

Sundara Gowda Vs. Commissioner for Religious and Charitable Endowments and ors.

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Court : Karnataka

Decided On : Mar-17-1999

Reported in : AIR1999Kant426

Judge : V. Gopala Gowda, J.

Acts : [Madras Hindu Religious and Charitable Endowments Act, 1951](#) - Sections 39

Appeal No. : Writ Petn. No. 1250 of 1997

Appellant : Sundara Gowda

Respondent : Commissioner for Religious and Charitable Endowments and ors.

Advocate for Def. : R. Mehaboob Ali Khan, A.G.A. and ;A. Keshava Bhat, Adv.

Advocate for Pet/Ap. : K. Raghavendra Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V. Gopala Gowda, J.

1. The petitioner has sought for quashing the impugned order at Annexure-F, dated 12-12-1996 by which the 3rd respondent Asst. Commissioner for Religious and Charitable Endowments, Mangalore, has appointed respondents 5 to 13 as the Trustees and among them the 5th respondent as the Managing Trustee of Rajan Daiva Chavadi, a temple in Sulya Taluk for a period of five years.

2. Mr. A. Keshava Bhat, learned counsel for the 5th respondent submits that the Deputy Commissioner for Hindu Religious and Charitable Endowments, Dakshina Kannada, under Annexure-D in Case No. LAW.CR 57/89-90 has held that the aforesaid temple is not a 'Religious Institution' and that order has become final. It is his further submission that unless the Civil Court declare that the decision of the Competent Authority under the Act is bad in law and set aside the same, the impugned order passed by the 3rd respondent is valid in law and shall not be interfered with by this Court.

3. The impugned order is passed by the 3rd respondent in exercise of purported Rule 17 of the Rules of the Department. Learned Addl. Govt. Advocate is unable to produce the Rule referred to in the impugned order despite granting time. Therefore, it has to be presumed that the impugned order is without the authority of law.

4. The earlier proceedings relating to this temple would reveal that the same is governed by the provisions of the Madras Hindu Religious and Charitable Endowments Act. The matter revolves round the appointment of trustees to the temple. Section 39(1) of the said Act stipulates that in respect of the religious institution over which there is no 'Area Committee', the Commissioner shall constitute Board of Trustees consisting not less than three and not more than five persons. In the instant case, the Commissioner has not passed any order. No material is placed before the Court to show that 'Area Committee' was constituted in accordance with the provisions of the Act. Learned Addl. Govt. Advocate is unable to point out that the 3rd respondent has got power to pass the impugned order. It is not the case of the 3rd respondent that he has passed the impugned order exercising the power under Section 39 of the Act. Mr. Raghavendra Rao, learned counsel for the petitioner was right in submitting that the impugned order

is without the authority of law. The impugned order is not passed by the competent authority. In spite of the direction issued by this Court to respondents 1 to 3 to file statement of objections in justification of the impugned order, the same is not filed. Consequently, it has to be held that the impugned order is bad in law and the same is liable to be quashed.

5. Accordingly, the writ petition is allowed. The impugned order at Annexure-F is quashed.

6. In view of the quashing of the impugned order, respondents 1 to 3 are at liberty to take appropriate action for the maintenance and administration of the institution in accordance with the provisions of the aforesaid Act.

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