



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF MARCH 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

W.A. No.1110 OF 2021 (GM-R/C)

BETWEEN:

SYED GHOUSE MOHIYUDDIN
SHAH KHADRI
AGED ABOUT 48 YEARS
SON OF LATE PEER MOHAMMED
SHAH KHADRI SAJJADA NASHEEN
HAZRATH DADA HAYETH MEER KALANDAR
RESIDENT OF JAMIA MASJID ROAD
CHIKKAMAGALURU 577101.

... APPELLANT

(BY SMT. SHIRIN MERCHANT WITH
SMT. SRUSHTI KADAM, ADVS., FOR
SRI. ABDUL KHADAR &
SRI. AJITH KULKARNI, ADVS.,)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
REVENUE DEPARTMENT
M S BUILDING, BENGALURU 560001.
- 2 . THE COMMISSIONER OF RELIGIOUS AND
CHARITABLE ENDOWMENTS IN KARNATAKA
MAHADESHWARA BAHVANA
ALUR VENKATARAO ROAD
CHAMARAJAPETE, BENGALURU 560018.

- 3 . THE DEPUTY COMMISSIONER
CHIKKAMAGALURU DISTRICT
CHIKKAMAGALURU 577101.
- 4 . THE TAHSILDAR
CHIKKAMAGALURU TALUK
CHIKKAMAGALURU 577101.
- 5 . SRI. GURU DATTATREYA PEETA DEVASTHANA
SAMVARDHANA SAMITI
DARAMASHREE NO.91
SHANKARAPURA, BENGALURU-560004
REP. BY ITS TRUSTEE
SRI. YOGISH RAJ ARUS
AGED ABOUT 45 YEARS
S/O SRI. NAGARAJ ARUS
R/O. KATHIKERE CHIKMAGALUR.

... RESPONDENTS

(BY MR. VIVEK SUBBA REDDY, SR. COUNSEL FOR
MR. N. JAGADISH BALIGA, ADV., FOR C/R5
MR. PRABHULING K. NAVADAGI, AG WITH
MR. SUBRAMANYA &
MR. ARUNA SHYAM, AAG FOR R1 TO R4
MR. JAYAKUMAR S. PATIL, SR. COUNSEL FOR
MR. A. MOHAMMED TAHIR, ADV., FOR
PROPOSED RESPONDENT ON IA 1/23)

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THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER DATED 28.09.2021, PASSED IN WP NO.18752/2018
BY THE LEARNED SINGLE JUDGE.

THIS WRIT APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 01.03.2023, COMING ON
FOR PRONOUNCEMENT OF JUDGMENT THIS DAY,
ALOK ARADHE J., DELIVERED THE FOLLOWING:

JUDGMENT

This intra court appeal emanates from an order dated 28.09.2021 passed by Learned Single Judge by which in a writ petition preferred by Sri.Guruduttatreya Peetha Samvardhana Samithi (hereinafter referred to as 'the Samithi' for short), the order dated 19.03.2018 passed by the State Government has been quashed and the matter is remitted to the State Government to re-consider the matter afresh in accordance with law without reference to the report of High Level Committee.

FACTS PERTAINING TO INCLUSION OF RELIGIOUS INSTITUTION IN THE LIST OF WAKF INSTITUTIONS :

2. Facts giving rise to filing of this appeal briefly stated are that an ancient cave temple is situate in Chandradrona Hills in Chikkamagalur (hereinafter referred to as 'the religious institution' for

short). Inside the cave, a tomb of Bababudan as well as Padukas of Lord Dattatreya and 'Nandadeep' are situate. The cave temple is a venerated place of pilgrimage. The land measuring 1,861 acres was granted to Sri.Dattatreya Devaru, whereas, land measuring 111.25 acres was granted to Sri.Bababudan Dargah separately by the then Maharaja of Mysuru. After the enactment of Karnataka Inams Abolition (Religious and Charitable) Act, 1955, the Inam lands of the institution have vested with the Government and upon such vesting tasdik (compensation amount) of Rs.1,16,207/- and Rs.69,360/- have been fixed in respect of Sri.Dattatreya Devaru and Bababudan Dargah respectively. The Hindu and Muslims both offer prayers in Peetha as well as in Dargah.

3. The Samithi is a religious and Charitable Trust registered under the provisions of Indian Trust

Act, which has been constituted with an object to protect and develop Sri.Gurudattatreya Peetha Devasthanana, the cave temple at Inam Dattatreya Peetha Village in Chandradrona Parvat, Chikkamagalur.

