

Secretary, Home (Endowments), Andhra ... vs Digyadarsam Rajindra Ram Dasjee on 3 May, 1967

Equivalent citations: 1968 AIR 105, 1967 SCR (3) 891, AIR 1968 SUPREME COURT 105, 1968 (1) SCJ 627, 1967 2 ANDHLT 412, 1967 SCD 1197, 1967 3 SCR 891

Author: C.A. Vaidyalingam

Bench: C.A. Vaidyalingam, M. Hidayatullah

PETITIONER:

SECRETARY, HOME (ENDOWMENTS), ANDHRA PRADESH

Vs.

RESPONDENT:

DIGYADARSAM RAJINDRA RAM DASJEE

DATE OF JUDGMENT:

03/05/1967

BENCH:

VAIDYIALINGAM, C.A.

BENCH:

VAIDYIALINGAM, C.A.

HIDAYATULLAH, M.

CITATION:

1968 AIR 105 1967 SCR (3) 891

CITATOR INFO :

RF 1970 SC 181 (2)

ACT:

Madras Hindu Religious and Charitable Endowments 'Act XIX of 1959, s. 53-respondent claiming to have succeeded as trustee of Math in accordance with procedure under certain agreements--other persons also raising disputes and claiming succession-whether vacancy existed to enable exercise of power by Commissioner under s. 53.

HEADNOTE:

After the death of the Mahant of Sri Swami Hathiramji Math, Tirumalai, Tirupati, in 1947, an agreement was arrived at on October 29, 1947 resolving certain disputes regarding the succession to the office of Mahant and laying down a

procedure for choosing a successor when a vacancy arose. Furthermore, the Akada Panchayat was constituted the supreme authority in such matters. One C.D. became the Mahant in 1958. The respondent challenged the succession by a declaratory suit but eventually there was a compromise and in an agreement dated July 15, 1961, it was agreed that C.D. was entitled to continue as Mahant, and that after his death the respondent would succeed him.

On the death of C.D. on March 18, 1962, the respondent claimed to have succeeded as Mahant in his own right and the Akada Panchayat approved the succession by a resolution on the same date. However, the Commissioner Hindu Religious and Charitable Endowments Andhra Pradesh, having received a telegram disputing the respondent's claim, took action under s. 53 of the Madras Hindu Religious and Charitable Endowments Act XIX of 1959 and assumed charge of the Math and its property on March 24, 1964. The respondent thereafter filed a suit for a declaration that he was the rightful successor. He also filed a revision before the Government challenging the action taken under S. 53 whereupon the Government stayed further proceedings and the respondent therefore withdrew his suit. On June 5, 1962 the Government issued an order stating that as there were disputes about who was the rightful successor, until the Civil Court decided this question, it was necessary to make suitable arrangements for the proper administration of the Math and its endowments; it therefore appointed the respondent as interim Mahant subject to various conditions laid down in the order. In view of the respondent's attitude in the discharge of certain of his duties, on August 22, 1964, the Government passed an order directing him to show cause why the previous order of June 5, 1962, should not be cancelled. The respondent filed a Writ Petition against this order claiming that he had succeeded to the office of Mahant in his own right and that no action could be taken by the Government under s. 53 other than appointing him as interim Mahant or cancelling such appointment-, the High Court thereupon stayed further proceedings in pursuance of the notice pending the disposal of the writ petition. The State Government then passed a further order on September 9, 1965, framing certain charges against the respondent, calling for his explanations to them. At the same time, placing him under suspension. The respondent filed a second writ petition challenging this new order whereupon the earlier writ petition was dismissed as infructuous. The High Court allowed the second writ petition.

892

It was contended on behalf of the appellant that (i) on the death of C.D. on March 18, 1962, a vacancy occurred in the office of Mahant and there was a dispute between the respondent and two other persons each of whom claimed the right of succession; suits had been filed by each of those two persons to establish their claims and, although these

had been dismissed, an appeal was pending in respect of one of them; view of this the necessary conditions existed for invoking the power under s. 53 for the proper management of the Math; furthermore, that inasmuch as the respondent had been appointed to manage the institution by the department under s. 53 of the Act, and, as he, was continuing in such management by virtue of that appointment, the State had ample jurisdiction to pass orders either of suspending or even dismissing the respondent.

