



CNR: KAHC020133432026

WA NO. 100478/2026 (GM - R/C)

IN THE HIGH COURT OF KARNATAKA AT DHARWAD
[SHREE MALATESH (MAILARLING) TEMPLE COMMITTEE AND
OTHERS VS. STATE OF KARNATAKA AND OTHERS]

19.08.2026

(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV
and
HON'BLE MRS JUSTICE HEMA KULKARNI

ORAL ORDER ON I.A.Nos.1/2026 and 2/2026

(PER: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV)

The present appeal is filed calling in question the order dated 09.07.2026 passed in W.P.No.104279/2025 by Sri Malatesh (Mailarlinga) Temple Committee, Devaragudda which was respondent no.5 in the writ petition.

2. The parties are referred to by their rank in the writ proceedings for the purpose of convenience.

3. This order is limited to the consideration of interim prayer of stay of the order of learned Single Judge dated 09.07.2026 in W.P.No.104279/2025 as sought for in I.A.No.1/2026 and the order dated 14.07.2026 passed by Deputy Commissioner and Chairman, District Religious Council, Haveri as sought for in I.A.No.2/2026.



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4. The petitioner who is stated to be a devotee of the Temple had filed the writ petition challenging notification dated 27.06.2025 passed by the Prl. District and Sessions Judge, Dharwad, whereby, applications were called for nomination to the Committee of Management of the Temple for a term of five years.

5. The contention of the petitioner is that the Prl. District and Sessions Judge, Dharwad had ceased to have power or authority after coming into force of the Hindu Religious Institutions and Charitable Endowments Act, 1997 ["HRICE Act"].

6. The learned Single Judge has observed that the Temple was notified under the provisions of HRICE Act in terms of Section 23 and accordingly, the Committee of Management is required to be constituted for the purpose of running/managing the affairs of notified Institutions in terms of Section 25 of HRICE Act. On such sole ground, the notification dated 27.06.2025 passed by the Prl. District and Sessions Judge, Dharwad was set aside.



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7. Sri Shailesh Madiyal, learned Senior Counsel appearing on behalf of Temple Committee has raised several contentions including that the Temple was governed by a Scheme prepared on 25.02.1935 under Section 92 of Code of Civil Procedure, 1908 ("CPC") in O.S.No.5/1906 and had further contended that despite the Temple being registered under the Bombay Public Trust Act, 1950 and despite notification under Section 23 of the HRICE Act, there can be no discontinuation of operation of the Scheme unless in terms of Section 25(B)(4), the Deputy Commissioner passes an order. Accordingly, it is submitted that till such time that the Deputy Commissioner modifies or cancels Scheme in force, same is not exempted from its operation.

8. Sri G.M.Gangadhar, learned Additional Advocate General appearing on behalf of respondent State submits that once the Temple is a notified Institution under Section 23 of HRICE Act, the Temple is to be governed by a Committee of Management in terms of Section 25 of the HRICE Act.

9. It is further contended that the Scheme under Section 92 of the CPC, 1908 would cease to operate, as the



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Government is at liberty to take steps for constituting the Committee of Management.

10. Sri S.S. Yadrami, learned Senior Counsel, appearing on behalf of the petitioner would further contend that the Government has the power under Section 25 of HRICE Act to alter or repeal any Scheme in operation and has placed reliance on the judgment of the Apex Court in **T. Lakshmikumara Thatacharyar v. Commissioner, HRCE and Others**¹.

11. Heard both sides.

12. It is not in dispute that the Temple is being governed by a Scheme framed in O.S.No.5/1906 under Section 92 of CPC, 1908 which Scheme was settled on 25.02.1935. Such Scheme settled in 1935 has been acted upon and appointment of a Committee of Management has been made by the learned District and Sessions Judge who had appointed a Committee for administration of the Temple which has continued till 2025.

¹ (1998) 6 SCC 643



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13. No doubt, the Temple has been notified under Section 23 of HRICE Act, however, the contention of learned Senior Counsel Sri Shailesh Madiyal that in terms of Section 25(B)(4), the Deputy Commissioner may at any time after consulting Trustees modify or cancel Scheme in force settled by the Court, is a matter that requires consideration.

14. Though learned Additional Advocate General Sri J.M. Gangadhar would contend that power of the Deputy Commissioner to alter a Scheme in force cannot interfere with the right available under Section 25 of HRICE Act to constitute a Committee of Management, such question is to be decided after completion of pleadings.

15. It is not in dispute that the Deputy Commissioner has not passed any order modifying the Scheme which governs the Temple in terms of Section 25(B)(4) of HRICE Act. Though learned Senior Counsel appearing on behalf of the petitioner would contend that the order passed by the Deputy Commissioner dated 14.07.2026 produced along with the statement of objections at Annexure-'R20' is in fact to be construed to be an order under Section 25(B)(4) of HRICE Act.



