

CASE NO.:
Appeal (civil) 1560 of 1997

PETITIONER:
TEKI VENKATA RATNAM & ORS.

Vs.

RESPONDENT:
DY. COMMISSIONER, ENDOWMENT AND ORS.

DATE OF JUDGMENT: 07/08/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil, J.

In this appeal, in the light of the contentions raised and submissions made, the following question arises for consideration and decision

Whether the Deputy Commissioner of Endowments has power to enquire and decide any dispute whether a temple is a public temple or a private one under Section 87 of Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987?

In brief, the facts leading to the filing of this appeal are: It appears, a notice was issued by the Inspector of Endowments on 8.10.1975 to the Executive Officer of Shri Panduranga Vitthal Swami temple, Chilakalapudi to register the said temple under Sections 38 & 39 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short 'the 1966 Act'). Challenging the same, W.P. No. 5480 of 1976 was filed. The said writ petition was disposed of on 24.11.1976 placing on record the submission of the learned counsel for the petitioner that the petitioner had been advised to raise a dispute before the Deputy Commissioner under Section 77 of the 1966 Act to contend that the temple did not fall within the purview of the said Act, being a private one. However, later the petitioner filed a writ appeal against the order made in the aforementioned writ petition. The writ appeal was dismissed, noticing the statement made by the learned counsel in the writ petition as stated above but granted six weeks time to the petitioner to take steps as advised. The petitioner did not file application under Section 77 of the 1966 Act. While the matter stood thus, the Assistant Commissioner, by his order dated 14.11.1977 appointed the Inspector of Endowments, Machhlipatnam as the Chief Festival Officer for Kartika Shudha Ekadashi from 20.11.1977 to 26.11.1977. In the R.P. No. 168 of 1977, the Joint Commissioner of Endowments, Hyderabad, set aside the said order on the ground that the order by the District Court, Krishna, in O.P. No. 1 of 1940 declaring the temple as private temple, was in

force and as such Assistant Commissioner could not have passed the order appointing Inspector of Endowments as the Festival Officer, while reserving liberty to the parties to move the Deputy Commissioner under Section 77 of the 1966 Act for declaration that the temple is a public in view of the changed circumstances. Thereafter, a notice was issued in O.A. No. 1 of 1987 under Section 87 (wrongly quoting as under Section 77 of the 1966 Act) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the 1987 Act') to decide whether the said temple was a public temple or not. The appellants and some others challenged the very jurisdiction of the Deputy Commissioner to decide such a question. However, the Deputy Commissioner by his order dated 20.07.1987 held that he had jurisdiction to do so under Section 87 of the 1987 Act. Assailing the said order, writ petition No. 10824 of 1987 was filed. Before a learned Single Judge, it was urged that under Section 77 of the 1966 Act there was no power to enquire and decide whether a temple was a public temple or a private one and that as on the date of the issue of the impugned notice, 1966 Act had been repealed. Repelling the said submission, the respondent pointed out that since the 1987 Act had come into force by then, under Section 87 of the said Act, the Deputy Commissioner was competent to hold enquiry and decide the question. The learned Single Judge, accepting the submission made by the respondent, dismissed the writ petition holding that the Deputy Commissioner had jurisdiction to decide as to whether the temple was a public temple or a private one. The appellants filed Writ Appeal No. 89 of 1994 questioning the validity and correctness of the said order. The Division Bench of the High court, after noticing in sufficient detail succinctly stated about the previous litigation of more than two decades and after considering the respective contentions, elaborately referring to the provisions of the 1966 Act and 1987 Act giving the historical background, by detailed order dismissed the appeal. Hence this appeal.