4. The 'religious institution' is a major muzrai temple governed by the provisions of Mysore Religious and Charitable Institutions Act, 1927. The State Government by an order dated 03.10.1964 included the religious institution in the list of Wakf Institutions. One Sri.B.C.Nagaraja Rao and Sri.C.Chandrashekar challenged the aforesaid order passed by the State Government in O.S.No.25/1970 before the District court at Chikkamagalur. The aforesaid civil suit was decreed vide judgment and decree dated 29.02.1980 and it was inter alia held that the religious institution is a holy place of worship belonging to Hindus and Muslims and is not a Wakf

property. It was further held that inclusion of the property belonging to religious institution in the list of Wakf is improper and illegal. The Karnataka State Board of Wakf was restrained by permanent injunction not to interfere with the plaintiffs rights in respect of religious institution.

5. The Karnataka Wakf Board filed an appeal viz., RFA No.119/1980, which was dismissed vide judgment and decree dated 07.01.1991. The judgment and decree passed by this court was affirmed in SLP No.17040/1991 vide order dated 01.11.1991. Thus, the judgment and decree passed in O.S.No.25/1997 attained finality.

FACTS PERTAINING TO RELIGIOUS PRACTICE IN THE INSTITUTION :

6. The Assistant Commissioner, Chikkamagalur passed an order on 22.03.1983 proposing to auction

the temporary shops at the time of Urs. The father of the appellant challenged the aforesaid order in a writ petition viz., W.P.No.2294/1984 inter alia on the ground that he was the Sajjada nasheen of Sri.Gurudattatreya Bababudan Swamy Dargah and the order dated 22.03.1983 infringes his right of management of the institution. The writ petition was disposed of by an order dated 01.03.1985 with the direction to the Endowment Commissioner to enquire through muzrai officer about the practice which was prevalent prior to June 1975 in relation to affairs of the religious institution. The Commissioner was directed to take appropriate decision after getting a report from the enquiry officer on or before end of August 1985.

7. The Assistant Commissioner, Chikkamagalur Sub Division being the muzrai officer issued public notices and heard the parties and

thereafter submitted a report dated 28.01.1988 to the Endowment Commissioner who considered the said report. The Endowment Commissioner by an order dated 25.02.1989 directed restoration of practices in respect of the religious institution prevalent prior to June 1975.

8. The State Government by an order dated 05.06.1999 directed constitution of a committee under the chairmanship of Assistant Commissioner to enquire into the administration and accounts of the religious institution. Thereafter, by an order dated 25.11.2000, the State Government directed constitution of an administrative committee comprising 19 members to look after the administration of the religious institution. The State Government after perusal of the report of the committee constituted under the Chairmanship of Assistant Commissioner passed an order dated

25.11.2000 by which Sri.Syed Ghouse Mohiuddin viz., the appellant was appointed as 'shakhadri' of the religious institution.

9. The Deputy Commissioner, Chikkamagalur passed an order dated 29.11.2000, to take over the management of Dargah, by the muzrai department of the Government. The appellant viz., shakhadri challenged the order passed by the Deputy Commissioner in a writ petition viz., W.P.No.389148/2008. Another writ petition viz., W.P.No.4262/2002 was also filed by one Sri.Bandagi Hussain Shakhadri seeking consideration of his claim for appointment as shakadri of the religious institution.

10. One Sri.B.S.Vittal Rao on or about 24.03.2003 filed a review petition seeking review of the order dated 25.02.1989 passed by the Endowment

Commissioner pertaining to ritual observed in the religious institution, which was dismissed by an order dated 07.07.2003. Thereupon, aforesaid Sri.B.S.Vittal Rao filed a writ petition viz., W.P.No.43621/2003, in which validity of the orders dated 25.02.1989 and 07.07.2003 passed by the Endowment Commissioner was challenged.

11. All the aforesaid there writ petitions were clubbed together and by a common order dated 14.02.2007, Learned Single Judge of this court quashed the order dated 25.02.1989 passed by the Endowment Commissioner and the matter was remitted to him to hear the grievances of the petitioners in the writ petition as well as public in general before passing appropriate orders in accordance with law.

12. The State Government being aggrieved by the order dated 14.02.2007 filed passed by Learned Single Judge filed a writ appeal viz., W.A.No.886/2007, whereas, appellant filed W.A.No.2302/2007. Both the writ appeals were dismissed by a division bench of this court vide order dated 04.08.2008 and 05.11.2008 respectively.

