

**\*HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

**+WRIT PETITION No.46652 of 2016**

**Between:**

#Chittibotla Bhardwaja Sarma,

**...PETITIONER**

**AND**

\$Commissioner and Others

**...RESPONDENT(S)**

JUDGMENT PRONOUNCED ON **10.04.2025**

**THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes -

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**DR.JUSTICE K. MANMADHA RAO**

\* THE HON'BLE DR.JUSTICE K. MANMADHA RAO

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...RESPONDENT(S)

**! Counsel for the Petitioner :** Sri M.V. Raja Ram

**! Counsel for Respondents:** G.P for Endowments

<Gist :

>Head Note:

? Cases referred: 1. 2001 SCC OnLine AP 133

APHC010500022016



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

[3310]

THURSDAY ,THE TENTH DAY OF APRIL  
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE DR JUSTICE K MANMADHA RAO**

**WRIT PETITION NO: 46652/2016**

**Between:**

Chittibotla Bhardwaja Sarma,

**...PETITIONER**

**AND**

Commissioner and Others

**...RESPONDENT(S)**

**Counsel for the Petitioner:**

1.M V RAJA RAAM

**Counsel for the Respondent(S):**

1.GP FOR ENDOWMENTS (AP)

2.A SREEKANTH REDDY(SC FOR ENDOW RS)

**The Court made the following:**

**ORDER:**

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“...to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not appointing the petitioner as Founder Trustee and Chairman of the subject temple, in pursuance of entries in the register

maintained under Section 43 of Act 30 of 1987 as well in pursuance of orders dated 03.09.2015 in W.P.No.28201 of 2015 as illegal and pass such other order.....”

2. The brief facts of the case of the petitioner are that the grandfather of the petitioner by name Venkat Seshaiyah constructed the 5<sup>th</sup> respondent temple in the year 1907-08 as can be witnessed the note on the stone in the temple that his grandfather had performed the Pratista of Lingam. The other eight temples were constructed by his father and his friends. His grandfather has donated money and lands for the development of the temple and also for conducting the festivals. His father constructed Nandiswara Alayam, Parvathi temple, Navgraha Mandapam, Koneru (pond) by spending money and also from donations. Till his death, his grandfather was the trustee of the subject temple and also managed the temple and later the petitioner's father Sri Eswara Sarma taken the responsibilities of the subject temple as chairman and later, the petitioner managed the temple as trustee. The petitioner's grandfather started Annadanam in the subject temple and the same is being continued. It is further stated that it is not in dispute that the petitioner's family members have been looking after the affairs of the temple as hereditary trustee. The proceedings of the 2<sup>nd</sup> respondent i.e., D.Dis.No.A6/1196/72/Adm/D/dt.24.10.1973 is very clear on this aspect. The petitioner was appointed as trustee and chairman of the subject temple by the Endowments department in the year 1995 along with 4 non-hereditary trustees. It is further stated that the respondent authorities have not taken any interest seriously in the interest of subject temple by considering the case of

the petitioner as founder trustee and chairman of the subject temple, while issuing notification Rc.No.A11/5922/2015-GNL, dated 07.08.2015 in pursuance of notice dated 06.05.2015 of the respondent authorities without verifying the register extracts made under Section 43 of the A.P.Charitable Hindu Religious Institutions and Endowments Act 1987, which itself sufficient to prove that the entries made there under are final in respect of the hereditary founder trustees and the same is self sufficient extract for the purpose of appointment of Founder Trustee and chairman of subject temple. Thus the respondents have no right in any other manner contradicting the entries made there under except follow the same unscrupulously. Hence, the present writ petition came to be filed.

3. This Court, on 30.01.2017, granted interim direction, directing the second respondent to pass necessary orders on the application submitted by the petitioner, within a week from that day.

4. The counter affidavit has been filed by the 2<sup>nd</sup> respondent denying the allegations made in the writ petition and stated that the petitioner herein has already filed O.A.No.483 of 2011 before the A.P. Endowments Tribunal, which is the competent authority to decide whether a person is a founder or a member from the family of an institution of Endowment under Section 87(1)(h) of Act 30 of 1987. Though it is a fact the entries in 43 Register was made that their ancestors were worked as Hereditary Trustees to the subject temple, but it is also mentioned that it is the villagers version and no authority was mentioned there under as required under Section 17 of the A.P.Charitable and

Hindu Religious Institutions and Endowments Act in the said Register. According to the explanation-1 given under Section 17 of the Act 30 of 1987 and 33 of 2007, it is necessary on the part of the petitioner to prove that the ancestors of petitioner herein were recognized as Hereditary Trustee under repealed Act 17/66 to consider his case as Founder Family Member and to appoint as Trustee and chairman of the subject institution.

It is further stated that the petitioner has initially filed W.P.No.26621 of 2015 and subsequently withdrawn and made his family members to file another writ in W.P.No.28261 of 2015 with his family members as petitioners by knowing the fact that 'No person shall be as trustee in more than one Board of Trustees" under Section 17(4) of the Act 30 of 1987 as the petitioner herein was acting as Trustee in the Board of Trustees in Sri Bramaramba Mallikarjuna Swamy Devasthanam, Srisailam, Kurnool at the time of Notification issued for constitution of Trust Board to Sri Vishnunandeeswara Swamy temple by the Commissioner, Endowments Department, A.P., Hyderabad and prayed the Court to dismiss the petition.