Before us, the learned counsel for the appellants reiterated the very same submissions, which appear to have been made before the High Court. The emphasis of his argument was on the point that the Deputy Commissioner has no jurisdiction to determine the question whether a temple is a public temple or a private one. According to him, the Deputy Commissioner has power and jurisdiction only as to the questions enumerated in clauses (a) to (g) of sub-section 1 of Section 87. He further submitted that as per Section 1(3) of the Act it does not apply to a private temple; when the Act itself does not apply to a private temple, the Deputy Commissioner could neither enquire into nor decide whether the temple in question is a private temple or not. He made one more subsidiary submission that in the light of the decree passed by the District Court as early as in 1940, it was not open to the Deputy Commissioner to invalidate or override it and pass order under Section 87; according to him, the said decree passed by the Deputy Commissioner operated as *res judicata*.

The learned counsel for the contesting respondent made submissions supporting the impugned judgment and order. In addition, he drew our attention to Section 160 of the 1987 Act to state that it has over-riding effect notwithstanding the decree passed by District Court in O.P. No. 1 of 1940.

We have carefully examined the respective submissions.

At the outset, it must be stated that it appears the Deputy Commissioner issued notice on 6.6.1987 under Section 77 of the 1966 Act by oversight as by then that Act had been repealed by

the present Act of 1987 and which had come into force on 28.5.1987. As rightly noticed by the Division Bench of the High Court, the said notice should be construed as one issued under Section 87 of the 1987 Act; mere wrong quoting of a statutory provision did not prejudice the case of the appellants. In this Court also, no argument was made on behalf of the appellants in this regard and appropriately so in our opinion. In order to appreciate the arguments of the learned counsel for the parties, some of the relevant provisions of the 1987 Act are to be noticed. It is evident from the Preamble of the Act that it is to consolidate and amend the law relating to the administration and governance of charitable and Hindu religious institutions and endowments in the State of Andhra Pradesh. Section 1(3) of the Act makes the Act applicable to all public charitable institutions and endowments, whether registered or not, other than wakfs and it also applies to all Hindu public religious institutions and endowments whether registered or not in accordance with the provisions of the Act. Section 2(23) of the Act defines 'religious institutions' means a math, temple or specific endowment and includes a Brindavan, samadhi or any other institution established or maintained for a religious purpose. Under section 2(27) of the Act temple is defined: -

2(27) 'Temple means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship and includes sub-shrines, utsavas mandapas, tanks and other necessary appurtenant structures and land;

Explanation I:- a place of worship where the public or a section thereto have unrestricted access or declared as a private place of worship by court or other authority but notwithstanding any such declaration, public or a section thereof has unrestricted access to such place and includes a temple which is maintained within the residential premises, if offerings or gifts are received by the person managing the temple from the public or a section thereof at the time of worship or other religious function shall be deemed to be a temple.

Section 87 of the Act in Chapter XII relating to enquiries, to the extent it is relevant for the present purpose reads :-

87. Power of Deputy Commissioner to decide certain disputes and matters:- (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;

(b) whether an institution or endowment is a religious institution or endowment;

(c)

(d)

(e)

(f)

(g)

(2)

(3)

(4)

(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 (1) 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.

Section 160 states as follows: -

160. Overriding effect of the Act: - (1) Notwithstanding any compromise, agreement, scheme, judgment, decree or order of a Court, Tribunal or other authority or any custom or usage governing any charitable or religious institution or endowment of Tirumala Tirupathi Devasthanams, the provisions of this Act shall with effect on and from, the date of the commencement of this Act, prevail in so far as they relate to the matters governed by the corresponding provisions in any such compromise, agreement, scheme, judgment, decree or order or any custom or usage and such corresponding provision shall thereafter have no effect.

(2)

Section 1(3)(b), Section 2(23), Sections 43 & 44 of the 1987 Act correspond to Sections 1(3)(b), 2(22), 38 & 39 of the 1966 Act respectively. Section 87 of 1987 Act corresponds to Section 77 of the 1966 Act. Sub-section (5) & (6) already extracted above are added to Section 87 of the Act. Under Section 87(1) of the Act, the Deputy Commissioner having jurisdiction shall have the power to enquire into and decide after giving notice to the person concerned, any dispute as to the question (a) whether an institution or endowment is a charitable institution or endowment; and (b) whether an institution or endowment is a religious institution or endowment; besides other disputes covered by clauses (c) to (g). It is clear from the Preamble and provisions of the 1987 Act that it