13. An NGO viz., Citizen for Justice and Peace filed Special Leave Petition No.29429/2008, whereas, the appellant filed SLP NO.27944/2008, in which orders passed in writ appeals dated 04.08.2008 and 05.11.2008 were challenged. In SLP No.29429/2008, Hon'ble Supreme Court passed an interim order on 01.12.2008 and directed that status quo be maintained by the parties in terms of order dated 25.02.1989 passed by Endowment Commissioner. However, the Commissioner was directed to hear the parties in the matter as directed by this court and

instead of passing any order, the Endowment Commissioner was directed to submit a report to Hon'ble Supreme Court.

14. The Endowment Commissioner submitted his report on 10.03.2010 to Hon'ble Supreme Court. The Special Leave Petition viz., SLP No.29429/2008 filed by Citizen for Justice and Peace was converted as Civil Appeal No.2685/2010. The Hon'ble Supreme Court by an order dated 01.03.2007 directed the local officers who were looking into the administration of religious institution, to continue to perform the rituals regarding the Urs in coordination with Sajdah nasheen.

15. Thereafter, Hon'ble Supreme Court by an order dated 03.09.2015 disposed of the civil appeal as well as contempt petition filed by the appellant directing the State Government to take appropriate

decision on the report of the Endowment Commissioner including the objections raised by the parties in civil appeal. The parties were granted the liberty to take recourse to the legal remedies, which may be available to them in case, they are aggrieved by an order, which may be passed by the State Government. The Hon'ble Supreme Court further directed that interim order granted on 01.12.2008 will continue till the State Government takes a decision. The Hon'ble Supreme Court thereafter, on 27.03.2017 directed the State Government to pass appropriate orders within six weeks.

16. However, the State Government by an order dated 19.04.2017 took a decision to constitute a sub-committee headed by Law Minister. Thereafter, on 11.08.2017, the State Government constituted a three member High Level Committee headed by Justice H.N.Nagamohandas (retired) which also included

Sri.Rahmath Tarikere, as one of the members to verify the recommendations of Endowment Commissioner, made in the enquiry report dated 10.03.2010. The aforesaid committee was required to submit the report to State Government within three months.

17. The State Government thereafter filed an affidavit on 11.09.2017 before Hon'ble Supreme Court seeking extension of time for implementation of orders of Hon'ble Supreme Court. The appellant filed a contempt petition viz., Contempt Petition No.1761/2017 alleging disobedience of the orders of Hon'ble Supreme Court. The Hon'ble Supreme Court by an order dated 22.09.2017 directing the Committee to complete the hearing and to take a decision expeditiously in any case, within four months. The Committee headed by Justice H.N.Nagamohandas (retired) submitted a report on 03.12.2017 to the State Government.

18. The findings of the High Level Committee were made available to all the members of the cabinet sub committee who on perusal of the report decided to secure the opinion of law department. The State Government by an order dated 19.03.2018 rejected the report of Endowment Commissioner dated 10.03.2010 and recommended continuation of existing rituals in religious institution. The muzawar was directed to carry out the customs at the religious institution even in respect of the part of the religious institution viz., Shri.Dattatreya Devaru.

19. The order dated 19.03.2018 was assailed in a writ petition by the Samithi. The Learned Single Judge by an order dated 28.09.2021 quashed the order dated 19.03.2018 and directed the State Government to re-consider the matter afresh without reference to the report of High Level Committee. In the

aforesaid factual background, the appellant who was respondent No.5 in the writ petition has filed this appeal on 06.01.2022.

SUBSEQUENT EVENTS DURING THE PENDENCY OF THE APPEAL

20. It is not in dispute that in compliance of the directions issued by Learned Single Judge, the State Government by an order dated 31.05.2022 constituted a cabinet sub committee comprising of three cabinet ministers viz., minister of law and parliamentary affairs, Home Ministers and Endowment Ministers. The aforesaid cabinet sub committee visited the spot and consulted various stakeholders. Thereafter, the State Government on 19.07.2022 constituted a panel of representatives of both the committees to carry out religious ceremonies in the religious institution.

21. The Endowment Commissioner by an order dated 18.11.2022 appointed a eight member

managing committee to manage the affairs of the religious institution as recommended by cabinet sub committee. The order dated 18.11.2022 has been made subject to decision of this appeal. Thereafter, the Endowment Commissioner by an order dated 24.11.2022 has appointed a Chairman of eight member managing committee, which has been recorded under Section 26(2) of Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 (hereinafter referred to as 'the 1997 Act' for short). By another order dated 03.12.2022, Endowment Commissioner has appointed two individuals as priests / archakas in respect of religious institution.

