IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2nd DAY OF MAY 2023

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

W.P.No.54745/2016 (GM-R/C)
C/W
W.P.No.48392/2016 (GM-R/C)

IN W.P.No.54745/2016:

BETWEEN:

SRI.M.S.RAVI DIXIT,
AGED ABOUT 50 YEARS,
S/O LATE SRI.M.N.SUBRAMANYA DIXIT,
R/AT No.62/375,
"SRI MAHABALESHWARA NILAYA",
5TH MAIN ROAD, K.R.PURAM,
BANGALORE-560 036. **... PETITIONER**

(BY SRI.Y.K.NARAYANA SHARMA, ADVOCATE (VC))

AND:

1. THE STATE OF KARNATAKA,
   REPRESENTED BY ITS CHIEF SECRETARY,
   VIDHANA SOUDHA,
   DR. AMBEDKAR ROAD,
   BANGALORE-560 001.

2. THE COMMISSIONER FOR RELIGIOUS AND
   ENDOWMENT DEPARTMENT,
   GOVERNMENT OF KARNATAKA,
   2ND FLOOR, SRI. MALE MAHABALESHWARA
   VARTHA BHAVAN, ALUR VENKATARAO ROAD,
   CHAMARAJAPET, BANGALORE – 560 018.

3. THE ADDITIONAL DEPUTY COMMISSIONER,
RELIGIOUS AND ENDOWMENT DEPARTMENT,
GOVERNMENT OF KARNATAKA,
BANGALORE URBAN, K.G.ROAD,
BANGALORE – 560 009.

4. THE TAHSILDAR,
BANGALORE EAST TALUK,
K.R.PURAM, BANGALORE-560 036.

5. SRI. M.S.JAGADEESH DIXIT,
AGED ABOUT 55 YEARS,
S/O LATE SRI. M.N.SUBRAMANYA DIXT,
R/AT "SRI GANESH NILAYA",
DEVASANDRA MAIN ROAD,
K.R.PURAM, BANGALORE-560 036.

6. SRI.M S.VENKATESH DIXIT,
AGED ABOUT 45 YEARS,
S/O LATE SRI. M.N.SUBRAMANYA DIXIT,
R/AT "SHIVASHAKTHI NILAYA"
No.4, 3RD CROSS, 2ND STAGE,
MUNIYAPPA LAYOUT, K.R.PURAM,
BANGALORE-560 036.

... RESPONDENTS

(BY SRI.D.S.SHIVANANDA, AGA FOR R-1 TO R-4;
R-5 SERVED AND UNREPRESENTED;
SMT. PRAMILA NESARAGI, SENIOR COUNSEL FOR
SRI.HEMANTH KUMAR.D., ADVOCATE FOR R-6(VC))

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO PASS NECESSARY ORDERS AND SET ASIDE THE ORDER DATED:03.08.2016 PASSED BY THE R-3 AS PER ANNEXURE-X AND DIRECT THE R-3 TO APPOINT THE PETITIONER AND R-5 AND 6 AS ARCHAKS OF SRI MAHABALESHWARASWAMY TEMPLE. K.R.PURAM BANGALORE TO PERFORM POOJAS ON YEARLY ROTATION BASIS AMONG THEM, ETC.

IN W.P.No.48392/2016:

BETWEEN:

SRI. M.S.VENKATESH DIXIT,
S/O SUBRAMANYA DIXIT,
AGED ABOUT 44 YEARS,
R/AT SHIVSAKTHI NILAYA,
No.4, 3RD CROSS, 2ND STAGE,
MUNIYAPPA LAYOUT GARDEN,
K.R.PURAM, BANGALORE-560 036. **... PETITIONER**

(BY SMT.PRAMILA NESARAGI, SENIOR COUNSEL FOR
SRI. HIREMATH KUMAR.D., ADVOCATE (VC))

AND:

1. THE COMMISSIONER,
HINDU RELIGIOUS AND
ENDOWMENT DEPARTMENT,
2ND FLOOR, SRI MALAI MAHADESHWARA
VARTHA BHAVA, ALUR VENKATESHRAO ROAD,
CHAMARAJAPET, BANGALORE-560 018.