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However, the order of the Deputy Commissioner dated 14.07.2026 is an order under Section 29 of the HRICE Act and cannot be treated to be an order under Section 25(B)(4) of the same Act.

16. The Committee in control of the Temple till the impugned order passed by the Government was the Committee appointed by the Prl. District and Sessions Judge, Dharwad in terms of the Scheme under Section 92 of the CPC, 1908 which is in the nature of bye-laws formulated as per the Scheme. For the present, taking note of the contentions raised, it would be appropriate that Committee appointed by the Prl. District Judge under the Scheme framed under Section 92 of the CPC, 1908 be continued till the present appeal is disposed of.

17. There is substantial force in the argument of Sri Shailesh Madiyal that the repeal Clause under Section 78 of HRICE Act makes no reference to repeal of Scheme or inapplicability of Section 92 of CPC, 1908. It is pointed out that such clause is in contradistinction to repeal and savings provision under Section 118 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which provides for



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specific repeal of Scheme settled under Section 92 of CPC, 1908.

18. Further, Third Proviso to Section 25 of HRICE Act provides for Committee of Management constituted under the repealed Act would cease to hold office from the date of commencement of the HRICE Act and as pointed out by learned Senior Counsel appearing on behalf of the Temple, the repeal under Section 78 of HRICE Act does not refer to repeal of Scheme under Section 92 of CPC, 1908. If Committee is constituted under a Scheme under Section 92 of CPC, 1908 as in the present case and has been in force, *prima facie*, unless such Scheme is altered or modified in terms of Section 25(B)(4) of HRICE Act, the Committee under the existing Scheme under Section 92 of CPC, 1908 would continue.

19. While the power to alter applicable existing Scheme of Management is not contested at the present stage of the proceedings, in the absence of any order by the Deputy Commissioner altering an existing Scheme, it could be stated that the existing Scheme is to continue.



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20. Insofar as the Temple registering itself under the Bombay Public Trusts Act, 1950, it is to be noticed that Section 52 of the Bombay Public Trusts Act, 1950 no doubt clarifies inapplicability of Section 92 and 93 of CPC to such Trusts, however, such inapplicability is only prospective and would not have the effect of repealing a Scheme framed and made applicable under Section 92 of CPC, 1908 which appears to be the position of law as laid down in the case of **Minnoo Rustumji Shroff v. Charity Commissioner**². If that were to be so, mere registration under the Bombay Public Trusts Act, 1950 also may not result in repeal of a Scheme which also provides for constitution of a Committee of Management.

21. All legal contentions as noticed above require a detailed consideration and final adjudication after hearing the parties on the basis of pleadings in the writ proceedings.

22. At present juncture, taking note that admittedly, there was a Scheme settled under Section 92 of CPC, 1908 and Committee has been constituted in terms of such Scheme till 2003 and continued to manage the Temple till Government

² (2005)2 MHLJ 1135



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appointed an Administrator under Section 29 of HRICE Act, it would be appropriate to continue to permit the Committee under the Scheme to continue till the present appeal is disposed of.

23. The observations made are not to be deemed to be final and conclusive expression of the legal position and are made for the limited purpose of disposal of interlocutory applications for stay.

24. Accordingly, there would be stay of the order passed by the learned Single Judge dated 09.07.2026 in W.P.No.104279/2025 and the consequential action taken by the respondent State pursuant thereto including the order dated 14.07.2026 passed by the Deputy Commissioner and Chairman, District Religious Council, Haveri appointing the Administrative Officer.

25. The notification of the Prl. District and Sessions Judge, Dharwad inviting applications to constitute a fresh Committee at Annexure-'D' is permitted to be acted upon. It is clarified that the action taken pursuant to notification dated



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27.06.2025 to constitute a Committee would be subject to orders to be passed in the present appeal.

26. Such direction to proceed in terms of Annexure-'D' dated 27.06.2025 would be necessary in light of the Committee which is in charge of affairs of Temple which is the Committee elected in the year 2003 and had a tenure of five years.

27. In light of history of litigation, it would be appropriate that the administration of the Temple by Committee under the supervision of the Prl. District and Sessions Judge, Dharwad in terms of the Scheme be permitted to continue till all legal issues are settled in the present appeal. Such order would also ensure that the Temple affairs are conducted appropriately in the interregnum.

Accordingly, I.A.Nos.1/2026 and 2/2026 are disposed of.

**Sd/-
(S.SUNIL DUTT YADAV)
JUDGE**

**Sd/-
(HEMA KULKARNI)
JUDGE**