SUBMISSIONS OF APPELLANT

22. Learned counsel for the appellant submitted that the respondent No.5 did not have any locus to file the writ petition. While inviting the

attention of this court to the order dated 03.09.2015 passed by Hon'ble Supreme Court, it is contended that liberty was granted only to the contesting parties to take recourse to the legal remedy. It is contended that respondent No.5 was not party to the Special Leave Petition before the Hon'ble Supreme Court. Therefore, it did not have locus to file a writ petition. It is also urged that respondent No.5 ought to have approached the Hon'ble Supreme Court against the order dated 06.04.2018 passed in Contempt Petition (C) No.715/2018 and could not have filed a writ petition before this court.

23. It was also contended that Learned Single Judge grossly erred in directing the State Government to re-consider the matter afresh without taking into account the report of the High Level Committee. It is also pointed out that respondent No.5 was heard by the High Level Committee and the order dated

30.06.2022 passed by the State Government constituted the committee under the provisions of the 1997 Act is per se without jurisdiction as the provisions of the Act did not apply to the religious institution as the same is a Mutt. It is further submitted that State Government should not interfere in the affairs of a religious institution. In support of aforesaid submissions, reliance has been placed on decision of Hon'ble Supreme Court **'DR.SUBRAMANIAN SWAMY VS. STATE OF TAMILNADU AND OTHERS', (2014) 5 SCC 75** and division bench decision of this court dated 29.09.2022 passed in W.P.No.25124/2016 (**SRI.EDURKALA ISHWARA BHAT AND OTHERS VS. SRI.RAGHAVESHWARA BHARATHI SWAMIJI AND OTHERS**).

SUBMISSIONS OF RESPONDENT

24. On the other hand, Learned Advocate General for the respondent submitted that in compliance of the order passed by the Hon'ble Supreme Court dated 23.07.2017 the State Government constituted a three member High Level Committee headed by Justice H.N.Nagamohandas (retired) which also included Sri.Rahmath Tarikere. It is pointed out that participation of the aforesaid Mr.Tarikere gave scope for allegation of a bias and therefore, learned Single Judge for the reasons assigned in para 53 of the judgment has rightly quashed the order dated 19.03.2018. It is also pointed out that the religious institution is an a notified institution under the Act by virtue of notification dated 29.09.2012.

25. It is pointed out that after disposal of the writ petition, the State Government had constituted a

cabinet sub-committee which submitted its report on 30.06.2022 and made certain recommendations. The recommendations of the cabinet sub- committee was accepted by the State Government by an order dated 19.07.2022 and thereafter, the applications were invited for constitution of the managing committee and thereafter, the managing committee has been constituted by an order dated 18.11.2022. It is further submitted that the religious institution is a composite institution which requires special treatment which has been accorded to it by the State Government. It is also urged that any interference at this stage, would unsettle the dispute, which has been put to rest by the State Government.

26. Learned Senior Counsel for Samithi submitted that the Samithi was arrayed as respondent No.27 in SLP No.29429/2008. It is further submitted that the Samithi has also filed a writ

petition in W.P.No.38148/2000, in which the order dated 25.02.1989 codifying the rituals to be performed in the religious institution was quashed. Therefore, the contention that Samithi has no locus to file the petition is misconceived. It is further submitted that Sri.Rahmath Tarikere who had participated in the proceeding before the Endowment Commissioner could not have been a member of the High Level Committee constituted by the State Government. It is further submitted that impugned order dated 19.03.2018 makes an incorrect reference to the order dated 14.02.2007 passed by this court in W.P.No.38148/2000, which is the basis for passing the impugned order. It is also urged that Learned Single Judge has assigned valid and cogent reasons for quashing the order dated 19.03.2018 and therefore, no interference is called for with the order passed by the Learned Single Judge.

27. Learned Senior Counsel for the proposed respondents submitted that the writ petition filed by the Samithi before the learned Single Judge was a public interest litigation and therefore, the learned Single Judge had no jurisdiction to deal with the writ petition. In support of his submission, reliance has been placed on decision of this Court in **STATE OF KARNATAKA Vs. B.KRISHNA BHAT AND OTHERS, ILR 2001 KAR 2030.**

ANALYSIS

28. We have considered the submissions made on both sides and have perused the record. The rights of the parties in respect of the religious institution have been adjudicated in O.S.No.25/1978 vide judgment and decree dated 29.02.1980. The relevant extract of the judgment reads as under:

"The suit of the plaintiffs is decreed not only in favour of plaintiffs, but also in favour of

the Hindu devotees or disciples of 'Sri Guru Dathathreyaswamy Peeta' declaring that the plaint schedule Institution is a religious Institution being a holy place of worship belonging to or of the Hindus and Mohammedans alike where they worship, it is not a Wakf property and therefore, the inclusion of the plaint schedule property in the List of Wakfs by the second defendant is improper and illegal, and such inclusion will not affect the rights of the plaintiffs or the Hindus, and that the 2nd defendant has no right to control or manage the suit schedule Institution; the administration, management and control of the said suit schedule property be retransferred from the control of the second defendant to the third defendant as it was being managed prior to June, 1975, the 2nd defendant is hereby restrained by means of a permanent injunction not to interfere with the plaintiffs' or Hindus' rights in respect of the plaint schedule Institution or property. Since it is a suit on behalf of the entire community of

Hindus and it is against the order of the Government in transferring the suit schedule property from its Muzrai Department to the Wakf Board and as it is not the fault of the 2nd defendant in including the suit schedule property in the List of Wakfs, I feel that in the circumstances to direct the parties to bear their own costs of the suit, Advocate's fee Rs.100."

29. The aforesaid judgment and decree has been upheld by this court vide judgment and decree dated 07.01.1991 passed in R.F.A.NO.119/1980. The Special Leave Petition preferred by Karnataka Wakf Board viz., SLP No.17040/1991 has been dismissed on 01.11.1991 by Hon'ble Supreme Court. Thus, it is clear that the religious institution being a holy place of worship belongs to the Hindus and Muslims alike and the same is not a Wakf property. The aforesaid finding has attained finality.

30. We may now examine the issue whether the religious institution is governed by provisions of the 1997 Act. Section 23 of the Act deals with notified institution. It provides that State Government after commencement of the Act shall publish by notification in respect of each revenue district a list of institution mentioned in Clauses (a) to (f) thereof. In exercise of aforesaid power, by virtue of notification date 29.09.2012, the religious institution has been declared to be a notified institution and is therefore, governed by the provisions of the Act. It is pertinent to mention here that in W.P.No.38148/2000 preferred by the appellant himself, Learned Single Judge of this court vide order dated 14.02.2007 had recorded a finding that admittedly the religious institution is declared as a major muzrai institution. Therefore, in view of notification dated 29.09.2012 as well as the aforesaid finding in the writ petition, which binds the

appellant, it can safely be inferred that the religious institution is not a Mutt and is governed by the Act.

31. Now we may advert to the locus of the Samithi to file the writ petition. The Endowment Commissioner by an order dated 25.02.1989 codified the rituals to be performed in the religious institution. The said order was challenged by the Samithi in W.P.No.38148/2008, which was decided by Learned Single Judge of this court by an order dated 14.02.2007. The aforesaid order was challenged in writ appeals viz., W.A.No.886/2007 and W.A.No.2302/2007, which were dismissed by division bench of this court by orders dated 04.08.2008 and 05.11.2008. The Samithi was also arrayed as respondent No.27 in SLP No.29429/2008 which was converted Civil Appeal No.2685/2010. Thus, it is evident that the Samithi had questioned the order passed by the Endowment Commissioner way back in

the year 2007 and was an aggrieved party. Therefore, it cannot be held that it had no locus to file the writ petition challenging the order dated 19.03.2018 passed by the State Government.

32. Now we may advert to validity of the order dated 19.03.2018 passed by the State Government. In compliance of the order dated 01.12.2008 passed by Hon'ble Supreme Court in Civil Appeal No.2686/2010, the Endowment Commissioner submitted a report to the Hon'ble Supreme Court. Following stand was taken on behalf of State Government before Hon'ble Supreme Court. Para3 and 4 of the order dated 03.09.2015 passed by Hon'ble Supreme Court, read as under:

3. *Shri. Basava Prabhu
S.Patil, Learned Senior Counsel
appearing on behalf of the state has
subitted that in view of the sensitive*

nature of the issues involved the report of the Commissioner is required to be considered by the State Cabinet and a decision thereon will be taken after considering the various pros and cons of the matter. Having regard to the issues involved and the stand taken by Shri Patil on behalf of the State, we are of the view that, at this stage, the state should be left free to take its decision on the result of the enquiry of the Commissioner as indicated in his report. The State Government will naturally be duty bound to take into account all objections that may be raised against the said report including the objections raised by the parties to the present appeals, as indicated above. Thereafter, the State Government will decide the matter. In case any of the contesting parties have any grievance against such decision that the State Government may take, it will be open for them to seek recourse to the legal remedies as may be available.

4. *In view of the aforesaid directions, we do not consider it necessary to keep the civil appeals pending any longer. Both the civil appeals and the contempt petition shall stand disposed of in terms of the above.*

Thus, it is evident that the State Government had taken a stand before Hon'ble Supreme Court that taking into account the sensitive nature of issues involved in the report of the Endowment Commissioner, the same would be considered by State Cabinet.

