THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

Civil Miscellaneous Appeal No.853 OF 2019

JUDGMENT:

Aggrieved by the Order dated 07.06.2019 (hereinafter will be referred as 'impugned order') in O.A.No.3 of 2017 passed by the learned Telangana Endowments Tribunal at Hyderabad, the applicants filed the present Civil Miscellaneous Appeal.

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

3. The facts that lead the applicants to file the present appeal are as under:

a) The applicants filed an application under Section 87 (1)(e) of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter will be referred as 'the Act') to declare the applicants and their family members as hereditary pujaris and trustees of Sri Chenna Keshava Swamy Temple and Sri Anjaneya Swamy Temple situated at Kodair Village of Nagar Kurnool District (hereinafter will be referred as 'subject temple') with a right to receive the emoluments and

honorarium like DDNS and others attached to the temple and also for the annulments of the entries in the Section 43 register standing in the name of first respondent by substituting it with applicants and their ancestors names as hereditary Pujaris and trustees of the temple. The brief averments of the application are as under:

i) The subject temple is a very small, ancient temple in existence ever since Vijayanagar dynasty having the income below Rs.10,000/- per annum. The ancestors of the applicants were recognized as hereditary pujaris and trustees of the temple. Their great grandfather addressed a letter in the year 1939 to the Chief Engineer of Nizam Government under the capacity of Muthawali wherein, it is appraised that there is no revenue to the temple and it is very much necessary for reconstruction of the temple, which is in dilapidated condition and when there was no reply for that letter, it was renovated with his personal resources.

ii) The great grandfather of the applicants used to submit budget proposals every year pertaining to the temple and also used to receive letter from Tahsil Office of Kollapur for submitting budget proposals. To overcome the financial difficulties and for smooth functioning of the temple, the village

elders resolved that their grandfather has to do daily puja activities in the subject temple by following traditional rituals for which, it was decided to contribute some yield from their agricultural fields. They have also resolved that in case for any reason, no support is received from them even in such circumstances, their grandfather has to do pujapath and it should be continued.

iii) The great grandfather and his successors by overcoming the adverse situations, sustained the pujariship cum trusteeship of the subject temple. After obtaining permission from Tahsil Office, Nagarkurnool, the great grandfather of the applicants constructed a dwelling house at Kodair and he became a permanent resident of Kodair by continuing Pujapath and the maintenance of the temple. The grandfather of the applicants by name Nambi Balakrishnaiah in line of succession served as hereditary pujari cum trustee of the subject temple and the Endowments Department recognized him as such, and he used to receive the notices from the department for submission of income and expenditure of the temple. The grandfather of the applicants used to correspond with the Assistant Commissioner of Endowments in relation to the activities of the temple and he used to receive the

acknowledgment for such correspondence. The subject temple was published in the official gazette. At first instance, the great grandfather Pujari Lakshmaiah, thereafter his son Pujari Narasimha, thereafter his son Pujari Balakrishnaiah and thereafter his sons Pujari Lakshmana Swamy, Pujari Srinivasulu used to perform the pujapath in the subject temple and now in the line of succession, the applicants are doing archakatwamu in the subject temple in the capacity of hereditary pujaris cum trustee though, it is a small and less income temple.

iv) The pujariship and trusteeship of the subject temple at all the times vested in the hands of their ancestors and at present in them in line of succession. No one from outside their family ever performed or functioned as hereditary pujari cum trustee of the subject temple. The office of the Pujariship and trusteeship of the subject temple is hereditary in nature, which is vested in their family. Earlier, their ancestors were in the administration of the temple as hereditary pujaris cum trustees and at present they are doing the pujapath in the capacity of the hereditary pujaris cum trustees of the temple and the temple was and is exclusively in their hands since long.

v) In the year 2008, the 1st respondent without any manner of right and without informing them or to their family members got registered the subject temple U/s.43 of the Act, 30/87 and the 2nd respondent without following the procedure, registered it by holding the 1st respondent as hereditary trustee cum pujari of subject temple and a certificate was also issued to that effect. The 1st respondent on the strength of the certificate issued to him by the 2nd respondent, applied for DDNS (Dhoopa Deepa Naivedyam Scheme) and he managed to obtain. When the applicants came to know about it and being aggrieved, addressed a letter to 2nd respondent on 18.12.2008 by narrating the facts and till date, there is no response from the 2nd respondent.

vi) The applicants aggrieved with the silence of 2nd respondent, were constrained to address letters to the MRO, Kodair, RDO of Nagar Kurnool and also to the Commissioner of Endowments and when they did not get any response, then they further constrained to address a letter to the District Collector of Mahaboobnagar District and that authority was kind enough to direct the 2nd respondent to take necessary action and but 2nd respondent has not shown any reaction. An application was made to the 2nd respondent with a request to provide the

information relating to hereditary pujaris for the year 1985-86 and to that application, there was no response. Then, they approached the Village elders of Kodair Village and were constrained to put into their notice about the illegal activities of the 1st respondent. The Village Sarpanch was kind enough to declare them as hereditary pujaris of the subject temple in line of succession and the 1st respondent as village priest and he has got no connection to the subject temple.