applies inter alia to all Hindu religious institutions or endowments including public temples. When a dispute arises as to whether an institution is a religious institution or put it straight for the present purpose, whether a temple is a public or a private temple, under Section 87 looking to the definitions contained in Sections 2(22) and 2(27) as to religious institution and temple the Deputy Commissioner has power and jurisdiction to enquire into and decide such a dispute. If the argument of the learned counsel for the appellants that the Act does not apply to private temples is to be accepted, then it is enough for any person or body to claim a temple as a private one so as to take away the power and jurisdiction otherwise conferred on the Deputy Commissioner under Section 87 of the 1987 Act. A merely self-serving design of a party to claim a temple as private one cannot defeat a specific statutory provision conferring power on a authority to decide a question. It is a different matter, if there is no dispute that a particular temple is a private temple; in that case perhaps the argument could be accepted. When there arises a dispute as to whether a temple is a public temple or not, basically it becomes necessary to decide that question. If Section 87 is read carefully in its entirety, it will be clear that the Deputy Commissioner exercises quasi-judicial power while holding enquiry and deciding a dispute under Section 87(1). Under sub-section (3), every decision or the order of the Deputy Commissioner on confirmation by the Commissioner shall be published in the prescribed manner. Under sub-section 4, the Deputy Commissioner, while recording his decision under sub-section (1) pending implementation of such decision, can pass appropriate interim order safeguarding the interests of the institution or endowment. It is also made clear under sub-section (5) that 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. Sub-section (6) raises a presumption in respect of the matters covered by clauses (a) to (e) of sub-section (1) that the institution or the endowment is public one and that burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private. Thus, it is amply clear that the Deputy Commissioner has jurisdiction to enquire into and decide the dispute covered by clauses (a) to (g) of sub-section (1). Sub-section (6) has sufficient indication that in such an enquiry, there will be presumption that the institution or endowment is public one and burden lies on the person claiming institution or endowment to be private. Thus, when there is a dispute as to whether a temple is a public or private one, the same falls within the purview of Section 87 for the purpose of enquiry and decision. It may also be recalled that as early as on 24.11.1976 in Writ Petition No. 5480 of 1976 a submission was made on behalf of the appellants that an application would be made under Section 77 of the 1966 Act before the Deputy Commissioner to decide as to the character and status of the temple as public or private. We have no good reason or valid ground to take a view other than the one taken by the Division Bench of the High Court in this regard. Thus, having due regard to all aspects, we are of the view that the Deputy Commissioner has power and jurisdiction to decide whether the temple in question is a public temple or private one.

The second submission based on the decision of the District Court made in O.P. No. 1 of 1940 declaring the temple as private, as rightly held by the High Court, has no merit or force. It must be remembered that a private temple in course of time depending on various factors and developments may gradually acquire the nature of a public temple. The Division Bench of the

High Court in this regard relied on the decision of this Court in G.S. Mahalaxmi vs. Shah Rancchoodas. Para 15 of the said judgment reads: -

Though most of the present day Hindu public temples have been founded as public temples, there are instances of private temples becoming public temples in course of time. Some of the private temples have acquired great deal of religious reputation either because of the eminence of its founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public temples.....

As per the decree passed by the District Court in O.P. No. 1 of 1940, the temple in question was declared as private on 24.10.1941 and a dispute has arisen whether it continued to be a private temple or it has become a public temple. Notice was issued by the Deputy Commissioner under Section 87 of the 1987 Act. It cannot be said that no enquiry can be held and decision taken as to the character of the temple. Further, as per Section 160, the Act has overriding effect. Notwithstanding inter alia a decree of a court, the provisions of the 1987 Act will prevail.

Thus viewed from any angle, this appeal, in our opinion, is devoid of any merit. Hence it is dismissed. No order as to costs.

.....J.
[S.RAJENDRA BABU]

.....J.
[SHIVARAJ V. PATIL]

AUGUST 7, 2001