, which is in prospective nature and declared the orders, which are passed prior to amendment as nullified. It is to be seen that as per explanation III of Section 17 of the Act, the persons who founded temples by collecting donations partly or fully from the public as well as those who founded them on public lands shall not be recognized as founder trustees by any means. The learned Tribunal has not passed the impugned order solely based on the amended explanation III of Section 17 of the Act. In fact, the explanation III of Section 17 of the Act was incorporated following the circular instructions No.40/97 in Rc.No.L/36330/97, dated

04.10.1997 and as per the said circular a founder should either construct or reconstruct the temple without the aid or contributions or otherwise received from any other persons or body including the public. The learned Tribunal has not set aside the orders of the Assistant commissioner solely based on the explanation III of Section 17 of the Act. In fact, the learned Tribunal has passed the impugned order based on few contradictions and lack of corroboration in the evidence of witnesses examined before the Tribunal. Thus, the above contention of the appellant is not sustainable.

11. As per the impugned order, even as per Ex.R11 notary attested copy of Ex.B3 in O.A.No.13 of 1995 at para 14 speaks that with the trusteeship Kalluri Venkata Narsimha Rao, one of the devotee M. Tirupathaiah with the public donations created a shape of temple to the swayambhoo deity and that the lands in sy.Nos.200, 151, 154 and 157 owned by the temple and there is nothing even to show that Tirupathaiah donated any land to the temple. As seen from the impugned order, the learned Tribunal after considering all the material on record, has arrived to a conclusion that the subject temple was not constructed by father of the appellant by name Tirupathaiah with his own funds in his own land. When the father of the appellant by

name Tirupathaiah, who was alleged to have been recognized as founder of the temple, is disentitled or suffering from disqualification covered by explanation III of Section 17 (incorporated in view of circular No.40/97 in Rc.No.L/36330/97, dated 04.10.1997) to be recognized as Founder, his son i.e., the appellant alleged to have stepped into the shoes of his father, will not have any right to declare him as member of founder family, more particularly in view of abolition of hereditary trusteeship.

12. In **Commissioner, Hindu Religious and Charitable Endowment (Admn.), Madras & Another v. Vedantha Sthapna Sabha**¹, the Apex Court held that no doubt, normally every donor contributing at the time of foundation of a Trust cannot claim to become a founder of the Trust, except in cases where all the contributors of the Trust Fund become the founders of the Trust itself inasmuch as a decision on the question as to whether a person can be a joint founder, cannot be made to rest merely upon the factum of contribution alone unless the surrounding and attendant circumstances proved in the case and subsequent conduct of parties warrant such a finding. Even as per the orders of the Assistant Commissioner,

¹ Appeal (civil) No. 5093 of 1998 decided on 07.05.2004

the opposite party No.3 has stepped into the shoes of his father, who alleged to have been recognized by the Deputy Commissioner of Endowments Hyderabad in O.A.No.12 of 1995, as 'Founder' of the temple. But it is to be seen that hereditary trusteeship is abolished by the Honourable Supreme Court. Merely because the opposite party No.3 is a son of recognized 'Founder' of the temple, he cannot be recognized as founder family member.

13. The evidence of PWs 2 to 3 and RW2 in their cross examination clearly discloses that the deity of Lakshmi Narasimha Swamy is a swayambhoo in the rock and not any idol installed and temple constructed there and in fact for swayambhoo temples the question of recognition of Founder Family does not arise by virtue of Explanation III of Section 17, which was incorporated in the Act by following the circular instructions No.40/97 in Rc.No.L/36330/97, dated 04.10.1997 and as per the said circular a founder should either construct or reconstruct the temple without the aid or contributions or otherwise received from any other persons or body including the public. Even in the case on hand, as per the evidence of PWs 2 and 3, the land where the temple lies belongs to one Kalluri Narasimha Rao family and not of Tirupathaiah family. Even as

per Ex.R10 i.e., notary attested copy of deposition of RW1 Nagaiah Temple EO in O.A.No.13 of 1995, the land on which temple constructed was donated by Kalluri Venkata Appa Rao. As per the averments of the counter filed by the opposite party No.3, the original pattedar of the temple situated land was Kalluri Ramchander Rao, who alienated the same to the founder M. Tirupathaiah through a gift exchange deed and all relevant documents filed in O.A.No.13/1995. But the opposite party No.3, who was examined as RW2 admitted in the cross examination that the idol is in a rock shape that was already existing in the land before the land was purchased by his father. When the deity was 'swayambhoo' (self manifest), the question of recognizing the father of RW2 as "founder" of the temple does not arise. On one hand, it is being claimed that the landed property was gifted by Kalluri Ramchander Rao through gift deed and on the other hand it is claimed that the father of RW2 Thirupathaiah has purchased the land from Kalluri Ramchander Rao. These two versions are contradictory to each other and thus, there is an ambiguity with regard to the mode of acquiring the disputed land by the father of the appellant herein.