vii) The Committee of the subject temple jointly addressed a letter to the Commissioner of Endowments on 10.08.2012 wherein, they declared them as original hereditary pujaris cum trustees of the subject temple in the line of succession a representation, dt.06.12.2012 was submitted to the Commissioner of Endowments about the illegal activities of 1st respondent, but, there is no response. That, despite their several representations to the various authorities, the 1st respondent is continuing his misdemeanor by receiving the DDNS amount every month though, he had no right of whatsoever nature, but, because of his close intimacy with the Endowments officials. Without there being any other alternative, the applicants were constrained to bring their problems to the notice of Village elders and to the temple committee. Then, a

meeting was held on 12.04 2013, wherein it was decided that, the DDNS amount shall be handed over to them. The 1st respondent accepted the proposal of the villagers and signed on a note paper in front of village elders but he failed to do so and then a representation was made to the 2nd respondent on 19.04.2014 vexed with the attitude of all the officials to 29.04.2014, but, there was no response.

viii) Having vexed with the attitude of all the officials to whom, they made representations, they as a last resort constrained to lodge a complaint before the Lokayukta and that authority passed an order on 23.08.2008 by giving direction to 2nd respondent for taking appropriate action after conducting the enquiry within the period of four (4) months. The 2nd respondent by issuing notices, called for details of the issue and in response to the notice received by them, they submitted all the required details along with the documents but, again the 2nd respondent has not responded. Then, they constrained to bring the issue to the notice of Vigilance Officer of Endowments Department and that authority issued a Memo to the 2nd respondent, but, for that memo also, the 2nd respondent has not responded. They also made an application to the 2nd respondent under the Right to Information Act for furnishing

the details of pujari of the subject temple along with other details, but, for that application also there is no response from the 2nd respondent. Aggrieved with the inaction of 2nd respondent, the applicants constrained to address a letter to Commissioner of Endowments on 21.06.2006, but, for that also there is no response. In the meanwhile, the Hon'ble Lokayukta passed a final order on 18.08.2016 wherein, a direction was given to approach the Endowments Authorities under the Act, 30/87 to seek redressal of the grievance.

ix) Having no other go, they constrained to file this application and even on the date of filing of the application, they are performing daily pujapath in the subject temple in the capacity of hereditary pujaris cum trustees and surprisingly, the 1st respondent receiving the amount under DDNS for every month from the Endowments Department, which shows the collusion in between the 1st and 2nd respondents. Needless to say, the 2nd respondent blatantly failed to discharge his statutory duties in the manner prescribed and thereby he caused irreparable injury. Thus, it is just and necessary to allow the application by granting the following reliefs.

b) The 1st respondent in his counter denied the case of the applicants, the material allegations made against him and sought dismissal of the application on the following grounds:

i) Sri Chenna Keshava Swamy Temple and Sri Anjaneya Swamy Temple are in existence from time immemorial and his ancestors used to work as pujaris in the Anjaneya Swamy Temple. In line of succession at present, he is working as pujari of Sri Anjaneya Swamy Temple. The ancestors of the applicants and their father worked as pujaris of Sri Chenna Keshava Swamy Temple which has got some lands for its maintenance and those lands are in the custody of applicants and their family members.

ii) There is no source of income to the Anjaneya Swamy Temple and it is maintained by the donations collected from the villagers. He was constrained to make an application for grant of honorarium for maintenance of Sri Anjaneya Swamy Temple from the Government under DDNS. The Government after conducting enquiry with the village elders, with the committee members and after perusing the actual state of condition of Sri Anjaneya Swamy Temple granted Rs.6,000/- per month for performing daily pujas and for the maintenance of the temple. The applicants are no way concerned with the maintenance of

Sri Anjaneya Swamy Temple and he is only entitled to receive the honororium under DDNS.

iii) The applicants with a grudge filed applications before various authorities for the stoppage and for the cancellation of honorarium, which he has been receiving under DDNS for Sri Anjaneya Swamy Temple. Those various authorities after conducting enquiries rejected the case of the applicants. The Hon'ble Lokayoukta before whom the applicants filed the complaint, directed the applicants to approach the Endowments Department and to apply for the sanction of amount under DDNS for the maintenance and performance of pujas in Sri Chenna Keshava Swamy Temple and the applicants instead of working out for their remedies before the Endowments Authorities under the Act, 30/87, they approached this Tribunal.

iv) The Sarpanch of Kodair Village and the temple committee of Sri Anjaneya Swamy Temple issued letters in his name with regard to the maintenance and performance of pujas in the Anjaneya Swamy Temple by himself and by his ancestors. There are no merits in the application and prayed to dismiss the application.

c) The respondent No.2 also sought dismissal of the application in counter for the following reasons:

i) The application is not maintainable before this Tribunal for want of jurisdiction of this Tribunal to entertain the application like that of applicants as such, the allotment of beneficiaries under DDNS can be decided only by the Commissioner of Endowments, who will issue a notification calling for the eligible candidates to apply. The authority during the enquiry finds any candidates eligible then, such candidate shall be given the benefit of that scheme. The applicants are seeking declaration as hereditary pujaris and trustees of the subject temple, whereas as per the Act, 30/87 and its allied rules, it is not possible. There is an express circular issued by the Commissioner of Endowments, wherein it is said that, a person cannot be considered as both i.e., as trustee and as hereditary pujari of any temple. The applicants are not having any official declarations from the competent authorities of the Endowments Department to declare them as hereditary pujaris cum trustees cum founder trustees of the subject temple.

