

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION No.14910/2021

C/W

WRIT PETITION No.6956/2022

IN WP No.14910/2021

BETWEEN:

- 1 . UMMATTURU URKATHESHWARI
AMMANAVARA DEVASTHANA
MANDALI, REP. BY ITS PRESIDENT,
SRI S. GURUMALLAPPA @
GOWDIKE GURUMALLAPPA,
AGED ABOUT 80 YEARS,
UMMATTURU VILLAGE,
SANTHEMARAHALLI HOBLI,
CHAMARAJANAGARA TALUK-571 313.
- 2 . SRI S. GURUMALLAPPA @
GOWDIKE GURUMALLAPPA,
AGED ABOUT 80 YEARS,
UMMATTURU VILLAGE,
SANTHEMARAHALLI HOBLI,
CHAMARAJANAGARA TALUK-571 313.

...PETITIONERS

(BY SRI K. CHANDRANATH ARIGA, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA,
REP BY ITS SECRETARY,

DEPARTMENT OF REVENUE,
VIKASA SOUDHA,
DR. B.R. AMBEDKAR ROAD,
BENGALURU-01.

2. THE TAHASILDAR,
CHAMARAJANAGARA TALUK,
CHAMARAJANAGARA - 571 313.

...RESPONDENTS

(BY SRI BASAVARAJ GODACHI, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE DIRECTIONS TO THE TAHSILDAR TO HANDOVER THE COLLECTION FROM HUNDI AMOUNT AS PER THE DIRECTIONS PASSED BY THIS HON'BLE COURT IN WP.No.21934/2016 TO THE PETITIONERS HEREIN

IN WP No.6956/2022

BETWEEN:

- 1 . UMMATHURU URUKATESHWARI
AMMANAVARA TEMPLE,
REGISTERED TRUST,
REP. BY ITS ADYAKSHA,
SRI S. GURUMALLAPPA,
UMMATTURU VILLAGE,
SANTHEMARAHALLI HOBLI,
CHAMARAJANAGARA TALUK-571313.
- 2 . SRI S. GURUMALLAPPA,
AGED ABOUT 81 YEARS,
ADHYAKSHA,
UMMATHURU URUKATESHWARI
AMMANAVARA TEMPLE,
UMMATTURU VILLAGE,
SANTHEMARAHALLI HOBLI,
CHAMARAJANAGARA TALUK-571313.

...PETITIONERS

(BY SRI K. CHANDRANATH ARIGA, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA,
REP. BY PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE,
(RELIGIOUS CHARITABLE ENDOWMENTS
DEPARTMENT), M. S. BUILDING,
BENGALURU-01.
- 2 . THE COMMISSIONER,
(RELIGIOUS CHARITABLE ENDOWMENTS
DEPARTMENT) 4TH FLOOR,
MINTO SRI ANJANEYA BHAVANA,
A. V. ROAD, CHAMARAJAPET,
BENGALURU-560018.
- 3 . THE DEPUTY COMMISSIONER,
CHAMARAJANAGARA DISTRICT
CHAMARAJANAGARA-571313.
- 4 . THE TAHASILDAR,
CHAMARAJANAGARA TALUK,
CHAMARAJANAGARA-571313.
- 5 . JAYASHANKAR,
S/O BASAVANNA,
AGE MAJOR,
UMMATTURU VILLAGE,
CHAMARAJANAGARA TALUK,
CHAMARAJANAGARA-571313.
6. SRI REVANNA,
S/O GURU MALLAPPA,
AGED ABOUT 59 YEARS,
RESIDING AT MEGALA BEEDHI,
UMMATHUR,
CHAMARAJANAGAR - 571316.
7. SRI SWAMY,
S/O SIDDAPPA,
AGED ABOUT 56 YEARS,
RESIDING AT 150, TERINA BEEDHI,
UMMATHUR, CHAMARAJANAGAR-571316.