HELD: Dismissing the appeal;

The High Court had rightly held that 'there was no jurisdiction for the exercise of the power under s. 53 of the Act. (i) Before s. 53 can be invoked. two conditions are necessary viz., (a) a vacancy must have occurred in the office of the trustee of a Math; and (b) there must be a dispute respecting the right of succession to such office. In the present case although it was possible to say that there was a dispute respecting the right of succession to the office of Mahant, the further condition that there must be a vacancy could not be said to have existed and the High Court had rightly accepted the claim of the respondent that by virtue of the Panchayat agreement of October 29, 1947, the compromise agreement of July 15, 1961, and the approval given to his succession by the Akada Panchayat. he had succeeded as Mahant March 18, 1962, on the death of C.D. 1898 B-D. H]

(ii) If the respondent had succeeded as Mahant on the death of C.D., in his own right. the mere circumstance that the Government also passed an order appointing him as interim Mahant, later would not take away the right of the respondent to function as Mahant. Once it is held that he was not holding the office exclusively on the basis of the order of the Government of June 5, 1962. it follows that the appellant had no jurisdiction to. pass an order, placing the respondent under suspension, as that virtually amounted to a removal of the trustee of a Math which could only be done in accordance with the provisions of s. 52 of the Act. [899 G-900 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2586 of

966. Appeals from the judgment dated November 17, 1966 of the Andhra Pradesh High Court in Writ Petition No. 1589 of 1965. P. Ram Reddy and A.V.V. Nab', for the appellants.

1. V. Rangacharya, B. Parthasarathy and P.C. Bhartari. for the respondent.

The Judgment of the Court was delivered by Vaidialingam, J. This appeal, by certificate, is directed against the order of the Andhra Pradesh High Court, allowing a writ petition, filed by the respondent, under Art. 226 of the Constitution.

The facts leading up to the filing of the Writ Petition, by the respondent, may be briefly indicated. In respect of Sri Swami Hathiramji Math. Tirumalai, Tirupati, disputes arose regarding 89 3 the succession to the office of the Mahant of the Math, after the death, in 1947, of the then Mahant, Prayag Dossji. An agreement seems to have been arrived at, on October 29, 1947, laying down the procedure for choosing a successor to the office of 'the Mahant, when a vacancy arises. The Akada Panchayat appears to have been constituted the supreme authority, in such matters. That agreement also provided, as to who, among the respondent, and one Chetham Doss, was to succeed to the office of the Mahant, on the death of one Narayan Doss. Narayan Doss died on December 9, 1958, and Chetham Doss succeeded as Mahant. The respondent filed O. S. 84 of 1958, in the Subordinate Judge's Court, Chittoor, for a declaration that he is entitled to succeed to the office of Mahant. The suit was resisted, by Chetam Dass, on the basis that under the agreement of October 29, 1947, he was legitimately entitled to succeed as Mahant. Sometime later, the respondent and Chetam Dass, entered into a compromise, by virtue of an agreement, dated July 15, 1961. Both of them agreed that Chetam Das was entitled to continue as Mahant, and that, after his death, the respondent was to succeed as Mahant. In view of this agreement, the respondent got dismissed, as settled, O.S. 84 of 1958.

Chetam Dass died, on March 18, 1962, and the respondent claims to have succeeded as Mahant, in his own right. But, according to the appellant, the Commissioner H.R. & C.E., Andhra Pradesh, received telegram stating that there was a dispute about the person who was to succeed as Mahant. The, Assistant Commissioner, H.R. & C.E., took action, under s. 53 of the Madras Hindu Religious & Charitable Endowments Act, 1951 (Act XIX of 1951). (hereinafter called the Act), which is applicable to the State of Andhra Pradesh, and assumed charge, on March 24, 1962, of the Math and its properties. The respondent filed, on March 26, 1962, O.S. 24 of 1962, for a declaration that he is the rightful successor to the office of the Mahant of the Institution, in question. The Commissioner, H.R. & C.E., was made a party to the suit. The respondent also filed a revision, before the Government, on April 18, 1962, challenging the assuming charge of the Math, under s. 53 of the Act, by the Assistant Commissioner. The Government stayed further proceedings; and, in consequence, O.S. 24 of 1962, was withdrawn, by the respondent, on April 24, 1962. The Government also passed an order, on June 5, 1962, stating that it was necessary to take action, for making suitable arrangements for the proper administration of the Math and its endowments, till the civil court decided as to who should succeed to the office of the Mahant. In this connection, the State Government referred to an objection, received, from one Devendra Dass, stating that he is the proper person entitled to succeed to the office of the Mahant. Ultimately, by the said order, the Government appointed the respondent, as an interim Mahant, subject to the various conditions, laid down therein. Devendra Dass filed writ petition No. 602 of 1962, on June 21, 1962, in the High Court, challenging this order of the State Government dated June 5, 1962. That writ petition was, dismissed on August 27, 1962. In the meanwhile, Devendra Dass, who was a minor, had instituted two suits, O.S. Nos. 50 of 1962 and 57 of 1962, to declare him as the person entitled to succeed to the office of the Mahant, on the death of Chetam Dass. In the first suit he was represented, by one