ii) The Section 43 register was issued to the temple by following the due process and the procedure as laid down under the Act, 30/87. There was a notice to the general public calling

for objections and suggestions for the registration of the temple. As per the records, the applicants did not apply for getting the benefit under DDNS and they can make an application for that, whenever the Commissioner of Endowments notifies the same. The identification of a beneficiary under DDNS is outside the purview of this Tribunal and only the Commissioner of Endowments is the competent authority to identify the beneficiary. There are no merits in the application and finally prayed to dismiss the application.

d) On behalf of applicants, PWs 1 and 2 were examined and got marked Exs.A1 to A30 and on behalf of respondents, RW1 was examined but no documentary evidence was adduced. The learned Tribunal after considering the rival contentions, dismissed the application. Aggrieved by the same, the applicants have preferred the present appeal.

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

5. The first and foremost contention of the learned counsel for the applicants is that the statement of the learned Tribunal holding that as per the present Act, 30/1987, hereditary rights in Arhakas etc., under Section 34 of the Act has been abolished,

therefore, the question of now recognizing a person as hereditary Archakas under the present Act does not arise, is contrary to the findings of the High Court of Andhra Pradesh in **A.B.Seshadri v. State of Andhra Pradesh (Telangana and Andhra Pradesh)**[1] and **Swarna Gadhadhara Babu v. State of Andhra Pradesh (Telangana and Andhra Pradesh)**[2]. In the above said decisions, it was observed that the qualified members of those Archaka families which were continuing in Archakathwam service under the repealed Act, 1966, having been recognized thereunder, shall continue to have the right of Archakathwam. Thus, by virtue of the amended provisions, if entitled to the benefit, it is for them to take pleas as provided in the Act and the Rules made thereunder before the proper forum as per Section 34(3) of the Act. In **Swarna Gadhadhara Babu's case** (supra), the High Court for the composite State of Telangana and Andhra Pradesh observed as under:

> *"9. In this regard, it requires no repetition of Section 2(1) and Section 2(15) and the amended Section 34 sub section 3 referred supra, it is clearly laid down from Section 34(3) of the qualified members of Archaka families which were continuing under the repealed Act, 17/66 in the Archakathwam service having been so recognized thereunder shall continue to have the right of Archakathwam and it is crystal clear the abolition of hereditary Archaka rights u/sec. 34(1) of the Act, is revived once they were continuing by the time of the repeal of Act 17/66 under the repealed Act by the new Act in 1987 of respectively, later on not continued from the very wording supra of the amended Section 34(3) by the Act 30 of 2007, leave it apart from the very definition*

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[1] 2019 (1) ALT 235
[2] 2018 (3) ALT 738

of Section 2(15) of the hereditary office holder which includes Archaka, the succession to whose office devolves concerned, it is according to the Rule of succession laid down by the founder or according to usage and custom applicable to the institution or endowment or according to the law of succession for the time being in force. It is not a case of rule of succession allowed by the founder of the institution or endowment. Coming to the law of succession concerned, where Archakas herein are Hindus undisputedly governed by the Hindu Succession Act, 1956 and as per the very Section 8 of the Act r/w schedule-1 wife and daughters are the class-1 legal heirs for no sons to the rule of succession. It is not even the case of the respondents that the wife or even she is now no more as the case may be of Poorneshwara Rao at least wife-Saraswathamma among the two daughters one eldest by name Manikyavalli Parvatha Venkata Subbamma @ Baby mentioned as innocent and not even ascertained the petitioner's mother Swarna Seethamahalakshmi is eligible or not. However among the provisions covered by section 34(3) what it speaks is qualified members of those Archaka families irrespective of what is the definition of Archaka and hereditary office holder in Section 2(1) and (15) supra, she continued having eligibility. The maternal grandson known as Dowhitra cannot be disputed as family members of said Poorneshwara Rao. It is not even a case of said grandson of Poorneshwara Rao by name Swarna Gadhadhara Babu-the writ petitioner not qualified for continuing as Archaka. Undisputedly he is continuing from the death of Poorneshwara Rao died prior to the Act 30/87 came into force making a bequeath providing rule of succession and he is to be considered for all purposes as founder Archaka to his share concerned of the hereditary rights u/sec.2(15) and of the Act once continuing as Archaka even under Section 34(2) of the Act, despite abolition of hereditary Archaka rights, he is entitled to continue after Section 34(3) introduced by amended Act 32/2007 as hereditary Archaka by the rule of succession which includes for the bequeath is only to the member of the Archaka family that is to the maternal grandson who is the only eligible family member of said Poorneshwara Rao to continue as descendant of him in the line of succession including by testamentary for performing Archaka rights."