33. However, State Government by an order dated 19.04.2007 contrary to the stand taken by it before Hon'ble Supreme Court directed constitution of sub committee headed by law minister and thereafter on 11.08.2017, the State Government constituted a 3 member High Level Committee headed by Justice

H.N.Nagamohandas (retired) which also included Mr.Rahmath Tarikere as one of the members to examine the recommendation of Endowment Commissioner. Therefore, contrary to the stand taken before Hon'ble Supreme Court, the cabinet did not consider the recommendation made by Endowment Commissioner and the task of examining the same was delegated to the High Level Committee.

34. The relevant extract of the order dated 19.03.2018 reads as under:

Decision / Recommendation

1. *As per the recommendations of the High Level Committee, the report of Endowment Commissioner dated 10.03.2010 to be rejected.*

2. *Having regard to the above it is decided to recommend that the same practices shall continue to be followed which would be in due compliance of the Hon'ble High Court single bench order*

dated 14.02.2007 in clubbing writ petition Nos.38148/2000, 4262/2002 & 43621/2003 as noticed below:

(1) There is a muzwar appointed by the Shah Khadri to perform daily rites (Pooja) inside the cave and he alone enters inside the sanctum-sanctorum of the institutions and distributes Tabaru/Theertha to the devotees of both communities.

(2) He alone puts flowers to the to the Paduka / khadave / lits the nanda deepa.

(3) The recognized Hindu Gurus of different mutts are also taken inside the cave gate to offer their respects to the Paduka / Khandava.

(4) Persons who do not take food prepared in the Langarakhana are given 'padi' i.e., the provisions like Rice, Dhal etc., for preparing their food.

(5) the Muzawar takes Lobana (Sambrani) and perform religious rituals

inside the man shrine between 7 p.m. and 8 p.m. daily;

(6) The above practices include certain practices which are founding Hindu Temples also, such as,:

(i) offering of flowers to Padukas.

(ii) lighting the Nanda Deepa.

(iii) giving theerta to pilgrims.

(iv) breaking of coconuts.

(v) taking Hindu Gurus of religious Mutts with respect.

(vi) giving padi to the pilgrims.

35. Before proceeding further, it is apposite to take note of the relevant extract of the order dated 14.02.2007 reads as under:

"Therefore, the Commissioner/1st respondent is directed to consider the grievance of the petitioners in 43621/03 as to the practice which was prevailing from time immemorial as to offering their prayer in accordance with the religious customs and practices and to recognise their rights regarding the offering of

pooja to Paduka of the Swamy Dattatreya as per the religious customs of hindu devotees if it was so practiced, and to take into consideration the report submitted by the then Assistant Commissioner and take necessary steps to appoint Archaka if need be and also consider to allow to perform the religious customs and ceremonies following the hindu way of worship if such practice was in vogue prior to 1975 or even prior to the taking over the administration by Hyder Ali and entrustment to one Ismail Shah a Mohammadan fakir in respect of management of the Datta Peetha and Dargha during his regime.

In the result, I pass the following order:

While quashing annexure B, WP 43621/2003 is allowed in part and matter is remanded back to the 1st respondent to consider and to pass orders in accordance with law after holding the enquiry as indicated above.

WP 38148/2000 and 4262/2002 are disposed of in terms of the above order."

36. Thus, it is evident that this court in its order dated 14.02.2007 has nowhere issued the directions with regard to continuance of the ceremonies to be performed in the religious institution. On the other hand, this court had remitted the matter to the Endowment Commissioner to take a fresh decision. Thus, the impugned order is based on assumption of facts, which are factually incorrect and suffers from the vice of non application of mind. The High Level Committee has misdirected itself with regard to application of 1997 Act as the issue in dispute had attained finality.

37. 'Lord Denning in ***Metropolitan Properties Ltd. Vs. Lannon***, (1968) 3 All England Reporter 304 laid down the test of real likelihood of bias and

held that the question has to be dealt with from the perspective of a reasonable man. The Hon'ble Supreme Court in the celebrated case of '**A.K.KRAIPAK VS. UNION OF INDIA**', (1969) 2 SCC 262, dealt with the question whether there is a reasonable ground for believing that a person was likely to have been biased. It was held that in deciding the question of bias, human probabilities and ordinary course of human conduct is required to be taken into consideration. It was further held that bias of one member in the group would infect the whole group even though in a group decision, it is difficult to say that how one biased member may influence in a settle manner the decision of other members. The Hon'ble Supreme Court specifically approved the real likelihood test of Lord Denning's in **Lannon** supra, but held that the question of real likelihood of bias has to be determined with reference to party himself

instead of a reasonable man. The aforesaid test laid down by Hon'ble Supreme Court is broader than the test in *Lannon* supra. In '**RANJEET THAKUR VS. UNION OF INDIA**', **AIR 1987 SC 2386**, the Hon'ble Supreme Court accepted the plea of bias and ruled that a judgment which is a result of bias or want of impartiality is a nullity. It was further held that test of real likelihood of bias is whether a reasonable person in possession of relevant information would have thought that bias is likely and whether person concerned was likely to be disposed to decide the matter in a particular way.