Mukund Dos!, as next friend, and in the second suit he was represented by one Bhagwant Doss, as the next friend. When Devendra Doss attained majority, later on, he preferred to continue O.S. 50 of 1962. and therefore O.S. 57 of 1962 was dismissed, as unnecessary. On August 22, 1964, the Government passed an order, directing the respondent to show cause why its previous order, dated June 5, 1962, appointing the respondent, as interim Mahant, should not be cancelled. This appears to have been issued, by the State Government, in view of the fact that the respondent was taking a particular attitude regarding the pada kanikkas received by him. In the said order, the Government also proceeded, on the basis that it has no jurisdiction to appoint an interim Mahant when action is taken, under s. 53 of the Act.

On receipt of this notice, the respondent filed writ petition No. 1534 of 1964, challenging the said order. His claim appears to have been that he had succeeded to the office of Mahant. in his own right, after the death of Chetam Dass, and that no action can be taken, under s. 53 of the Act, and therefore, the question of the Government, either appointing him as interim Mahant. or taking any action to cancel such an order, does not arise. It is seen that further proceedings, in pursuance of the notice, issued by the Government, were stayed, by the High Court, pending the disposal of the writ petition. The State Government passed an order, on September 9, 1965, framing certain charges, as against the respondent, and directing him to furnish his explanation. regarding the same, and, at the same time, placed him under suspension. The respondent filed, writ petition no. 1589 of 1965. challenging this order of the Government, placing him under suspension. In view of this writ petition, the earlier writ petition. no. 1534 of 1964, was dismissed, as infructuous, on April 14, 1966.

In the meanwhile, Bhagwant Doss, who had originally instituted O.S. no. 57 of 1962, as the next friend of Devendra Dass, and which suit was got dismissed by the minor, after attaining majority, instituted another suit, O.S. no. 69 of 1965 on September 29, 1965, claiming in his own right to be the person entitled to succeed to the office of Mahant. This suit appears to be still pending. But O.S. 50 of 1962, which was decided to be continued, by Devendra Doss, was contested by the respondent and, ultimately, dismissed, on April 28, 1966. It is stated that an appeal., A.S. No. 476 of 1966, has been filed, on November 17, 1966. against this decree and it is still pending.

The main contention, taken by the respondent, in writ petition no. 1589 of 1965, was that he had already in law succeeded as Mahant, on March 18, 1962, when the presiding Mahant, Chetam Doss, died. Therefore, according to him, there was no vacancy which can be said to have occurred, in the office of the trustee of the Math, so as to give jurisdiction to the Assistant Commissioner, or the Commissioner, H.R. & C.E., to take action, under S. 53 of the Act. The respondent also relied upon the circumstance that the suit filed by Devendra Doss, O.S. 50 of 1962, had been dismissed and the Court had accepted his title to hold the office of the Mahant, on the basis of the Panchayat Agreement, dated October 29, 1947, as well as the agreement, dated July 15, 1961, entered into between him and the then Mahant, Chetam Dass. The respondent also relied upon the circumstance that his assumption of office, as Mahant, on the death of Chetam Dass, has been approved, on March 18, 1962, by the supreme authority, namely, the Akada Panchayat. The appellant resisted the claim of the respondent., on the ground that when Chetam Doss died, and the respondent attempted to take charge as Mahant, a claim was made, by one Devendra Doss, that he was the person, lawfully entitled to succeed to the office of the Mahant. On the death of Chetam Doss, on March 18, 1962, a