6. In view of the principle laid down in the above said decision, it is amply clear that though the hereditary rights have been abolished, an archaka is entitled to continue after Section 34(3) introduced by amended Act 32/2007 as hereditary Archaka by the rule of succession. Thus, the learned Tribunal ought not to have observed in the impugned that as hereditary

rights have been abolished, the question of now recognizing a person as hereditary Archakas under the present Act does not arise.

7. It is further contended that learned Tribunal at paragraph No.8 of page No.7 of the impugned judgment observed that Section 87 (1) of the Act, 30/1987 gives any power to decide the dispute in relation to declaring of a person as hereditary pujari and trustee of a religious endowment or institution but by contravening its own statement at paragraph No.4 of page No.13 observed as “that apart the Commissioner of Endowment is the proper and correct authority to identify the Hereditary Archaka cum trustee under the Act” and thereby created an ambiguity, which is question of law requires to be determined in the appeal. It is further contended that the learned Tribunal observed at paragraph No.8 of page 7 of the impugned judgment as “Even though, this Tribunal is not empowered U/s 87 of the Act, to declare the applicants as hereditary pujaries and trustees of the temple, this Tribunal in the interest of justice, inclined to make some emphasis over the dispute raised by the applicants in relation to their request of declaring them as the hereditary pujaries cum trustees of the temple”, which is a question of law on the ground of ouster of jurisdiction and the

validity/nullity of the order of the Tribunal in view of decisions in **Balvant N. Viswamitra v. Yadav Sadashi Mule**[3] and in **Prem Singh v. Birbal**[4].

8. In **Shri Dangeti Narasinga Rao v. Sri Venkateswara Swamy Temple**[5] the High Court for the State of Andhra Pradesh held as under:

> *"12. The main grievance of the appellant against the Order passed by the Deputy Commissioner is that the Order dated 24.05.2010 was passed after the constitution of the Tribunal without jurisdiction. For better appreciation, I reproduce the G.O.Ms.837, dated 13.08.2009.*
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> *13. G.O.Ms.No.837 dated 13.08.2009 issued by Revenue (Endowments Department), reads as under:*
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> *"In exercise of the powers conferred under section 162(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) the Government of Andhra Pradesh hereby constitute the A.P. Endowment Tribunal sitting at Hyderabad. The Tribunal shall have jurisdiction for the entire State of Andhra Pradesh for the determination of any disputes, question or the matter relating to a Charitable Institution, Dharmadayam, Religious Charity, Religious Endowments, Religious Institution or any Institution etc., as defined in the Act".*
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> *14. The said G.O. specifies the Notification shall be published in the Extraordinary issue of the Andhra Pradesh Gazette, dated 20.08.2009. As seen from Section 87 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 is substituted by Act No.33 of 2007 w.e.f. 03.01.2008. Before the amendment to Section 87 of the Act, it reads as under:*
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> *87. (1) The Deputy Commissioner 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*
>
> *a) whether an institution or endowment is a charitable institution or endowment;*

[3] 2008 (8) SCC 706
[4] 2006 AIR (SC) 3608
[5] Appeal Suit No.586 of 2010 decided on 14.06.2023

b) whether an institution or endowment is a religious institution or endowment;
c) whether any property is an endowment, and if so, whether it is a charitable endowment or a religious endowment;
d) whether any property is a specific endowment;
e) whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;
f) whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or
g) where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses.

(2) The Deputy Commissioner may, pending his decision under sub-section (1), pass such Order as he deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) Every decision or Order of the Deputy Commissioner on confirmation by the Commissioner under this section shall be published in the prescribed manner.

(4) The Deputy Commissioner may while recording his decision under sub-section (1) and pending implementation of such decision, pass such interim order as he may deems fit for safeguarding the interests of the institution or endowment and for preventing damage to or loss of or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment.

(5) Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner.

(6) The presumption in respect of matters covered by clauses (a), (b), (c), (d) and (e) in sub-section (f) is that the institution or the endowment is public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment as the case may be.

15. Section 87 of the Act is substituted by Act 33 of 2007, which reads as follows:

"87. Power of Endowments Tribunal to decide certain disputes and matters. - (1) 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__

(a) whether an institution or endowment is a charitable institution or endowment;
(b) whether an institution or endowment is a religious institution or endowment;
(c) whether any property is an endowment, and if so, whether it is a charitable endowment or a religious endowment;
(d) whether any property is a specific endowment;
(e) whether any person is entitled by custom or otherwise to any honor, 'emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;
(f) whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or
(g) where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of a religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses;
(h) Whether a person is a founder or a member of the family of the founder of an Institution or Endowment.

(2) The Endowments Tribunal may, pending its decision under subsection (1), pass such Order as it deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) The Endowments Tribunal may while recording its decision under subsection (1) and pending implementation of such decision, pass such interim Order as it may deem fit for safeguarding the interest of the institution or endowment and for preventing damage to or loss or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment.

(4) The presumption in respect of matters covered by Clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is a public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment, as the case may be.