38. In the backdrop of aforesaid well settled legal principles, we may advert to the facts of the case in hand. Sri.Rahmath Tarikere, Professor, Kannada University, Hampi, Bellary District, was one of the members of the High Level Committee, who, had deposed before the Endowment Commissioner. The

relevant extract of the report of the Endowment Commissioner reads as under:

433. *Rahmath Tarikere, Porfessor, Kannada University, Hampi, Bellary District, has stated that he has been visiting the Babagudangiri since his childhood days and he has studied about Sufi doctrine. According to him Bababudangiriis a centre of Sufis. The non vaidic Datta Pantha had friendship with the Sufis as the Sufis were against the orthodox Muslims and hence the Muslims and Hindus (lower class) jointly worship here and hence there is no precedents that the upper class Hindus had devotion to Bababudan as ascertained with the upper class Hindus / senior generation of Chikmagalur District.*

Thus, aforesaid Sri.Rahmath Tarikere who had already expressed an opinion with regard to the dispute before Endowment Commissioner, was also a

member of High Level Committee which recommended for rejection of the report of the Endowment Commissioner. Thus, the participation of Sri.Rahmath Tarikere as member of High Level Committee, by taking into account the human probabilities and ordinary course of human conduct clearly gives rise to an inference about likelihood of bias and therefore, the report submitted by the High Level Committee suffered from bias.

39. Therefore, for the aforementioned reasons viz., (i) That the order dated 19.03.2018 was passed contrary to the stand taken by the State Government before Hon'ble Supreme Court that the report of Endowment Commissioner shall be considered by the cabinet, the same was considered by High Level Committee. (ii) The order was passed on assumption of facts and incorrect statement about the order dated 14.02.2007 passed by Learned Single Judge of this

court (iii) The report submitted by High Level Committee suffered from bias, the order dated 19.03.2018 was rightly quashed by the Learned Single Judge. We concur with the conclusion recorded by Learned Single Judge that the order dated 19.03.2018 passed by the State Government was violative of Article 25 of the Constitution of India, inasmuch as it prevented the Hindus from performing the Pooja as per their faith and compelled the Muzawar to offer Pooja contrary to his faith. We also agree with the conclusions arrived at by the Learned Single Judge in para 53 of the judgment for setting aside the order dated 19.03.2018.

40. During the pendency of the appeal, following interim order was passed by this court on 31.05.2022.

*This intra court appeal has been
filed against the order dated 28.09.2021*

by which the writ petition preferred by respondent No.5 has been allowed and the order dated 19.03.2018 passed by the State Government has been quashed and the matter has been remitted to State Government with a direction to re-consider the matter afresh in accordance with law without reference to the report of the High Level Committee.

We have heard learned counsel for the parties at length.

Learned Advocate General submitted that in compliance of the directions issued by learned Single Judge, the State Government has constituted a cabinet sub-committee comprising of three cabinet ministers, which consists of Minister of Law and Parliamentary affairs, Home Minister and Endowments Minister. It is also stated that the aforesaid cabinet sub-committee has visited the spot and has consulted various stakeholders. It is further submitted that the aforesaid

cabinet sub committee with a view to amicably resolve the dispute between the parties shall take a decision within a period of six weeks from today and hearing of the appeal be deferred for a period of six weeks.

On the other hand, learned counsel for the appellant submits that the status quo which exists with regard to the secular and religious activities be permitted.

In view of aforesaid submission, learned Advocate General has submitted that there was no dispute, between the parties with regard to existing state of affairs in respect of place of worship in question even before the learned Single Judge and the State Government does not intend to alter or interfere with the performance of any religious activities in the place of worship in question till the decision is submitted.

With a view to put quietus to the dispute and with a view to arrive at an amicable settlement and in view of the submission made by learned Advocate General before this Court, we are inclined to defer the proceedings for a further period of six weeks to enable the State Government to submit its decision for perusal of this court. Needless to state that the decision, which may be submitted by the State Government shall be subject to result of the appeal and it will be open for either of the parties to raise an objection with regard to the decision, which may be taken by the State Government. The parties are also granted liberty to move an appropriate application in case, the status quo as it exists today with regard to affairs of the site in question is altered.

