

Pavani Sridhara Rao

Vs

Govt. of A.P. and others

Civil Appeal Nos. 661-62 of 1994

(S. P. Bharucha, S. B. Majmudar JJ)

29.02.1996

JUDGEMENT

S. B. MAJUMDAR J.

1. These two appeals by special leave have been moved by the common appellant against the judgment and order of the Division Bench of the Andhra Pradesh High Court by which the Division Bench dismissed one writ appeal and another writ petition moved by the appellant before the High Court. The Government of Andhra Pradesh; the Commissioner of Hindu Religious and Charitable Endowments, Hyderabad; the Deputy Commissioner of Endowments, Guntur and the Assistant Commissioner of Endowments, Ongole, Prakasam District, are the common respondents in these appeals. A few relevant facts are required to be noted to highlight the grievance of the appellant.

2. The appellant filed Writ Petition No. 531 of 1980 before the Andhra Pradesh High Court being aggrieved by Memorandum dated 30-12-1978 issued by Respondent No. 1, Government of Andhra Pradesh, represented by its Secretary, Revenue (Endowments) Department by which the order dated 30-5-1978 passed by Respondent No. 2, Commissioner of Hindu Religious and Charitable Endowments, was confirmed. That writ petition came to be dismissed by the learned single Judge. The appellant carried the matter in appeal which was dismissed by the impugned judgment. The facts leading to the said petition are that a saintly person named Tummala Venugopala Swamy came to the village of the appellant and expressed his desire to engage himself in peaceful meditation. The appellant gave him a site and constructed an Ashram in the land belonging to him being Survey No. 201 of Mogilicherla Village. The Ashram was constructed out of the donation received from one B. China Meera Setty. On 6-5-1976, Venugopala Swamy passed away. A Samadhi was constructed in the place of Ashram which became a centre for pilgrimage. This Ashram was known as Sri Dattatreya Swamy Mandiram. A total area of three acres of land was dedicated for the said purpose by the appellant.

3. Respondent No. 2 passed an order dated 30-5-1978 appointing an Executive Officer for this Mandiram. The appellant being aggrieved by the said order preferred a revision before the Government which was dismissed. The appellant then filed Writ Petition No. 531 of 1980 before the Andhra Pradesh High Court. As noted earlier, the learned single Judge dismissed the writ petition. Thereafter, the appellant filed a writ appeal before the Division Bench of the High Court. In the meantime, an order was passed in 1987 precisely on 29-6-1987 by Respondent No. 4, the Assistant Commissioner of Endowments, Ongole, after the dismissal of the writ petition by the learned single Judge. By the said order of 29-6-1987 which was a consequential order flowing from the earlier order of 30-5-1978 the Executive Officer of the temple was invited to immediately take over charge of the temple from the appellant de facto managing trustee. The appellant, therefore, challenged the

said order by filing the writ petition being Writ Petition No. 10016 of 1987. That was clubbed with the pending aforesaid writ appeal. Both the writ petition and the writ appeal were dismissed by the Division Bench of the High Court by its impugned judgment.

4. The Division Bench of the High Court in the impugned judgment took the view that the earlier order of 1978 continued to operate despite the repeal of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (in short '1966 Act') by the latter 1987 Act bearing the very same caption. The High Court did not consider the main grievance of the appellant against the order of 1978, namely, that it was passed without there being any basis for passing such an order. The Division bench of the High Court, as noted above, dismissed both the writ appeal and the writ petition.

5. Learned counsel for the appellant vehemently contended that leaving aside the question whether the earlier order of 1978 survived after the enactment of 1987 Act replacing the earlier Act, even for passing such order of 1978 there was no material with the respondent-authorities and the order was passed without application of mind and was null and void. It appears that this argument was not canvassed before the High Court firstly at the stage of writ petition before the learned single Judge nor in writ appeal. However, as this question goes to the root of the matter, we heard learned counsel for both the sides on this question. The impugned order at page 23 of the paper-book is dated 30-5-1978. It was passed with reference to a memorandum dated 14-4-1978 issued by the Assistant Commissioner, Endowments Department, Ongole. The impugned order was passed in the light of the aforesaid Memorandum dated 14-4-1978. The relevant recitals therein read as under :-

"In the circumstances reported by the Assistant Commissioner Endowments Department, Ongole, and in the interests of public service and for the better management of the Institution, the Executive Officer of Temples, Malakonda, is appointed as Manager in additional charge to Sri Dattatraya Mandiram, Mongilicherla (Village), Kandukur Tq., Prakasam District.