> *(5) Notwithstanding anything contained in the above subsections, the Deputy Commissioner having jurisdiction shall continue to enquire into and decide the disputes referred to in sub-section (1) until the constitution of the Endowments Tribunal."*
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> *16. From the reading of the above provisions, it is explicit that by virtue of the amendment to Section 87 of the Act, the Deputy Commissioner is empowered to decide certain disputes and matters, whereas, after the amendment to Section 87 of the Act, the Endowment Tribunal is constituted. Section 87(5) amendment shows that the Deputy Commissioner having jurisdiction shall continue to enquire into and decide the disputes referred to in Sub Section (1) until the constitution of the Endowments Tribunal. When the Endowments Tribunal is constituted, the Deputy Commissioner is not supposed to decide the disputes. The impugned Order passed by the Deputy Commissioner shows that the impugned Order was passed after the constitution of the Endowments Tribunal. A reading of the impugned Order does not indicate the reasons for passing the Order after the constitution of the Endowments Tribunal. During the course of the hearing, learned counsel appearing for the Endowments has not given justifiable reasons to pass the impugned Order by the Deputy Commissioner after the constitution of the Endowments Tribunal. This Court views that the Deputy Commissioner is not empowered with the jurisdiction to decide the disputes after the constitution of the Endowments Tribunal. As such, without going into the merits of other contentions, the Order passed by the Deputy Commissioner is liable to be set aside."*

9. In view of the principle laid down above, the Assistant Commissioner or the Deputy Commissioner will have jurisdiction to decide the disputes until the constitution of the Endowments Tribunal. In the case on hand, by the date of filing the claim application, the Endowments Tribunal was constituted, as such, the learned Tribunal ought not to have observed in the impugned order that the Tribunal is not empowered to deal with case under Section 87 of the Act. In **M. Penchala Swamy and another v. The State of Andhra**

Pradesh and others[6] the High Court for the State of Andhra Pradesh observed that the issue concerning hereditary rights is cognizable by the Endowments Tribunal.

10. The learned Tribunal observed in the impugned order that if at all the applicants were recognized as such, under the Act, 17/66 then, the intention of legislature under Section 34 (3) would have been made applicable. In **Kum. Shashikala and four others v. Smt. Babita Sharma and three others**[7] this Court observed as under:

> *34(a). Thus in this Section, among sub Section (1) clauses (a)-(g), clauses (a)&(b) deal with nature of institution, clauses (c)&(d) deal with nature of property, clause (e) deals with personal entitlement if any of emoluments, honours or perks etc., clause (f) deals with combination of the above and clause (g) deals with any property or money given for the support of, or performance of any service or charity connected with, the institution or endowment is partly secular and partly religious and at what proportions and whereas clause (h) deals with enquiry into and to decide any dispute as to the question whether a person is a founder or a member from the family of the founder of an Institution or Endowment and it is not confined to those already recognized as such for such of the institutions existing by the time the Act 30/1987 came into force and not otherwise for any entitlement of any enquiry and decision in this regard. Thus, so far as in respect of an institution or endowment existing at the time of commencement of the Act,30/1987, by virtue of the amended Act 33/2007, from combined reading of Section 87(1)(h) and Section 17, the person who was recognized as hereditary trustee under the old Act 1966 or a member of his family recognized by the competent authority, is with in the meaning of Founder as per the Explanation I to Section 17(1) of the Act, though he was not but for his ancestor if any was the real founder and that does not mean those not recognized by any adjudicatory process earlier and even acting from any dispute later arisen cannot be decided from the literal wording of Section 17(1) Explanation I. In the other single judge expression of this High Court in A.V.Ranga Rao Vs. State of A.P , it was held that the person who was recognised as hereditary trustee under the Repealed Act 17/66 automatically comes within*

[6] 2022 AIR (Andhra Prades) 37
[7] 2018 (4) ALT 161

the definition of Founder and thus he is entitled to be appointed as one of the trustees as per the amended Act 33/2007 as per the Explanations I&II therein. In fact to understand fully this Founder concept, it is needful to refer the Sec.2 (15) & Sec.77 of the old Act,17/1966. Under Sec.77(1) of the old Act 17/1966, the Deputy Commissioner was conferred with jurisdiction to decide eleven types of disputes and among which the Sec.77(1)(c) empowers the Deputy Commissioner to decide whether trusteeship is hereditary or not in case of any dispute in that regard. If there is no dispute the question of approaching for deciding the same by the Deputy Commissioner does not arise and that does not mean those not recognized by adjudication not entitled to act as such much less to obtain any decision from any dispute in this regard. It is for the reason in such case, there is only recognition of hereditary trustee by entering in the book of Endowment or in the trust deed or the like. It is in fact clear for so concluding, from the meaning of hereditary trustee defined under Sec.2(15)of the old Act,17/1966. As per Sec.2(15) of the old Act,17/1966 Hereditary trustee means the trustee of a charitable or religious institution or endowment the succession to whose office devolves (i).according to the rule of succession laid down by the founder or (ii).according to usage and custom applicable to the institution or endowment or (iii).according to the law of succession for the time being in force as the case may be. Same is the meaning given by 2(16) of the Act 30/1987. From the above definition it is clear that, it is not always devolution of office of trustee of a religious or charitable institution by succession according to law of succession for the time being in force, as it can be even according to rule of succession laid down by the founder in the trust deed or some other document or book of endowment or records of endowment as to who have to act as hereditary trustees in future and in the absence of which it may be according to usage and custom applicable to the institution or endowment to regard such office as hereditary in nature and such trustee as hereditary trustee, leave about the proper way is according to the rules of succession. In fact, from the wording of the amended Explanation II to Section 17(1) of the Act Member of the family of the founder means children, grand children and so in agnatic line of succession for the time being in force and declared or recognized as such by the relevant appointing authority. The line of succession above referred arises only after the death of the person for claim by his agnatic lineal descendents as Members of Founders Family. The line of succession provided by the Act is only in agnatic line which is running contrary to the general rules of succession covered by the Hindu Succession Act and other personal statutory laws, leave about same even offending Articles 14 to 16 of the Constitution of India, though it is not the issue here for the present revision petitioner being daughter of the founder is in agnatic line descendent to the founder from the very claim to adjudicate the factual dispute for nothing in any manner to decide the claim from any bar of law to reject the application for adjudication in O.A.No.603 of 2012. It is because of what is discussed supra and further from the factum of once there is a hereditary trustee so recognised under the old Act 17/1966, he is founder within the meaning of the Explanation I to Section 17(1) of

