

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1631-1636/2021

(Arising out of S.L.P. (Civil) Nos.24015-24020 of 2018)

Ramachnadrapura Math

....Petitioner (s)

Versus

Sri Samsthana Mahabaleshwara
Devaru & Ors.

.... Respondent(s)

With

Civil Appeal No.1637/2021 @ SLP (C) No.24321/2018

and

**Civil Appeal Nos.1638-1643/2021 @ SLP (C) Nos.6443-
6448/2021 (D.No.6578/2021)**

ORDER

1. The petitioners are before this Court claiming to be aggrieved by the order dated 10.08.2018 passed by the High Court of Karnataka in W.P. No.30609/2008 and connected petitions. The issue raised in the petitions was with regard to

the status of 'Gokarna Mahabaleshwara Temple'. A Notification dated 30.04.2003/01.05.2003 was issued under Section 23 of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 notifying the temples mentioned therein as coming within the purview of the Act. In the said notification, the 'Gokarna Mahabaleshwara Temple' was also included at Serial No.92. The said position remained so until the petitioners herein claiming to be aggrieved by such notification made a representation seeking that the temple be deleted from the notification since according to them it was attached to the petitioners' 'Mutt' and was therefore not covered by the Act in view of Section 1(4) of the Act, 1997. Pursuant thereto the official respondents through the Government Order dated 12.08.2008 ordered the deletion of 'Shri Mahabaleshwara Temple', Gokarna from the list of notified temples published on 30.04.2003. The Deputy Commissioner was accordingly directed to hand over the administration of the temple to the petitioner 'Mutt'.

2. The said Government Order dated 12.08.2008 whereunder the temple was de-notified was assailed in public

interest by the devotees and representatives of the former trustees by filing writ petitions in the High Court of Karnataka. All the writ petitions were taken up together for consideration by the Division Bench and on a detailed consideration the Government Order dated 12.08.2008 was quashed, result of which was that the temple in question remained to be a notified temple under Act, 1997. It was held that a determination was required to be made as to whether the temple belonged to the 'Mutt' by a competent Civil Court since disputed questions of fact cannot be decided in a writ petition. However, taking note of various other aspects including the validity of Act, 1997 itself pending consideration before this Court, the Division Bench has constituted the Committee termed as "Overseeing Committee" under the Chairmanship of the Deputy Commissioner, Uttara Kannada District and also requested a former Judge of this Court to be the advisor to the said committee. The said arrangement was made till the committee in terms of Act, 1997 is constituted.

3. The petitioner 'Mutt' would, therefore, get divested of the right to administer the temple and, as such, claiming to be aggrieved is before this Court. The Division Bench of the High Court on pronouncing the order, at the request on behalf the petitioner herein had stayed the implementation of the order for a period of one month due to which petitioner continues to be in charge. This Court while directing notice to the respondent on 07.09.2018 extended the benefit of the interim order granted by the High Court, which was thereafter clarified to indicate that the status quo was to be maintained.

4. In that light though the petitions were taken up for final consideration, it was noticed that the hearing of the petition will have to be exhaustive and will require deeper consideration. That apart, the Act, 1997 under which the notification was made in the year 2003, was thereafter declared as unconstitutional by the Division Bench of the High Court of Karnataka in another proceeding, through the judgment dated 08.09.2006. The said judgment is assailed before this Court in the case of **State of Karnataka** vs.

Sahasra Lingesshwara in C.A. No.5924/2008 wherein the judgment of the High Court is stayed through the order dated 12.07.2007. Thus, the result in the said appeal would also have a bearing on this case, apart from the factual aspects involved in these petitions which require deeper consideration. We therefore deem it proper to admit these petitions for hearing by granting leave.