41. In pursuance of aforesaid order. the State Government by an order dated 31.05.2022 constituted a cabinet sub committee comprising of three cabinet

ministers viz., Minister of Law and Parliament Affairs, Home Minister and Endowment Minister. The cabinet sub committee visited the spot and consulted various stake holders.

42. Thereafter, this court by an order dated 22.08.2022 permitted the State Government to place on record copy of the decision taken by it on 19.07.2022. The State Government by the aforesaid decision dated 19.07.2022 constituted a panel comprising of both communities to carry out the religious activities at the religious institution. It was provided that Hindu Priest shall conduct the daily rituals, whereas, muzwar shall carry out the customs at Dargah. Thereafter, the Endowment Commissioner by an order dated 18.11.2022 appointed a 8 member management committee for a period of three years to manage the religious institution as recommended by cabinet sub committee. The said order has been made

subject to final decision in this appeal. The representatives of all sections of the society have been included in the committee. Thereafter, Sri.G.H.Hemanth Kumar was elected as Chairman of the Managing Committee and therefore, the Government of Karnataka has passed a memorandum dated 24.11.2022 notifying the election of aforesaid Sri.G.H.Hemanth. The aforesaid committee is performing the rituals as per the recommendations made by the sub cabinet committee. The Endowment Commissioner also by an order dated 03.12.2022 has appointed two individuals as priests / archakas in respect of the religious institution in question.

43. The hall mark of our Constitution is to build a society to attain justice and erase inequities flowing from religion, gender, caste and privileges. In this background, Articles 25 to 30 are incorporated in the Constitution. Article 25(1) of the Constitution

guarantees the freedom of conscience, the right to freely profess, practice and propagate religion subject to public order, morality and health. Article 26 confers the right to establish institution for religious or charitable purpose and to maintain its own affairs in the matter of religion, on every religious denomination, subject to public order, morality and health. Article 26 of the Constitution reads as under:

"26. Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

44. The religious institution is composite in nature where members of both the communities are the devotees. The religious institution is entitled to protection of Article 26 of the Constitution of India. The State Government has dealt with the sensitive issue in a pragmatic manner and has taken an action to manage the religious institution after consulting the representatives of both the communities. The committee constituted by the State Government is managing the affairs of the religious institution without any complaint from any section of the society. The subsequent orders passed during the pendency of the appeal regarding performance of the rites in the religious institution have not been assailed on the ground that either it is arbitrary or is violative of fundamental rights of any section of the society.

45. So far as submission made by Learned Senior Counsel for the proposed respondents that the writ petition before the learned Single Judge was a public interest litigation and therefore, the same could not be entertained by learned Single Judge is concerned, suffice it to say that the Samithi had filed the writ petition being aggrieved by the order dated 19.03.2018 passed by the State Government. The Samithi is a religious and charitable trust which has been constituted with an object to develop Shri Dattatreya Peetha Devasthanam, the cave temple and was an aggrieved person. At best, the writ petition filed by it could be termed as a writ petition filed in a representative capacity. The respondents in the said writ petition did not raise any such contention that the writ petition is a public interest litigation. Even otherwise, the aforesaid contention is misconceived. The same is therefore repelled.

46. At this stage, we may refer to the relevant extract of judgment and decree dated 07.01.1991 passed in RFA No.119/1980 with regard to the appellant as well as members of Hindu Community.

..... What is more heartening and commendable is the attitude of the 4th defendant Sajjada who is said to be a Muslim not to challenge the averments of his Hindu brother in the plaintiffs that this shrine belongs to both Hindus and Muslims. Equally heartening is the spirit of Hindu plaintiffs in not claiming the shire as exclusively belonging to the Hindus for the reasons that there are "Paduka" and "Nandadeepa" maintained and protected since ancient time and it is also known as "Guru Dathatreya Peeta".

47. Thus, the appellant, the members of Hindu and Muslim community by their conduct have made the religious institution as shining example of true

secularism. The court even otherwise also should be very circumspect in a dispute with regard to rites and rituals to be performed in a religious institution. The courts normally therefore, would not enter into such a dispute particularly when by reason thereof fundamental right of a group of devotees under Article 25 and 26 of the Constitution of India, may be infringed. For this reason also, at this point of time, no interference is called for. The dispute, which had arisen five decades ago needs to be put to rest in the absence of any controversy either by members of Hindu or Muslim Community.

48. In view of preceding analysis, we do not find any ground to differ with the view taken by the Learned Single Judge.

In the result, the appeal fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SS/RV