the Act 30/87 amended by Acts 27/2002 & 33/2007 and a member of his(such a founder) family recognized by the competent authority under the Act is Founder Family Member and for anybody to claim even not already recognized before the Act 30/87 came into force, so to apply for recognition for no such bar from very wording of Section 87(1)(h) to prevail over the Section 17(1) particularly Explanation I for the purposive construction otherwise thereby required to read for all purposes by supplying the words including those who are entitled to be so recognized from the only conclusion on over all spectrum of the provisions and propositions discussed supra to read in the wording of Explanation I- of 'Founder' to mean (a) in respect of Institution or Endowments existing at the commencement of this Act, the person who was recognized as Hereditary Trustee under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 or a Member of his family recognized by the Competent Authority, including those who are entitled to be so recognized as the very proviso to it also clearly speaks that the founder or one of the members of the family of the founder, if qualified as prescribed shall be appointed as one of the trustee. [Same is substituted for trustees shall be from the family of the founder, if qualified by amended Act 27/2002 w.e.f. from 26.08.2002.]. In fact, the above proviso to sub-section (1) of Section 17 casts an obligation on the appointing authority to appoint founder and if founder is not alive among the recognized members of the founders family that is either one or more of the members of the family of the founder to be the trustees in the trust Board as also laid down by the Apex Court in Pannalal Bansilal Pitti supra.

34(b). Further, on the above concept from the scope of Sections 87(1)(h) r/w 15-19, after the amended Acts 27/2002 & 33/2007 to the Act,30/1987, as held by another expression of this Court in Andal Raghavan vs. Deputy Commissioner, Endowments Department, Kakinada at Para 10, that The declaration of a person as founder or member of the founders family under section 87(1)(h) of the Act by the Deputy Commissioner of Endowments or by any competent authority before coming into force of Section 87(1)(h), is altogether different from the appointment of a qualified founder or a qualified member of founders family as trustee under Sec.17(1) of the Act (see- G.Rajendranadh Goud vs. State of AP-2006(1)ALD705). Every founder or member of the founders family cannot be said to have an enforceable right for being appointed as a trustee or Chairman of Trust Board as a matter of course. Such person has to fulfill the qualifications prescribed in Section 18 of the Act, Rule 8 of the Rules, and should not incur any disqualifications under Section 19 of the Act. Further, even in a case where the number of applications received by the competent authority is equal to the number of trustees to be appointed, even then, no applicant can be said to have any right for appointment. The antecedents of all the applicants have to be verified by the subordinate officers and the verification report has a bearing on the exercise of the power by the competent authority. Therefore, unless and until the application is made by the person claiming to be founder or member of the founders family giving all the details in