8. SRI KUMAR R.,
S/O RANGASWAMY NAYAKA,
AGED ABOUT 33 YEARS,
RESIDING AT No.713,
NAYAKAS STREET,
UMMATHUR,
CHAMARAJANAGAR-571316.
9. SRI PUTTASWAMY S.,
S/O SANNAIAH,
AGED ABOUT 51 YEARS,
RESIDING AT No.1287,
AMBEDKAR BADAVANE,
UMMATHUR,
CHAMARAJANAGAR - 571316.
10. SRI RAMAIAH,
S/O KURI SIDDAIAH,
AGED ABOUT 69 YEARS,
RESIDING AT AMBEDKAR BADAVANE,
UMMATHUR,
CHAMARAJANAGAR - 571316.
11. SRI PUTTASWAMY,
S/O MADHA SHETTY,
AGED ABOUT 46 YEARS,
RESIDING AT No.81,
K.B. MODALLA,
UMMATHUR,
CHAMARAJANAGAR - 571316.
12. SRI PRABHUSWAMY S.,
S/O SHIVANNA L.,
AGED ABOUT 60 YEARS,
RESIDING AT No.465,
NANJANAGUDU ROAD,
UMMATHUR,
CHAMARAJANAGAR - 571316.
13. SRI MADEVANAIKA,
S/O GURUSIDDANAYAKA,
AGED ABOUT 53 YEARS,
RESIDING AT NAYAKA STREET,

SANTHEMARALLI HOBLI,
UMMATHUR,
CHAMARAJANAGAR - 571316.

...RESPONDENTS

(BY SRI BASAVARAJ GODACHI, AGA FOR R1 TO R4;
SRI RAVISHANKAR S. ADVOCATE FOR R5 TO R13)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE ORDER DATED 10.03.2022 PASSED BY THE PRINCIPAL SECRETARY, REVENUE (RELIGIOUS AND CHARITABLE ENDOWMENT DEPARTMENT), M.S. BUILDING, BANGALORE BEARING No.Kum.E.01.Mu.Aa.Bi.2022 VIDE ANNEXURE-A IS ILLEGAL AND VOID.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.12.2023, THIS DAY THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Writ Petition No.6956/2022 is preferred challenging to the order dated 10.03.2022 passed by respondent No.1 bearing No.Kum.E.01.Mu.Aa.Bi.2022, at Annexure-A.

Writ Petition No.14910/2021 is preferred seeking direction to respondent No.2-Tahsildar to implement the direction issued by this Court in W.P.No.21934/2016, dated 09.11.2017.

2. Brief facts;

Learned counsel for the petitioners in the course of hearing has filed synopsis referring the disputes in relation to petitioner No.1 - Trust from 1946 till date.

The factual aspects relevant for adjudication of correctness of Annexure-A in W.P.No.6956/2022 are referred for convenience.

3. Petitioner No.1 - Trust is registered through registered deed dated 24.11.2014. Sri Puttanna and others filed an application under Section 92(A) of CPC in Mis.No.9/2014 seeking permission to file a suit against petitioner No.1. The Principal District and Sessions Judge, Chamarajanagara, rejected the said application by order dated 29.02.2016. Aggrieved by the order dated 29.02.2016, MFA No.1827/2016 was preferred before this Court. The appeal came to be dismissed as withdrawn with liberty to initiate such other proceedings, in accordance with law.

4. Petitioners preferred W.P.No.21934/2016 seeking direction to respondent No.2-Tahsildar to remove the seal and to open the lock of the Temple to manage the affairs of Temple except Hundi in view of formation of the Trust.

5. This Court by order dated 09.11.2017 directed the Tahsildar to handover the key of the Temple and to arrange for Darshan as per the custom that was being followed.

6. The residents of Ummathuru Village preferred Public Interest Litigation W.P.No.2037/2020 seeking direction to respondent No.3-Assistant Commissioner, Kollegal Sub-Division, Kollegal, Chamarajanagara District, to take management of petitioner No.1-Temple. The Hon'ble Division Bench of this Court, by order dated 18.02.2021, considering the statement made by the State Government that proceedings under Section 43 of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 (hereinafter referred as 'Act' for short), has been initiated by issuance of show cause notice, disposed of the

writ petition directing the State Government to ensure that the proceedings in terms of Section 43 of the Act is concluded and appropriate decision is taken in accordance with law within a reasonable time.