The Manager appointed is directed to take over complete charge of records, accounts, moveable and immovable properties etc., from the executive authorities of the Subject Institution."

A mere look at these recitals shows that only on the basis of Memorandum dated 14-4-1978 passed by the Assistant Commissioner, Endowments Department, Ongole, the said order was passed. We wanted to know from the learned counsel for the respondents whether there was anything on record to show that at the relevant time the temple was mismanaged or there was any reason for invoking the power under the 1966 Act for passing the impugned order. We also wanted to know whether the Memorandum dated 14-4-1978 issued from the Assistant Commissioner's Office was on record. He fairly stated that there was no such evidence on record. In this view of the matter, the conclusion is inevitable that the impugned order was passed without application of mind there being no factual basis for invoking the jurisdiction of the competent authority under Section 27 of the 1966 Act under which the impugned order came to be passed on 30-5-1978. It is true that at the relevant time the annual income of the temple was not less than Rs. 10,000/- and did not exceed Rs. 2 lakhs. It is also true that as per sub-section 2(a) of Section 27 of the 1966 Act, it was provided that in case of any charitable or religious institution or endowment, whose annual income was not less than Rs. 10,000/- but did not exceed Rs. 2 lakhs, the

Commissioner could appoint an Executive Officer for discharging the duties of such institution or endowment for exercising the powers and discharging the duties conferred on him by or under that Act. However, that power had to be exercised on relevant data and on necessary facts and material. It could not be exercised just off hand without there being any necessity for appointing an Executive Officer for the temple in public interest. Nothing could be pointed out from the record of this case by the learned counsel for the respondents as to why it was in the interest of public and for better management of the institution, that an Executive Officer was to be appointed in 1978. Only on this short ground these appeals are required to be allowed. The impugned order dated 30-5-1978 will stand quashed and set aside. We do not express any opinion on the finding of the High Court that the said order remained operative even after the 1987 Act. We keep that question open. So far as the subsequent order dated 29-6-1987 is concerned, a mere look at the said order shows that it was solely based on the order dated 30-5-1978 and was passed consequent on the dismissal of the writ petition by the learned single Judge of the High Court on 18-2-1987. It is not an independent order issued under the 1987 Act. Once the main order of 30-5-1978 fails, the consequential order necessarily must give way and must also fall with it.

6. In the result, these appeals are allowed. Both the impugned orders i. e. order dated 30-5-1978 issued by Respondent No. 2 and the order dated 29-6-1987 issued by Respondent No. 4 are quashed and set aside. The common orders of the Division Bench of the High Court are set aside. Writ Appeal No. 456 of 1987 and Writ Petition No. 10016 of 1987 will stand allowed.

7. However, we may note one contention canvassed by learned counsel for the respondents. He submitted that by subsequent order dated 29-3-1979, Respondent No. 3, Deputy Commissioner, Endowments Department, Guntur, had appointed the appellant as hereditary trustee of the Ashram, that the said order did not survive after the 1987 Act as office of the hereditary trustee was abolished by this Act and that the 1987 Act was upheld by this Court in the case of Pannalal Bansilal v. State of Andhra Pradesh, 1996 (1) Scale 405 : (1996 AIR SCW 507). In our view this aspect is not much relevant at this stage. We are concerned here with the legality of the 1978 order. Even if the office of hereditary trustee was abolished by the 1987 Act, the same could not retrospectively validate the 1978 order. It would of course be open to the respondents to pass appropriate order under the 1987 Act in accordance with law, so far as the functioning of the present temple is concerned. Exercise of that power on the part of the respondents will not in any way stand affected by the present proceedings and the decision rendered by us herein. If and when such an order is passed under the 1987 Act, it will equally be open to the appellant to challenge it in accordance with law.

8. Subject to the aforesaid clarifications, these appeals are allowed. In the facts and circumstances of the case, there will be no order as to costs throughout.

Appeals allowed.