5. Delay condoned in SLP @ D.No.6578/21. Leave granted in all the petitions.

6. Sri. S.S. Nagananda, learned senior counsel appearing for the contesting respondents would however make out a grievance that the petitioners taking benefit of the interim extension of the limited interim order granted by the High Court will continue to be in charge of the temple, to the detriment of the devotees despite the High Court having upheld the notification under Section 23 of Act, 1997 and the order dated 12.08.2008 being quashed. Since we have granted leave and the appeals will have to be heard in usual course, merely allowing the status quo order made earlier

would work to the detriment of the contesting respondents and other devotees despite having succeeded in the petition before the High Court. At the same time, it would not be just if the interim order is vacated in entirety and allow the takeover of the temple in terms of the notification under Section 23 of Act, 1997. The equities are to be balanced. Hence in our opinion an appropriate interim arrangement to protect the interest of all parties is to be made pending consideration of the appeals on merit.

7. In that background Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the petitioner 'Mutt' and Shri Ranjit Kumar, learned senior counsel appearing for the State of Karnataka were heard, who have contended to assail the judgment passed by the High Court, while Shri S.S. Nagananda, learned senior counsel has sought to support the view taken by the High Court. Similarly, we have heard other learned counsel and perused the petition papers limited to the extent of considering the interim arrangement.

8. The petitioners contended with regard to the history of the 'Mutt' dating back to the 8th Century A.D. and being

established by Adi Shankaracharya who established the 'Mutt' at Gokarna and ordered his disciples to look after the affairs of the 'Mutt' and the Gokarna Temple. However, a trust was created to manage the temple only to meet the requirement under the Bombay Public Trust Act, 1950 ('BPT Act' for short). But it is contended that it has been subsequently held that BPT Act is not applicable to Karnataka. The present pontiff i.e., petitioner No.2 is stated to be the 36th pontiff in an unbroken line. In that light the right of the 'Mutt' over the temple is contended and reference is made to Section 1(4) of Act, 1997 which makes the Act inapplicable in respect of the temples belonging to the 'Mutt'. The contesting respondents however, dispute the position and have referred to the consideration made by the High Court to hold otherwise.

9. From the rival contentions what is relevant ultimately is to consider whether the factual aspect relating to the status of the temple i.e. whether it belongs to the 'Mutt' has been established in accordance with the requirement under law to establish the factual position. At the outset, it is to be

noted that the notification under Section 23 of the Act, 1997 is dated 30.04.2003/01.05.2003 and the position of the temple being governed under the provisions of the Act was accepted by the appellants for nearly five years until the representation was made by the appellants as late as on 18.03.2008. Dr. Singhvi on referring to the said representation has pointed to the proposal forwarded by the Tehsildar, Kumta to the Assistant Commissioner and the opinion of the Assistant Commissioner being considered by the Deputy Commissioner, Commissioner and ultimately the opinion of the learned Advocate General being taken note, after which the Government Order dated 12.08.2008 was passed by the Government of Karnataka. We do not find anything to suggest that an enquiry was initiated under the Act and parties were made aware that the Authorities were enquiring into the question whether the temple belongs to the Math or not. Such an enquiry would naturally have entailed an opportunity to lead evidence.

10. The High Court though had taken note of the said documents was ultimately of the view that the factual

determination relating to the status of the temple belonging to the 'Mutt' or not was to be decided in a civil suit. It is also contended that in another proceedings in Writ Appeal No.5131/2008, through the order dated 15.12.2008 it was held therein also that the jurisdiction of the civil court is to be invoked to decide the disputed question of fact. The learned senior counsel for the appellants would, however, contend that Section 68 of Act, 1997 bars the jurisdiction of the civil court and in that circumstance the conclusion reached by the Commissioner based on the report submitted by the Tehsildar, Assistant Commissioner and the Deputy Commissioner should be held as conclusive on that aspect. Though such contention is put forth, no documents to establish the fact of the temple belonging to the 'Mutt' was brought to our notice from the records nor was any such document shown to have been relied upon by the Tehsildar or the Commissioner in support of their recommendation. As noted, on all these aspects the above appeals will require a detailed consideration. One other aspect which is also brought to our notice is a subsequent amendment introduced

in the year 2012 to Act, 1997 through Section 20-A wherein the disputed questions of the present nature has been left to be decided by the 'Rajya Dharmika Parishad'. Therefore, in the instant facts the nature of consideration to be made will arise at a later stage.