7. Respondent No.2-Commissioner issued show cause notice at Annexure-F, dated 06.02.2021 in exercise of powers under Section 43 for the purpose of Section 42 of the Act. Further issued notice under Section 43(6) of the Act to conduct enquiry and to submit a report by letter dated 08.11.2021, Annexure-H. Petitioner No.1 filed detailed objections at Annexure-G to the show cause notice on 06.09.2021. Further written submission was filed on 09.09.2021. Respondent No.3 submitted report to respondent No.2 at Annexure-B, dated 15.09.2021 recommending declaration of petitioner No.1 institution to be declared institution under Section 42 of the Act. Respondent No.1 on the recommendation of respondent No.2, by order dated 10.03.2022 declared petitioner No.1

institution as declared institution under Chapter VIII of the Act.

Rival contentions

8. Sri K Chandranath Ariga, learned counsel for the petitioners submits that recommendation by respondent No.3 by report dated 15.09.2021 to declare petitioner No.1 institution as declared institution under Chapter VIII of the Act is in violation of the procedure prescribed under Section 43 of the Act. Respondent No.2 has not appointed or authorized any officer sub-ordinate to him to hold any enquiry into the objections. Section 43(7) of the Act mandates the Commissioner considering the enquiry report submitted under Section 43(6) to report to the State Government to declare such institution to be subject to the provisions of this Chapter. In view of no enquiry officer being appointed, report submitted by the Commissioner is in contravention of the procedure contemplated under Section 43 of the Act. Consequently, the declaration under Section 42 of the Act is void.

9. Learned counsel further submits that the findings recorded by respondent No.3 are contradictory. Respondent No.3 has rightly arrived at a conclusion that there was no dispute regarding administration of the temple from 1952-53 to 2014. The finding of respondent No.3 that the dispute has arisen after creation of Trust consisting of 15 Trustees during 2014 and creation of Trust is doubtful, is without any basis. The reasons assigned in the report by respondent No.3 to declare the temple as declared institution under Section 42 of the Act would not fall within the ambit of mismanagement as required under Sections 42 and 43 of the Act. On the above submissions prays to quash Annexure-A declaring the Temple as declared institution under Section 42 of the Act.

10. Sri Ravishankar, learned counsel appearing for respondent Nos.5 to 13 submits that while passing the order of declaration under Section 42 of the Act, it is not necessary to record any satisfaction and report of the Commissioner in terms of Section 43(7) is sufficient. No

specific procedure is followed for conducting enquiry under Section 43(6) of the Act. The Trust has no right to administer the Temple. The report of respondent No.3 is justified. On the above submissions, prays to dismiss the writ petition.

11. Learned Additional Government Advocate appearing for respondent Nos.1 to 4 submits that the reasons assigned at paragraphs 4 to 9 of the report of the Deputy Commissioner at Annexure-B would constitute mismanagement to attract Section 43 of the Act. On the above submissions justifies the impugned order.

12. Heard learned counsels for the petitioners, respondent Nos.5 to 13 and learned Additional Government Advocate for respondent Nos.1 to 4.

13. Respondent No.2 has issued show cause notice at Annexure-F under Section 43(1) of the Act. The petitioners have preferred objections and written submissions at Annexures-G and G1. Respondent No.3 is

the authorized officer to conduct enquiry in to the objections which is in compliance of Section 43(6) of the Act at Annexure-H. Respondent No.3 has submitted report on 15.09.2021, Annexure-B. Respondent No.2 in terms of Section 43(7) of the Act has submitted a report to the Government recommending declaration of petitioner No.1 as declared institution under Section 42 of the Act. Respondent No.1 acting on the recommendation of respondent No.2 has declared petitioner No.1 as declared institution under Section 42 of the Act. In view of the above, the procedure contemplated under Section 43 of the Act has been followed. In the circumstance, the contention of the petitioners that procedure under Section 43 of the Act has not been followed cannot be accepted and the same is rejected.

