

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF NOVEMBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.14590 OF 2020 (GM - RES)

BETWEEN:

- 1 . SRI PRAKASH
AGED 45 YEARS
S/O KRISHNAMURTHY
RESIDING AT SALAIMMA COLONY
KADUR TOWN, KADUR TALUK
CHIKMAGALUR DISTRICT - 577 548.
- 2 . SRI KARI BASAPPA
AGED 55 YEARS
S/O THONDEERA HANUMANTHAPPA
RESIDING AT DODDATHEKALAVATTI VILLAGE
HOSADURGA TALUK
CHITRADURGA DISTRICT - 577 533.
- 3 . SRI MALLIKANNA
S/O GOVINDAPPA
AGED 46 YEARS
RESIDING AT DODDATHEKALAVATTI VILLAGE
HOSADURGA TALUK
CHITRADURGA DISTRICT - 577 533.

THE PETITIONERS 1 TO 3 ARE
ALL TRUSTEES OF KAMSAGARA-BEERALINGESHWARA AND
HINDE MALLIKARJUNA TEMPLE
REGISTERED UNDER THE TRUST ACT

DODDATHEKALAVATTI VILLAGE
HOSADURGA TALUK
CHITRADURGA DISTRICT.

... PETITIONERS

(BY SMT.LAKSHMY IYENGAR, SR.ADVOCATE A/W
SRI SANJAYA KUMAR K.N., ADVOCATE)

AND:

- 1 . THE DEPUTY COMMISSIONER
CHITRADURGA DISTRICT
CHITRADURGA - 577 501.
- 2 . THE SUPERINTENDENT OF POLICE
CHITRADURGA DISTRICT
CHITRADURGA - 577 501.
- 3 . THE POLICE INSPECTOR
HOSADURGA POLICE STATION
HOSADURGA
CHITRADURGA DISTRICT - 577 527.
- 4 . THE SUB INSPECTOR OF POLICE
HOSADURGA POLICE STATION
HOSADURGA
CHITRADURGA DISTRICT - 577 527.
- 5 . GOVINDAPPA
EX-M.L.A., AND
ADMINISTRATOR OF
SRI KAGINELE SWAMY PEETA
KAGINELE
CHITRADURGA DISTRICT - 581 110.
- 6 . GANGADHAR
S/O VARADAPPA

AGED ABOUT 50 YEARS
R/AT SIRIGUNDANA HALLI VILLAGE
MATHODU HOBLI
HOSADURGA
CHITRADURGA DISTRICT – 577 527.

- 7 . RAJJANNA
S/O LAKKAPPA
AGED ABOUT 60 YEARS.
- 8 . SIDRAMAPPA
S/O HUCHHININGAPPA
AGED ABOUT 60 YEARS.
- 9 . RAVIRANGAPPA
S/O GOVINDAPPA
AGED ABOUT 55 YEARS.
- 10 . PRAKASH
S/O SANDIMANE HANUMANTHAPPA
AGED ABOUT 40 YEARS.
- 11 . B.ANANDA
S/O HANUMANTHAJJARA BASAPPA
AGED ABOUT 45 YEARS.
- 12 . D.NAGRAJ
S/O DEVI KARYAPPAODOMALLAYYARA
AGED ABOUT 55 YEARS.
- 13 . SHIVANNA
S/O LAKKIYYADEVI KARYAPPA
AGED ABOUT 60 YEARS.
- 14 . NAGARAJU
S/O KAREKANNIYARA NINGAPPA
AGED ABOUT 35 YEARS.

15 . RANGANATHA
S/O GADIGE KUMARANNA
AGED ABOUT 30 YEARS.

16 . SHASHIDHARA
S/O MESTRU RAJAPPA
AGED ABOUT 24 YEARS.

17 . KALLAPPA
S/O SANGHIMANE RAMANNA
AGED ABOUT 48 YEARS.

18 . LOKESH
S/O URAMANDALU JHOTHANNA
AGED ABOUT 27 YEARS.

19 . BASAVARAJU
S/O ODOMALLIYARAMALLIYA
AGED ABOUT 32 YEARS.

20 . KARIYANNA
S/O DALLAPPARA KAMSAGARA
AGED ABOUT 60 YEARS.

21 . SHIVANNA
S/O DALLAPPARA KARIYANNA
AGED ABOUT 45 YEARS

RESPONDENT 7 TO 21 ARE
RESIDING AT DODDATHEKALAVATTI
VILLAGE, HOSADURGA TALUK
CHITRADURGA DISTRICT – 577 533.

... RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1 TO R4;
SRI K.S.HARISH, ADVOCATE FOR R5 TO R21)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS NOT VIOLATE THE RELIGIOUS FUNDAMENTAL RIGHTS UNDER PART III OF INDIAN CONSTITUTION WITHOUT ANY AUTHORITY OR DIRECTION OF LAW; DIRECT THE RESPONDENTS NOT TO TOUCH/MOVE THE RELIGIOUS STATUE, IDOL AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.11.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court seeking various prayers like issuance of writ in the nature of mandamus directing the respondents not to violate their fundamental rights; not to move the idol; not to dislocate or dispossess or shift any property of Kamsagara Beeralingeswara Temple to any other place.

2. Heard Smt. Lakshmy Iyengar, learned senior counsel appearing for the petitioners, Smt. Rashmi Patel, learned High Court Government Pleader for respondents 1 to 4 and Sri K.S.Harish, learned counsel for respondents 5 to 21.

3. Brief facts that lead the petitioners to this Court in this petition, as borne out from the pleadings, are as follows:

The petitioners claim to be the residents of Doddathekalavatti Village, Hosadurga Taluk, Chitradurga District and belong to Hori Kuruba community. They have knocked the doors of this Court in the subject petition alleging that in the year 2020 pooja materials and properties of the newly constructed Kamsagara Beeralingeshwara and Hinde Mallikarjunaswamy Temple including the idol have been attempted to be shifted to old Kamsagara Beeralingeshwara and Hinde Mallikarjunaswamy Temple. It is contended that Kamsagara Beeralingeshwara Temple ('Temple' for short) situated at Doddathekalavatti village was a private temple existing for over 100 years and the residents of the village and nearby villages majority of whom belonged Hori Kuruba community were visiting the temple and visit of the temple by the community people was frequent. The temple became popular in view of massive gathering of people worshipping the deity. It is contended that between 1970 and 1982 the people of the community drew up various kinds of poojas daily, monthly and annually in the temple. In the year 1983 due to two warring factions in the village led to institution of civil suit in O.S.No.40 of 1982 and the suit comes to be decreed that Kamsagara Beeralingeshwara and Hinde

Mallikarjunaswamy Temple belongs to Hori Kuruba Community and is a private temple and the said community people were entitled to perform poojas to which three villages surrounding the temple were permitted. The Temple grew on its own accord and between 1994 and 2007 due to heavy rains, walls of the temple started collapsing and the temple itself went into a dilapidated condition. The water during every rainy season used to seep inside the temple and the seepage of the water into the temple became uncontrollable which was endangering the structure of the temple.

4. In the year 2007 the community people of the area called a meeting, collected funds from all the devotees and laid a foundation stone for construction of a new temple for the deity and the construction took about 8 years for the temple to come up. It was later in the year 2015 temple came to be inaugurated and idol was installed in the new temple by shifting from the old temple. In the year 2017, the entire community people appear to have assembled and formed a trust called Kamsagara Beeraligeshwara and Hinde Mallikarjunaswamy Temple Seva Samithi Trust ('the Trust' for short). It is the claim of the petitioners that since 1983 all

the original documents demonstrate that the Trust that is formed by the petitioners is having regular meetings and it has also contributed to the construction of the new temple.

5. When things stood thus, in the year 2020 the local people on the alleged instruction of the former Member of Legislative Assembly/respondent No.5 herein, along with the help of the police, seek to take away materials and properties of the temple and shift it to the old temple, which was in a dilapidated condition. At that point in time, the petitioners knocked at the doors of this Court seeking certain directions to the respondents. The petition having been entertained, this Court granted an interim order on 11-12-2020. The interim order granted reads as follows:

"Smt. Lakshmy Iyengar, learned Senior Advocate appearing for petitioners submitted that in Doddathekalavatti village, Hosadurga Taluk, Chitradurga District a new temple of Beeralingeshwara has been constructed in the year 2015 and petitioners are performing the daily pooja. Respondent No.5, a former M.L.A. and the private respondents are seeking to shift the idol from the new temple to an old dilapidated temple. On 05.11.2020 four police officers visited the village. They are favouring the private respondents who want to shift the idol from new temple to the old temple for political reasons. Petitioners have issued a legal notice on 12.11.2020 (Annexure-H) to the Chief Secretary and other senior Govt. Officers.