11. However, *prima facie* for the present, a perusal of the consideration made from the initiation of the proceedings by the Tehsildar on 20.02.2008 would indicate that the determination of the status is not based on the evidence or material relied upon in that regard. The Tehsildar, on the other hand, has based the conclusion to recommend the entrustment of the administration of the temple to the 'Mutt' in view of the overall improvement and also the opinion expressed by the President of Gram Panchayat, Gokarna which would not be sufficient to satisfy the requirement of Section 1(4) of Act, 1997. The further consideration made by the Assistant Commissioner, upto Commissioner and the proceedings of the Government resulting in the order dated 12.08.2008 to delete the temple, *prima facie* indicates to be

an unilateral proceedings to which the contesting respondents were not parties. In a matter where rival contentions are being urged by the appellants and the contesting respondents relating to the status of the temple, appropriate determination/adjudication is required to be made in accordance with law after providing opportunity to both.

12. All the above aspects would require detail consideration. The position remains that from the period of the notification in the year 2003 the authorities under the Act were in charge of the affairs of the temple till the impugned order dated 12.08.2008 was passed. Subsequently since the High Court has set aside the said order dated 12.08.2008, in the usual course the inclusion of the temple in the notification issued under Section 23 of Act, 1997 would revive and the administration will have to be made as provided under the Act. However, since a final decision is to be taken in these appeals, it would not be appropriate to allow that course. Instead, the appropriate course in the interest of the temple as well as the devotees as also the 'Mutt' would be to

allow the administration of the temple by an independent committee so that the temple is administered in an appropriate manner for the benefit of all devotees until a final determination is made.

13. To that extent, as already noticed the High Court while quashing the Government Order dated 12.08.2008 and holding that the temple shall continue to be included in the list of notified institutions as per Section 23 of Act, 1997; pending constitution of the Committee of Management for the temple under the provisions of the Act had constituted an “Overseeing Committee”. Presently since we are of the view that a detailed consideration will be necessary herein and the validity of the Act, 1997 is also pending in a collateral proceeding, as an interim arrangement the said ‘Overseeing Committee’ shall administer the temple pending consideration of this appeal. There shall be a minor modification in the composition of the committee formed by the High Court.

14. In that view, in modification of all earlier interim orders we direct that the ‘Overseeing Committee’ shall function

under the Chairmanship of Hon'ble Justice Sri. B.N. Srikrishna, Former Judge, Supreme Court of India and manage the affairs of the temple in all respects. The Overseeing Committee shall consist of the following as members;

- (i) Deputy Commissioner, Uttara Kannada District
- (ii) Superintendent of Police, Uttara Kannada District
- (iii) Assistant Commissioner, Kumta Sub-Division, Kumta
- (iv) Two eminent persons/scholars, capable of discharging their functions as members of the Committee, to be nominated by the State Government;
- (v) Two Upadivantas of Gokarna Temple to be nominated by the Deputy Commissioner in consultation with the State Government. The committee shall oversee the functioning of the temple by adhering to all traditions.

15. The two eminent persons and the two Upadivantas indicated above to be members shall be nominated within 15 days from the date of this order and the committee shall take over the management of the temple immediately thereafter,

which shall be subject to final orders to be made in these appeals. The appellant 'Mutt' shall hand over charge of the affairs of the temple to the Assistant Commissioner who shall also act as Secretary to the 'Overseeing Committee'.

16. Issue notice to respondents in SLP @ D.No.6578/21. Pleadings be completed.

17. Ordered accordingly.

.....CJI.
(S. A. Bobde)

.....J.
(A.S. Bopanna)

.....J
(V. Ramasubramanian)

**New Delhi,
April 19, 2021**