14. When there is any dispute with regard to piece of a land, such dispute must be resolved by a competent civil Court. It is not even the case of the appellant that they are agitating about their rights in respect of disputed land in a competent civil court. Without any reliable, conclusive and cogent proof, the appellant cannot claim that the disputed belongs to his father. In fact, as discussed supra, a person would be declared as 'Founder' of the temple only if he finds/constructs a temple with own funds without collecting donations and not on public lands. But as per the averments of the counter of opposite party No.1, about sixty years back a big stone consisting of 6' x 15' fell from a hill with a big sound on the land and thus, the deity is 'swayambhoo' and thereby it cannot be said that temple was constructed or founded by the father of the opposite party No.3 by name M. Thirupathaiah with his own funds in his own land. The opposite party No.3/appellant being descendant of Tirupathaiah cannot claim to be recognized as member of founder family of subject temple due to bar in explanation III of Section 17 of the Act and as a consequence the appointment of opposite party No.3 as founder family trustee by the Assistant Commissioner in the year 2000 does not survive and the force of the said order ceases.

15. As per the above said circular, a person cannot be considered as a 'Founder' or a 'member of the founder's family' if he has merely donated or subscribed for the construction or reconstruction of the temple or institution or merely developed it. The appellant has not filed any material to show as to in whose name the land covered by the temple stands. The learned Tribunal in the impugned order has rightly observed that there is nothing to show Tirupathaiah was the owner for any extent of land much less to the area covered by the temple. The opposite party No.1 in his counter contended that an order was given by the Commissioner in his circular No.L/366330/1997, dated 04.10.1997 not to declare the founder family member to 'swayambhoo self manifest'. Thus, when the appellant is claiming to be recognized as founder family member of the subject temple merely because he is the son of Founder (Tirupathaiah), who is disqualified by virtue of circular No.L/366330/1997, dated 04.10.1997, the appellant cannot continue as member of founder family of subject temple by virtue of orders passed by the Assistant Commissioner of Endowments, Khammam on 11.08.2000.

16. An endowment under Hindu Law is a sum of money or property that is donated to an institution with the intention of

providing a permanent source of income and Endowments are an important aspect of Indian culture and tradition that provide a way for individuals and organizations to give back to society and promote social welfare. The Honourable Supreme Court in **Chenchu Rami Reddy and another v. Government of Andhra Pradesh and others**² observed as under:

“We cannot conclude without observing that property of such institutions or endowments must be jealously protected. It must be protected, for, a large segment of the community has beneficial interest in it (that is the raison d’etre of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard against all pitfalls.”

17. In view of the principle laid down in the above said decision, it can be observed that property of such institutions or endowments must be jealously protected to ensure that acts of a person, who is disqualified to be a founder family member, cannot be detrimental to the interests of the institution. Perhaps, that might be the reason as to why the learned Tribunal has not allowed the opposite party No.3 to continue from any earlier orders as member of founder’s family of subject temple, more particularly, in view of the disqualifications covered by explanation III of Section 17 of the Act, which was

² 1986 AIR 1158

incorporated following the circular instructions No.40/97 in Rc.No.L/36330/97, dated 04.10.1997.

18. A perusal of the operative portion of the impugned order, it discloses that the learned Tribunal disentitled the petitioners and opposite party No.3 to be recognized or even to be continued from any earlier orders as members of founders family of subject temple due to the disqualifications covered by explanation III of Section 17 of the Act, however, the learned Tribunal has considered the petitioner No.1 and opposite party No.3 as trustees of the subject temple in the non-hereditary Trust Board constituted under Section 15 of the Act by the Endowment Department from time to time subject to the qualifications and disqualifications. Though the learned Tribunal did not permit the appellant to continue as member of the founder family of the subject temple, the appellant was permitted to be considered as Trustee, perhaps, by considering the fact that the family members of the applicants and appellant/opposite party No.3 have been actively involved in the developmental activities of the subject temple. In these circumstances, this Court is of the considered view that the learned Tribunal has passed the impugned order in proper perspective and hence, interference of this Court is not

necessary. Accordingly, the Civil Miscellaneous Appeal is liable to be dismissed.

19. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

Pending Miscellaneous applications, if any, shall stand closed.

Date: 07.02.2024
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JUSTICE M.G.PRIYADARSINI