14. Section 42 of the Act mandates the State Government to declare an institution under Chapter-VIII of the Act on being satisfied with the report of the Commissioner under Section 43 of the Act. As seen from

the impugned order at Annexure-A, respondent No.1 except reiterating the conclusion arrived at by the enquiry officer i.e. respondent No.3 and except making a reference to the extent that recommendation of the Commissioner has been thoroughly examined, no satisfaction has been recorded on the report of the Commissioner submitted under Section 43 of the Act to declare the institution under Chapter VIII of the Act. On the basis of report of respondent No.3 and recommendation of respondent No.2, respondent No.1 has to record its satisfaction to arrive at a conclusion for the purpose of Section 42 of the Act. Mere reference to enquiry report of respondent No.3 and recommendation of respondent No.2 and concluding under Section 42 of the Act is only on the borrowed opinion. The order declaring the institution under Chapter VIII by respondent No.1 is without recording satisfaction under Section 42 of the Act and without application of mind. For the aforesaid reasons, the impugned order at Annexure-A cannot be sustained.

15. Respondent No.3 in his enquiry report has referred to various aspects with regard to litigations between various parties from 1944-1945 to 1952- 53 and upto 2014. The enquiry report further places undisputed facts upto 2014. There was no dispute regarding the management of the Temple. The dispute has arisen on creation of Trust in 2014 consisting of 15 trustees. This conclusion is without any basis. Respondent No.3 has not recorded any finding as to how the creation of Trust after lapse of 69 years results in mismanagement in the temple. In the same report, contradicting all other reasons, respondent No.3 records a finding that there is religious peace and harmony being maintained while conducting Ummathuru Sri Urkatheshwari Ammanavara Utsav, consisting of 19 communities. The above finding by the enquiry officer is an appreciation of the peace and harmony being maintained by the residents of the village while performing jatra activities.

16. The entire dispute has arisen due to the complaint lodged by respondent Nos.5 to 13 with reference to mismanagement of the Temple by the Trust. The Trust Deed at Annexure-J depicts it as a Public Charitable Trust having objects of various public charitable activities at large. The total number of trustees declared is 15 in number. If respondent Nos.5 to 13 have any dispute against the Trust, Section 92 of CPC provides the aggrieved person to institute suit before the Principal Civil Court or original jurisdiction within the local limits of jurisdiction where the Trust is situated.

17. The findings recorded by respondent No.3 that disputes have arisen after the Trust coming into existence in the year 2014, is without any basis. It is not open to respondent No.3 to record any finding on the correctness of the manner in which the Trust has been created, its composition and activities when the same is registered and remedy to redress grievance is provided under Section 92 of CPC.

18. Respondent Nos.5 to 13 have statutory remedy under Section 92 of CPC to approach competent Civil Court for redressal of their grievance in the manner in which the Trust has been created and the alleged breach of objects of the Trust, if any.

19. The contention of the petitioner that in view of Section 78 of the Act read with Sub-section (2) of Section 92 of CPC, suit under Sub-section (1) of Section 92 of CPC is not maintainable, is not correct. Section 78 of the Act excludes applicability of Religious Endowment Act, 1863 to institutions governed under 1997 Act. Similarly, the bar of civil suit under Section 92(2) of CPC is in respect of institutions governed by the Religious Endowment Act, 1863. In the present case, the proceedings have been instituted under Section 43 of the 1997 Act and Section 92 of CPC is applicable.

20. For the aforesaid discussions, this Court is of the view that the action of respondent Nos.1 to 3 is beyond

the scope of Section 43 of the Act. Consequently, the impugned order under Section 42 of the Act is without jurisdiction and unsustainable. Hence, the following;

Order

- i) W.P.No.6956/2022 is allowed.
- ii) The impugned order dated 10.03.2022 passed by respondent No.1 at Annexure A bearing No.Kum.E.01.Mu.Aa.Bi.2022 is quashed.
- iii) Respondent Nos.5 to 13 are at liberty to initiate proceedings in terms of Section 92 of CPC before the competent court, in accordance with law.
- iv) In view of order dated 10.03.2022 passed by respondent No.1 under Section 42 of the Act being quashed, W.P.No.14910/2021 is allowed directing the respondents to handover the key, accounts authorization to operate the bank account and such other acts in relation to

Ummathuru Sri Urkatheshwari Ammanavara
Temple to petitioner No.1-Trust.

v) No order as to costs.

**Sd/-
JUDGE**

MV