Form No.II and unless and until the antecedents of such person are verified by the Verification Officer, such person cannot be appointed as a trustee. Rule 7 of the Rules clearly lays down that, competent authority shall scrutinize the applications along with the report of the Verifying Officer and pass orders appointing trustees. Therefore, the submission of the learned counsel for the petitioner that there is no necessity for the founder or member of the founders family to apply in Form No.II under Rule 5(1) of the Rules, after publication of notice in Form No.1, cannot be countenanced. If the same is accepted and a member of the founders family is appointed without there being an application, it would lead to number of complications besides showing up problems and difficulties in a case where there are more than one recognized member from the founders family. It no way speaks even of those not recognized as such already of the institutions in existence prior to the Act 30/1987 came into force cease to be so recognized or to adjudicate any dispute in relation thereto. Even another division bench expression of this Court in K.Girijakumari Vs. G.Rajendranath Goud , it was held that Member of the family of the founder of the Temple though got no right of claim as hereditary trustee, yet shall have a right in the trust board to be constituted as Chairman, unless disqualified otherwise as the management shall remains with the members of the family of the founder as laid down by the Apex Court in Pannalal supra. Further, in the case of Executive Officer, Group Temple, Dhulipudi Vs. D.S.Rao , referring to the decisions of the Apex Court in Pannalal supra and the division bench expression of this Court in K.Girijakumari Vs. G.Rajendranath Goud supra, it was held that a hereditary trustee, if qualified entitled to be appointed as a trustee in Board of trustees when constituted. When U/s 15 of the Act, a Board of Trustees is constituted in respect of an institution or endowment, the founder trustee or the hereditary trustee as the case may be should be one of the said members of the board and should be an honorary Chairperson of the said Board. The hereditary trustee has no right except of being appointed as a trustee in the board of trustees when constituted, subject to being qualified under the provisions of the Act (Sec.17-19). Furthermore, in the case of Govt. of A.P rep. by Commissioner of Endowments Vs. Rajandranath Goud and others , referring to the decisions of the Apex Court in Pannalal Bansilal Pitti supra, it was held that hereditary trustee, unless incurred any disqualification in terms of Sec.18/19 of the Act, is entitled to be appointed as a trustee in Board of trustees when constituted. However he is not entitled to even any honorarium much less other remuneration though earlier it was paying since such right stood abolished by Sec.144 of the Act 30/1987. From the above there is no need of recognition earlier and no bar to appoint as one of the trustees to head the trust board as its Chairman by a person if he belongs to the family of the founder, if founder is no more even, provided he/she is one of the lineal descendants of the founder in the line of succession to make a claim of entitled to be recognized and declared as Member of Founder Family of the temple as per Sections 15 to 20 r/w 87(1)(h) of the Act 30/87 amended by Acts 27/2002 & 33/2007, for bound to consider as Member of Founder Family for trusteeship as one

> *among others to the Trust Board of the temple being constituted u/s.15 of the Act, by the Endowments Department from time to time, subject to disqualifications u/s.19 of the Act as there is no any exemption of application of Sections-15-19 of the Act for Member of founder family to become Chairman of the board of trustees, ex-officio or otherwise. This Honble High Court also held in W.P.No.18719/2007 reported in 2008(2) ALD 123, that there is jurisdiction and power to question the illegal order of recognition even given, on having came to know of the same irrespective of the same was earlier not challenged. Way back the full bench of the Madras High Court in Gauranga Sahu Vs. Sudevi Matha that it is competent to decide when questioned by any heir of the founder of the shrine or other institution for any non- appointment in trusteeship from the failure to recognize him in the line of original trustee as an unending right.*
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> *35. Accordingly and in the result, by holding that the judgment of the High Court reported in Sri Vallabharayeswara Swamy Temple supra is hit by sub-silentio principle and there is no bar for any legal heir of the founder or member of the family of the founder of any institution even existing since prior to the Act 30/1987 came into force and even not recognized earlier to, to make a claim of entitlement to act as one of the trustees of the institution for any non-appointment in trusteeship or from the failure to recognize despite entitlement in the line of original trustee on such showing for same is as an unending right and the cause of actions for such claim accrue from time to time for the descendents in continuity of succession and as such, the order of the Endowments Tribunal in dismissing the application for rejection of the OA based on the claim of bar of law from the expression in Sri Vallabharayeswara Swamy Temple supra, is perfectly right and thereby the Civil Revision Petition is dismissed. No order as to costs."*

11. From the principle laid down in the above said decision, it is clear that, it is not always devolution of office of trustee of a religious or charitable institution by succession according to law of succession for the time being in force, as it can be even according to rule of succession laid down by the founder in the trust deed or some other document or book of endowment or records of endowment as to who have to act as hereditary trustees in future and in the absence of which, it may be

according to usage and custom applicable to the institution or endowment to regard such office as hereditary in nature and such trustee as hereditary trustee. It is further clear from the above said decision that there is no bar for any legal heir of the founder or member of the family of the founder of any institution even existing since prior to the Act 30/1987 came into force and even not recognized earlier to, to make a claim of entitlement to act as one of the trustees of the institution for any non-appointment in trusteeship or from the failure to recognize despite entitlement in the line of original trustee on such showing for same is as an unending right and the cause of actions for such claim accrue from time to time for the descendents in continuity of succession. It is not the case of the respondents that the applicants are disqualified from being declared as hereditary archakas of the subject temple.

12. The changed circumstances after filing of the present appeal are as under:

a) Sri A. Kranti Kumar Reddy, learned counsel for the respondent No.1 has submitted a memo stating that he was informed by the counsel before the learned Tribunal that respondent, who was unmarried, died on 10.01.2023. Along with the memo, copy of death certificate of respondent No.1 is

enclosed. A perusal of the death certificate discloses that respondent No.1 passed away on 10.01.2023.

b) The claimants have filed an application vide I.A.No.1 of 2022 with a prayer to receive copy of order dated 16.01.2020 issued by the Assistant Commissioner of Endowments, Mahaboobnagar as additional document and accordingly the said application was allowed on 09.06.2022. A perusal of the said document discloses that on the complaint filed by the claimants, Lokayuktha for AP Endowments issued orders dated 23.08.2014 duly directing the Commissioner, Endowments Department, Hyderabad for taking suitable action. Accordingly, the matter was referred to the Inspector, Endowments Department, Nagarkurnool division with directions to enquire into the matter and report. In pursuance of the above, the Inspector, Endowments Department, has reported that the Sarpanch has certified that forefathers of claimants are rendering service to Sri Chennakesava and Anjaneya Swamy Temple and that Sri Narsimha Sharma (respondent No.1 herein) has predicted that they are pujaries of subject temple and took certificate over all the sarpanch, which was certified as a grama purohits instead of the original archakas T.N. Pradeep Kumar family (claimant herein). The document further discloses that