4. The counter affidavit has been filed by the 5<sup>th</sup> respondent denying the allegations made in the writ petition and stated that the petitioner's ancestors and Family Members might have acted as Trustees to the subject temple, but not in the capacity of Hereditary Trustee. The family Members of the petitioner was never appointed as Hereditary Trustees to the subject institution and prayed the Court to dismiss the petition.

5. Reply affidavit has been filed by the petitioner to the counter filed by the 2<sup>nd</sup> respondent stating that the respondents had intentionally suppressed the material averments and made some irrelevant issues which would clearly indicate that they want to avoid the petitioner to be appointed for obvious and extraneous reasons. The 2<sup>nd</sup> respondent has given false facts and thereby trying to mislead this Hon'ble Court as if he is not belonging to the founder family member, though the 2<sup>nd</sup> respondent filed material averments, in which at page 89 clearly indicates that their ancestors belong to founder of the temple and his name also figured at serial No.4.

6. Heard Sri M.V.Raja Ram, learned counsel for the petitioner and learned Assistant Government Pleader for Endowments appearing for the respondents.

7. On hearing, learned counsel appearing for the petitioner while reiterating the contents made in the petition, has placed reliance on a decision of the erstwhile High Court of Andhra Pradesh at Hyderabad reported in **Prathi Sbaiah Chetty and others versus Government of Andhra Pradesh and others**<sup>1</sup>, wherein it was held that :

*In para-4 of the said Circular, it is stated that if there is no entry with regard to the name of the founder as contemplated under [Section 43\(4\)\(b\)](#) of the Act, an application has to be filed before the Assistant Commissioner to consider the claim and then the Assistant Commissioner after making an enquiry should make necessary entries. But, it is only a consequential act pursuant to the appointment of Founder Trustee and in fact it is a sort of ministerial act and not a statutory function. The statutory function vests in the Deputy Commissioner under [Section 15](#) of the Act, the procedure whereof is provided under [Section 17](#) of the Act and these provisions are mandatory and, there cannot be any exception to the same. When the Act names the authority and the manner in which that authority has to function, it is the basic tenet of interpretation of a statute that such a plain and unambiguous provision should not be twisted and distorted. It is not out of place to mention that there are*

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<sup>1</sup>2001 SCC OnLine AP 133

*Rules framed for appointing the Trustees which includes the Founder Trustee titled. Appointment of Trustees Rules, 1987 issued in G.O. Ms. No.258 Revenue (Endowments-I), dated 31-3-1998, which have been issued in exercise of the powers conferred by subsection (3) of [Section 17](#) read with [Section 153](#) of the Act. Under Rule 3, the Assistant Commissioner has to report to the authority competent to appoint trustees about the vacancy of trustee(s) and Rule 4 then enables the competent authority to appoint the trustee(s). The Circular aforementioned has to be interpreted in consonance with the said Rules. The net result is that the Assistant Commissioner has to notify the vacancy of trustee(s) and then the competent authority, may be the Assistant Commissioner or Deputy Commissioner or the Commissioner having regard to the category of institutions mentioned in [Section 6\(a\)\(b\)\(c\)](#), has to appoint the Trustee including Founder Trustee, by making enquiry if there are rival claims, and after obtaining such finality of appointment of Trustee(s) including Founder Trustee(s), the Assistant Commissioner under the aforementioned Circular has to make entries in the Register to be maintained under [Section 43\(4\)\(b\)](#) of the Act.*

8. Learned counsel for the petitioner while relying upon the above decision, submits that, the said mandatory procedure have not followed by the respondents therefore prayed to allow the writ petition while declaring the action of the respondents as illegal.

9. Per contra, learned Government Pleader opposed for allowing the writ petition and prayed to dismiss the same.

10. Whereas, learned counsel appearing for the 5<sup>th</sup> respondent submits that the petitioner's ancestors and Family Members might have acted as Trustees to the subject temple, but not in the capacity of Hereditary Trustee. The family Members of the petitioner were never appointed as Hereditary Trustees to the subject institution and therefore prayed to dismiss the writ petition.

11. As seen from the proceedings of the Commissioner, Endowments Department, Government of A.P., vide Proceedings in Rc.No.D1/6584/2016, dated 04.04.2016, wherein it was mentioned that :

“...The Inspector, Endowments Department, Nandyal is authorized to convene a special meeting of the Trustees and conduct the election of Chairman of Trust Board as per rules framed U/s.20 of the Act 30 of 1987. The said Chairman will be acted till Founder Family Members matter is finalized. After Founder Family Members matter is finalized as per the orders dt.03.09.2015 rendered by the Hon'ble High Court in W.P.No.28261/2015, the Founder Family Member so declared will be acted as Chairman of the Trust Board. He is also requested to obtain the affidavits from the newly appointed Trustees dulyattested as required under the rules framed under Section 19(2) of the Act 30 of 1987.”