This petition is presented with a prayer to direct the respondents inter-alia not to dislocate or to dispossess or shift the idol. An interim prayer is sought not to shift the idol from the new temple to the old temple.

Learned Addl. Govt. Advocate took serious exception to the writ petition by submitting that there is no cause of action; that as per the telephonic instructions received from the Deputy Commissioner and the Superintendent of Police, the officials mentioned in the legal notice had visited the village as a Peace Committee to resolve the dispute between the two groups in the same community with regard to the idol.

In conspectus of facts, it is clear that there exists some dispute with regard to the idol and the place of worship. The photographs annexed to the writ petition prima-facie show that there are two temples, new one and the old one. The contention of the petitioners is that, shifting of idol is to appease one group in the election which is scheduled on 22.12.2020.

*In the circumstances, by ad-interim direction, the private respondents are restrained from shifting the idol.”
(Emphasis supplied)*

The said interim order is in operation even as on date.

6. The learned senior counsel appearing for the petitioners would contend with vehemence that a peaceful atmosphere and poojas being performed at the newly built temple is shaken by the illegal acts of the 5th respondent, a former member of the Legislative Assembly, who for political reasons, wants to bring a rift between the two factions. She would take this Court through the

photographs of the old temple and the new temple so produced to demonstrate that the old temple is in such a dilapidated condition as it would collapse, if the crowd/devotees gather beyond a limit, and the crowd during festivals will be so huge that even the new temple is unable to manage. Therefore, it being a private temple, the 5th respondent or any other person who claim right over the deity can always agitate his rights before a competent civil Court. Using Government's machinery by the 5th respondent should not be permitted to be continued.

7. Learned High Court Government Pleader appearing for the State would seek to refute the submissions to contend that the two factions of Hori Kuruba community are wanting to control the management of the temple. The suit finally decided the issue between the communities. The present petitioners who are not parties to the suit are now claiming rights over the temple. The State would submit that explanation was sought regarding the alleged interference of officers, in shifting the idol and the explanation would also reveal that the old temple is in a dilapidated

condition. Therefore, the entire objections of the State would hinge upon the dispute between the petitioners and respondents 5 to 21.

8. The learned counsel appearing for respondents 5 to 21 has also filed elaborate statement of objections and would seek to contend that the temple is not a private temple belonging to Hori Kuruba community. The suit in O.S.No.40 of 1982 which was decreed on 30-07-1993 was a suit in representative capacity in which it has been clearly held that the people of the said community have a right to worship the deity and participate in religious functions of the deity in the temple i.e., the old temple and, therefore, the petitioners cannot claim over the idol. The petitioners on the ground that temple had been constructed, took the deity from the old temple for the purpose of installation of the deity in the new temple, but have never returned the deity. The deity belongs to the old temple and there is already a determination in the civil proceedings – O.S.No.40 of 1982.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. To consider the respective submissions, a little walk in the history becomes germane. Dispute in the Kuruba Community gets generated with regard to the deity in the Temple of Doddathekalavatti Village as belonging to the entire Kuruba Community of Doddathekalavatti, Siregondanahalli and Gudikattu village, irrespective of sub-castes and all the community people have equal right to worship the deity and participate in all religious functions. The dispute was that the deity was exclusively the family god of Hori Kurubas and except Hori Kuruba no other community has got a right to manage the affairs of the deity, conduct poojas, uthsavas and other festivals thereto. The 1st plaintiff in the suit in collusion with other defendants sought to take away the rights of Hori Kuruba community. On this allegation, the civil suit comes to be filed. The suit was decreed in the following manner:

"The suit of the plaintiffs is decreed as against defendants 1 to 3, 6, 7, 9 to 12 and 14 to 27. The suit as against defendants 4, 5, 8 and 13 is dismissed. It is hereby declared that the deity Sri Kamsagara Beeralingeswaraswamy of D.T. Vatty village belongs to the entire Kuruba Community of D.T. Vatty and Siregondanahalli village, Gudikattu irrespective of sub-sects of prabhedas and the people of the said community have equal right to worship the deity and to participate in the religious functions of the deity. The defendants 1 to 3, 6, 7, 9 to 12 and 14 to 27 are

permanently restrained from interfering with the peaceful management of the deity by the management committee and the convener, which shall not come in the way of the said defendants in their becoming management committee members for and on being elected and from worshipping the deity and from participating in the functions and Uthsavas of the deity during festivals, peacefully. Considering the nature of the suit, facts and circumstances of case and the interest of the community people, I direct both the parties to bear their own costs as it is necessary in the interest of maintaining harmony amongst community people and in the Society. It is also just and necessary in the interest of smooth management of the deity to direct the convener of the concerned management committee to maintain the register of valuable properties of the deity, the donations received from the devotees and to maintain the accounts and records regularly by making available the said accounts to all the devotees of the entire kuruba community for verification during the meetings and functions of the deity and accordingly directed.”