vacancy occurred, in the office of the trustee of the nath, and there is also a dispute, between the respondent and Devendra Doss, regarding the right of succession to such office. In view of the fact that the necessary conditions, for invoking s. 53 exist, the assumption of management of the Math was taken over, by the Assistant Commissioner, H.R. & C.E., for the proper management of the institution. It was also pointed out that the suit instituted, by Bhagwant Doss, O.S. no. 69 of 1965, claiming in himself the right to succeed, as a trustee, was still pending and that also shows there is a dispute, regarding succession to the office of the- trustee. The appellant has also urged, that in any event, inasmuch as the respondent has been appointed, to manage the institution, by the department, under s. 53 of the Act, and. as he was continuing in such management by virtue of such appointment, the State had ample jurisdiction to pass orders either of suspending, or even dismissing the respondent. The learned Judges of the High Court have held that the respondent has succeeded as Mahant, on March 18, 1962, on the death of Chetam Dass, by virtue of the Panchayat Agreement, of October 29. 1947, and the compromise agreement, dated July 15, 1961. Therefore, it Cannot be said that there was any vacancy in the office of the trustee of the Math, so as to enable the appellant to take action, under s. 53 of the Act. The High Court has, in this connection, referred to the findings recorded, by the Subordinate Judge's Court, in favour of the respondent, in O.S. 50 of 1962. The mere circumstance that after a person has succeeded to the office of the trustee, other people lay claims to that office, and institute litigation for that purpose, will not, according to the High Court, give jurisdiction to the appellants to take action, under s. 53 of the Act. The High Court is further of the view that the appellant's action, in placing the respondent under suspension, is contrary to the directions given by the High Court, on April 9, 1965, pending the disposal of the writ petition. The High Court is further of the view that the stand, taken by the appellants, is quite contrary to the earlier stand, taken in their order, dated June 5, 1962, wherein they had categorically stated that the civil Court's decision will be conclusive and final, regarding the succession to the office of the Mahant. This reason, is given by the High Court, as it was of the view that the appellant should give due respect to the decision, in O.S. 50 of 1962. On these grounds the High Court quashed the order passed, by the State Government, dated September 9, 1966, placing the petitioner, under suspension.

Mr. Rain Reddy, learned counsel appearing for the appellants. has raised the same contentions that were taken, before the High Court. In addition, counsel has also pointed out that the decision, in O.S. 50 of 1962, has not become final, inasmuch as Devendra Doss, who lost that litigation, has filed A.S. No. 476 of 1966, which is still pending. Counsel further points out that, in view of the dispute raised, by Devendra Doss, by making a claim for the trusteeship or the Math, before the Government the writ petition, No. 602 of 1962, filed by the said party, Lis well as the various suits, referred to above, will clearly show that there is a dispute regarding the succession to the office of the trustee of the Math. when a vacancy occurred, on the death of Chetam Dass, on March 18, 1962. Therefore, action taken by the appellant, in the interests of the institution, was perfectly valid. Counsel also urged that inasmuch as the respondent is functioning as Manager of the institution, by virtue of his appointment, on June 5, 1962, by the Government, subject to the conditions mentioned therein, the Government was competent to take disciplinary action, as against the respondent, for breach of those conditions.

Mr. 1. V. Rangacharya, learned counsel for the respondent, of Lilly supports the reasons, given by the learned Judges of the High Court, for accepting the claim made by his client, in the writ petition.

The short question, that arises, for consideration, is as to whether the Assistant Commissioner, H.R. & C.E., had jurisdiction to assume management of the Math, in question, under s. 53 of the Act. That will depend on the further question as to whether the State Government had jurisdiction to place the respondent, under suspension, as they have purported to do, 'by their order. dated September 9. 1965. The answer to the above question is to be decided, by reference to s. 53 of the Act. Section 53 of the Act. occurs in 'Chapter IV, relating to Maths. Sub-s. (1) of that Section enables the commissioner or any two or more' persons having interest and having obtained the consent, in writing, of the Commissioner, to institute a suit to obtain a decree for removing the trustee of ,a math or a specific endowment attached to a math, for any one or more of the grounds mentioned in cls. (a) to (f) therein. Section 53, which is the material section, and which relates to filling of vacancies, is as follows:

"53. (1) When a vacancy occurs in the office of the trustee of a math or specific endowment attached to a math and there is a dispute respecting the right of succession to such office or, when such vacancy cannot be filled up immediately or when the trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or when the trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unable to discharge the functions of the trustee, the Assistant Commissioner may take such steps and pass such order as he thinks proper for the temporary custody and protection of the endowments of the' math or of the specific endowment, as the case may be, and shall report the matter forthwith to the Commissioner.

(2) Upon the receipt of such report, if the Commissioner, after making such inquiry as he deems necessary. is satisfied that an arrangement for the administration of the math and its endowments or of the specific' endowment, as 'the case may be, is necessary, he shall make such arrangement as he thinks fit until the disability of the trustee ceases or another trustee succeeds to the office, as the case may be.

(3) In making any such arrangement, the Commissioner shall have due regard to the claims of the' disciples of the math, if any.

(4) Nothing in this section shall be deemed to affect anything contained in the Madras Court of Wards Act, 1902."