T.N. Pradeep Kumar has not raised objection during the registration of the temple and not applied for DDNS and that their ancestors have mortgaged the temple kidmati inam land of sy.No.136 Ac.2.00 guntas to others and it was in the possession of the unauthorized persons. In the said document, the learned Assistant Commissioner requested the Commissioner, Endowments Department, Hyderabad to consider the plea of Sri T. N.Ramakrishna Murthy for sanction of DDNS duly treating the said plea as special case and issue suitable orders.

13. It is the specific case of the claimants that respondent No.1 without any manner of right and without informing them or to their family members got registered the subject temple U/s.43 of the Act, 30/87 and the respondent No.2 without following the procedure, registered it by holding the respondent No.1 as hereditary trustee cum pujari of subject temple. The respondent No.1 on the strength of the certificate issued to him by the respondent No.2, applied for DDNS (Dhoopa Deepa Naivedyam Scheme) and managed to obtain the same. But on the other hand, the respondent No.1 contended that he is working as pujari in Sri Anjaneya Swamy Temple and that the ancestors of the applicants and their father worked as pujaris of Sri Chenna Keshava Swamy Temple, which has got some lands

for its maintenance and those lands are in the custody of the applicants and their family members. Thus, the respondent No.1 is acceding to the contention of the applicants that they are eligible to be declared as hereditary archakas but only to the extent of Sri Chenna Keshava Swamy Temple. However, the learned Tribunal failed to consider this aspect. A perusal of the impugned order does not disclose as to who is extending services in Sri Chenna Keshava Swamy Temple i.e., either the applicants or any other person other than the applicants.

14. It is the contention of the applicantsthat respondent No.1 accepted on 12.04.2013 before the village elders for paying a monthly amount of Rs.2,500/- i.e., the amount which he is receiving from the Endowments Department under DDNS from 01.07.2013 to 31.12.2014 and in the meanwhile, the first applicant by using his good offices in the Endowments Department has to get the name of first respondent cancelled as a recipient of DDNS amount and on the event of his failure to get it cancelled then, from 01.01.2015 onwards the first respondent has to pay Rs.1,250/- to the first applicant, out of Rs.2,500/-, which he is receiving every month under DDNS and that in pursuance of resolution passed by the village elders the first respondent executed an undertaking in front of the

villagers. In support of the said contention, though the applicants relied on Ex.A17 resolution of the villagers and Ex.A18 alleged to be undertaking executed by first respondent, the learned Tribunal failed to consider the same by explaining that except self serving statements in their respective evidences in chief, the applicants failed to prove the contents of Ex.A18 by examining any of the village elders. But as can be seen from the record, the respondent No.1 categorically admitted in the counter that the ancestors of the applicants and their father worked as pujaris of Sri Chenna Keshava Swamy Temple and apart from that the resolution of the villagers is also filed by the applicants. The learned Tribunal in the impugned order observed that though it is not clearly pleaded by the first respondent in the counter, but, a careful reading of his counter, it is indicating that, he has got no objection if the Endowments Authorities sanction the DDNS amount to the applicants as Archakas of Sri Chenna Keshava Swamy Temple.

15. On one hand the learned Tribunal opined that the Tribunal has no jurisdiction to entertain the applicant and on the other hand expressed that the Commissioner of Endowments is the proper and correct authority to identify the hereditary archaka cum trustee under the Act. Further, the

learned Tribunal observed that a person cannot be appointed as archaka cum trustee and in such circumstances the learned Tribunal ought not to have observed that the Commissioner of Endowments is the proper and correct authority to identify the hereditary archaka cum trustee under the Act. In these circumstances, this Court is of the considered view that the learned Tribunal has passed the impugned order without considering the principles laid down in the above said decisions and also without considering the evidence in proper perspective and thereby there is need to interfere with the findings of the learned Tribunal. Furthermore, as stated supra, some changed circumstances have also taken place after passing of the impugned order, especially the demise of respondent No.1. Thus, it is just and appropriate to remand the matter to the learned Tribunal for considering the case afresh.

16. Accordingly, the Civil Miscellaneous Appeal is disposed of setting aside the impugned Order dated 07.06.2019 in O.A.No.3 of 2017 passed by the learned Telangana Endowments Tribunal at Hyderabad while remanding the matter to the learned Tribunal with a direction to consider the matter afresh by giving opportunity to both the sides to put forth their respective contentions. The learned Tribunal is also directed to consider

the changed circumstances that took place after passing of the impugned order while arriving to just and appropriate conclusion in pursuance of the provisions of the Act and also the settled principles of law in regard to subject matter. The learned Tribunal shall decide the matter in accordance with law uninfluenced by any of the comments or remarks made by this Court in this Judgment. There shall be no order as to costs.

Pending Miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

Date: 07.06.2024
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