(Emphasis added)

The suit is decreed declaring that the deity Sri Kamsagara Beeralingeswara Swamy of D.T.Vatty belongs to entire Kuruba community of D.T.Vatty and Siregondanahalli village, Gudikattu irrespective of sub-sects and the people of the said community have equal right to worship and have a right to participate in the functions and uthsavas of the deity during festivals and it was also ordered that it was just and necessary in the smooth management of the temple to direct the convener to maintain proper records. This was a suit that was decreed in the year 1993 and the suit was

instituted in a representative capacity. Thereafter, the community people were peacefully praying at the temple.

11. Later, it appears, that a dispute between the sub-sects and Kuruba community gets generated and pooja in the temple was being performed only by Hori Kuruba community. The photographs appended to the petition which are acknowledged by the Government demonstrate that the temple is in a dilapidated condition due to grave weather conditions. The condition is the walls became dilapidated and rain water began to seep. It is at that point in time a foundation stone was laid for construction of a new temple exclusively for Hori Kuruba community. For setting up of a new temple, at the time of inauguration, the deity that was in the old temple is sought to have been shifted to the new temple, both of which allegedly belonged to Hori Kuruba Community. Now respondents 5 to 21 allege that the idol or the deity that was shifted to the new temple is not returned back to the Temple.

12. The devotees of the old temple and the new temple are the same, is a fact that cannot be brushed aside. The issue

whether, the deity was placed in the old temple or the new temple? The photographs that are appended would demonstrate huge crowd or gathering at the time of festivals which definitely cannot be accommodated in the old temple. Politics apart, in public interest, the safety of public that enter into those temples should be a paramount interest of the State. If the temple is in a dilapidated condition and the deity is now in the new temple where the temple can accommodate necessary gathering at any point in time, in the considered view of the Court, owing to public interest and public safety, it should be permitted to continue.

13. If the warring factions would seek to claim any right over the deity and it being placed in a particular temple, it is open for them to agitate the issue before the competent civil Court. The issue earlier decided would not come in the way of institution of any suit, as the earlier decision was not where the deity should be kept. The issue that has now sprung is with regard to the place of the deity. It is therefore for the respective parties to agitate before the competent civil Court about the place of the deity. Before instituting any suit, it would be necessary for the people of the

community i.e., Hori Kuruba Community to sit together and decide about the place of placing the deity, as the manner of worship will not change from shifting the deity from one place to another.

14. If the deity is to be worshipped people can worship the deity at the new temple itself. Political consideration or any such agenda as alleged should not take away public interest or public safety, in the deity being shifted from one place to the other. However, it is needless to observe that in the interest of the community people as also the devotees who visit the temple, the deity to be continued in the new temple rather than shifting to the old temple which is in a dilapidated condition thereby exposing the idol to all vagaries of nature.

15. The State should ensure that public safety is kept at the forefront while taking any decision. If the pleadings and the submissions are noticed, they are completely shrouded with politics being played with regard to the place of worship. In the peculiar facts as narrated hereinabove, it is politics that has led the petitioners to this Court. People who worship are not complaining, it is the people who play with the emotions of such worshippers are

at squabble. Therefore, this Court is constrained to observe "**there should be devotion in politics; and not politics in devotion**".

16. For the aforesaid reasons, I pass the following:

ORDER

- (i) The Writ Petition is allowed in part.
- (ii) Mandamus issues to respondents 1 to 4 not to generate disturbance about the place of choice of the deity but maintain law and order strictly.
- (iii) The parties to the *lis* are at liberty to agitate their respective grievances or claim their respective rights over the deity continuing in the new building or to be shifted to the old temple by approaching the competent civil Court. Till such time, status quo as on today shall be maintained which would be subject to the result of any suit, if instituted.

Consequently, pending applications also stand disposed.

**Sd/-
JUDGE**

bkp
CT:MJ