Section 53(1) contemplates four contingencies, under which the Assistant Commissioner may take steps for the temporary ,custody and protection of the math. We are concerned, in this case, only with the first contingency, referred to in that subsection. Before that provision can be invoked, two conditions are necessary, viz., (a) a vacancy must have occurred, in the office of the trustee of a math; and (b) there must be a dispute, respecting the right of succession, to such office. In this case,

it is possible to say, in view of the claim made by Devendra Das. and the litigations referred to, above, that there was a dispute respecting the right of succession to the office of the Mahant. But in order to give jurisdiction to the appellant to take action, under the first contingency, referred to in sub-s. (1) of s. 53, the two conditions adverted to above, will have to exist. In this case, it is the claim of the appellant that there was a vacancy, in the office of the trustee of the Math, on March 18, 1962, when Chetan Das died. On the other hand, according to the respondent, there was no vacancy in the office of the Mahant, at that time, because, on the death of Chetan Das, the respondent succeeded to the office of the Mahant. Therefore, the point to be considered is, as to whether a vacancy has occurred, in the office of the trustee of the Math, on March 18, 1962. That there must be an actual vacancy, unfilled, is clear, from the wording of s. 53(1), when it deals with two different contingencies. providing for the assumption of management. Under the first contingency, a vacancy should have occurred in the office of a trustee of a Math, and there is a dispute in respect of the succession to such office. That is, the office has not been filled in. by anybody having a prima facie legal, right to assume management. Similarly, the second contingency, contemplated under s. 53(1), when assumption of management can be made by the Department, is when a vacancy occurs in the office of a trustee of a Math and when such vacancy cannot be filled up immediately. This clearly shows that there must be a vacancy, as a fact, in the sense that nobody with any legal right has assumed Office of the trustee of a Math.

In this case, as we have pointed out earlier, the High Court has accepted the claim of the respondent that by virtue of the Panchayat agreement dated October 29, 1947, and the compromise agreement, dated July 15, 1961, the respondent has succeeded to the office of the trustee of the Math, on March 18, 1962, on the death of Chetan Das. The supreme authority. according to the High Court, the Akada Panchayat, has also approved of the said appointment, by resolution of the same date. We do not propose to consider the findings recorded in O.S. 50 of 1962, which are no doubt in favour of the respondent, because that decision is the subject of an appeal, in A.S. no. 476 of 1966. Nor do we propose to consider the claim of Bhagwant Doss in O.S. 69 of 1965, which is still pending adjudication, at the hands of the Court. But even without reference to those litigations, the view of the High Court that there is no vacancy in the office of the trustee of the Math which alone will give jurisdiction to the appellant to take action under s. 53(1), can be accepted as correct, for the other reasons, mentioned by us, earlier.

Mr. Ram Reddy, learned counsel for the appellants, further points out that, in this case, the respondent is in management of the Math, by virtue of the appointment made, by the State Government, on June 5, 1962, and therefore the State Government is entitled to take disciplinary action against him for breach of conditions, under which he was holding that office. Counsel also invited our attention to the averments made by the respondent himself, in Writ Petition No. 602 of 1962, that the State Government has appointed him as interim Mahant. The stand taken by the respondent, in writ petition no. 602 of 1962, cannot assist the appellant, because he was interested then in fighting the claim made by Devendra Dass, in the said writ petition. In resisting such claim, he has, no doubt, made reference to the fact that his right to function, as Mahant, cannot be disturbed, as the State Government has appointed him as, interim mahant. Therefore, the stand taken by the respondent, in the said writ petition, must be understood in the said context.

No doubt, normally, if it is established that the respondent's only right to function as Manager of this institution, is exclusively on the basis of the Government order, dated June 5, 1962, there will be considerable force in the contention of learned counsel for the appellant that the State Government has got jurisdiction to take disciplinary action, against the respondent. But 'the facts in this case show that the position is entirely different. If the respondent, as held by the High Court-with which view we are in agreement has succeeded to the office of the trustee of the Math, on the death of Chetam Dass, on March 18, 1962, in hi,-; own right, the mere circumstance that the Government also passe,; an order appointing him as interim Mahant, or Manager, later, will not take away the right of the respondent to function as trustee. on the basis of his original right. Once it is held that the respondent is not holding the office of the Mahant, exclusively on the basis of the order of the Government, dated June 5. 1962, it follows that the appellant has no jurisdiction to pass an order, placing the respondent under suspension, as that virtually amounts to a removal of the trustee of a Math. The removal of trustee of a Math can be done only in the manner, and in the circumstances, mentioned in S. 52 of the Act. Therefore, the view of the High Court that the order of the Government, placing the respondent Linder suspension, is not valid, is correct.

The result is, that the appeal fails, and is dismissed. In the Circumstances of the case, there will be no order as to costs.

R.K.P.S. Appeal dismissed