12. On a perusal of the order dated 28201 of 2015 dated 3.9.2015, wherein this Court, while disposing of the writ petition directed the Deputy Commissioner of Endowments, Endowments department-the 2<sup>nd</sup> respondent herein to consider the applications of the petitioners to enlistment as members of the Board of Trustees as per the claim of the petitioners that they belong to the founder family while appointing the Board of Trustee in consequent to the notification issued on 7.8.2015.

13. It is pertinent to mention here that, as per [Section 43\(4\)\(b\)](#) of the Act, an application has to be filed before the Assistant Commissioner to consider the claim and then the Assistant Commissioner after making an enquiry should make necessary entries. But, it is only a consequential act pursuant to the appointment of Founder Trustee and in fact it is a sort of ministerial act and not a statutory function. The statutory function vests in the Deputy Commissioner under [Section 15](#) of the Act, the procedure whereof is provided under [Section 17](#) of the Act and these provisions are mandatory and, there cannot be any exception to the same. [When the Act](#) names the authority and the manner in which that authority has to function, it is the basic tenet of interpretation of a statute that such a plain and unambiguous provision should not be twisted and distorted.

14. It is pertinent to mention here that Section 15 (2) and Sections 15, 17 reads as under:

Section 15(2):

As per Section 15(2) of the Act, it is only the Deputy Commissioner having jurisdiction is competent to constitute the Board of Trustees consisting of five persons (in the instant case it was in respect of temple falling under Sec. 6(b)(ii) of the Act). Where as per the Commissioner's Circular, appointing authority to appoint trustees is only competent to recognize member of founder's family after causing thorough enquiry, but the enquiry was conducted by the Assistant Commissioner, such an enquiry was held not to be called as a thorough enquiry.

Sections 15, 17: The Assistant Commissioner has to notify the vacancies of trustees and then the competent authority, may be the Assistant Commissioner or Deputy Commissioner or the Commissioner having regard to the category of institutions mentioned in Section 6(a)(b)(c) has to appoint the Trustees including the Founder Trustee by making enquiry. After obtaining the finality of appointment, the Assistant Commissioner has to make entries in the Register to be maintained under Sec. 43(4)(b) of the Act in accordance with the Circular No.J5/5288/96 (Act and Rules) dated 25.3.1996 (Prathi's case (supra)

Appointment of Board of Trustees to temple. Contention that only the local residents should be appointed as Trustees is rejected.

15. It is not out of place to mention that there are Rules framed for appointing the Trustees which includes the Founder Trustee titled. Appointment of Trustees Rules, 1987 issued in G.O. Ms. No.258 Revenue (Endowments-I), dated 31-3-1998, which have been issued in exercise of the powers conferred by sub-section (3) of [Section 17](#) read with [Section 153](#) of the Act. Under Rule 3, the Assistant Commissioner has to report to the authority competent to appoint trustees about the vacancy of trustee(s) and Rule 4 then enables the competent authority to appoint the trustee(s). The Circular aforementioned has to be interpreted in consonance with the said Rules. The net result is that the Assistant Commissioner has to notify the vacancy of trustee(s) and then the competent authority, may be the Assistant Commissioner or Deputy Commissioner or the Commissioner having regard to

the category of institutions mentioned in [Section 6\(a\)\(b\)\(c\)](#), has to appoint the Trustee including Founder Trustee, by making enquiry if there are rival claims, and after obtaining such finality of appointment of Trustee(s) including Founder Trustee(s), the Assistant Commissioner under the aforementioned Circular has to make entries in the Register to be maintained under [Section 43\(4\)\(b\)](#) of the Act.

16. Having regard to the facts and circumstances of the case, as the mandatory procedure as mentioned above having not been followed, this Court is of the view that, while declaring the action of the respondents in not appointing the petitioner as Founder Trustee and Chairman of the subject temple in pursuance of the entries in the register maintained under Section 43 of Act 30 of 1987 as well as in pursuance of orders dated 3.9.1015 in WP No.28261 of 2015, as illegal and arbitrary.

17. Accordingly, the Writ Petition is allowed directing the concerned Deputy Commissioner will now take up the matter and make an enquiry by issuing notice to the petitioners and the 2<sup>nd</sup> respondent and also by publishing a general notification calling for objections by affording an opportunity to and pass appropriate orders identifying and appointing the hereditary/founder trustee of the institution concerned, within a period of four (04) months from the date of receipt of this order.

18. It is made clear that pending such decision by the Deputy Commissioner concerned, the 2<sup>nd</sup> respondent, who is functioning as on today, shall continue to function. There shall be no order as to costs.

19. As a sequel, all the pending miscellaneous applications shall stand closed.

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**DR. K. MANMADHA RAO, J.**

*Date : 10 -04-2025*

*Gvl*

**HON'BLE DR. JUSTICE K. MANMADHA RAO**

**WRIT PETITON No.46652 of 2016**

*Date : .04.2025*

*Gvl*