2. THE DEPUTY COMMISSIONER,
BANGALORE URBAN,
K.G.ROAD, BANGALORE,

3. TAHSILDAR,
BANGALORE EAST TALUK,
K.R.PURAM, BANGALORE-560 036.

4. SRI.M.S.JAGADEESH DIXIT,
S/O LATE SUBRAMANYA DIXIT,
AGED ABOUT 51 YEARS,
R/AT SRI. GANESH NILAYA,
KRISHNA TALKIES ROAD,
DEVASANDRA MAIN ROAD,
K.R.PURAM, BANGALORE-560 036.

5. SRI. M.S.RAVI DIXIT,
S/O LATE SUBRAMANYA DIXIT,
AGED AOBUT 46 YEARS,
R/AT No.62/375,
SRI.MAHABALESHWARA NILAYA,
5TH CROSS, K.R.PURAM OLD EXTENSION,
BANGALORE – 560 036.

6. SRI. L.MUNISWAMY,
S/O LATE LAKSHMAIAH,
AGED ABOUT 75 YEARS,
EX MUNICIPAL COUNCILOR,
R/AT 5TH MAIN, RAJIV GANDHI ROAD,
OLD EXTENSION, K.R.PURAM,
BENGALURU-560 036.

7. SRI.CHANDRAIAH,
S/O LATE SHANTHAPPA,
AGED ABOUT 70 YEARS,
EX MUNICIPAL COUNCILOR,
GOVT JUNIOR COLLEGE ROAD,
R/AT MALANILAYA,
K R.PURAM, NEW EXTENSION,
BENALURU-560 036.

8. SRI.KODANDA RAM,
S/O SRI.RAMANNA,
AGED ABOUT 51 YEARS,
EX MUNICIPAL COUNCILOR,
R/AT No.200/5, KUMBARE BEEDHI,
K.R.PURAM, BENGALURU- 560 036.

... RESPONDENTS

(BY SRI.D.S.SHIVANANDA, AGA FOR R-1 TO R-3;
R-4 IS SERVED AND UNREPRESENTED;
SRI Y.K.NARAYANA SHARMA, ADVOCATE FOR R-5 (VC);
SRI.C.S.HASHIM SAEED, ADVOCATE FOR R-6 TO R-8)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH

THE IMPUGNED ORDER DATED:03.08.2016 PASSED BY THE R-1 VIDE ANNEXURE-Q, ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.04.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Petitioner in W.P.No.54745/2016 i.e., M.S.Ravi Dixit and petitioner in W.P.No.48392/2016 i.e., M.S.Venkatesh Dixit are the sons of M.N.Subramanya Dixit, who was the archak of Sri Mahabaleshwaraswamy Temple at K.R.Puram, Bangalore East Taluk who had submitted the representations stating that they were entitled to be appointed as archaks, since the archakship of the temple was hereditary.

2. M.S.Venkatesh Dixit, ultimately filed a writ petition in W.P.No.50176/2014 seeking for a direction that he be appointed as archak. This Court, by an order dated 22.02.2016 disposed of the said petition by directing the concerned authorities to dispose of the representation of the petitioner in accordance with law and before disposing of the same, they were required to afford an opportunity of hearing to the petitioner and also to his brothers M.S.Jagadeesh Dixit

and M.S.Ravi Dixit, who had been arrayed as respondents 5 and 6 respectively in the said writ petition. This Court also observed that any other person who may be interested in the archakship would also be heard in the matter.

3. Pursuant to the said order, an order was passed on 05.04.2016 stating that there was no document indicating that for the previous three generations of the petitioners, their ancestors had been discharging the functions of archakship and therefore, their request to be appointed as archaks could not be acceded to. A finding has been recorded by the Commissioner for Religious and Endowment Department to the effect that the father of the petitioners late M.N.Subramanya Dixit had been appointed on 23.08.1979 and his father-in-law late Nanjunda Dixit was found to have been working as archak for 45 years as per the letter dated 30.12.1980 addressed to the Tahsildar. It was, therefore, held that since the archakship was traceable only towards maternal side of the petitioners, they would not be entitled for a claim of hereditary archakship.

4. Learned Senior Counsel appearing for the petitioners strenuously contended that adequate opportunity was not granted to the petitioners to establish that archakship was hereditary and the petitioners were entitled as a matter of right to be appointed as archaks.

5. Learned Additional Government Advocate, on the other hand, supported the impugned order and also submitted that during the pendency of the writ petition, Sri Mahabaleshwaraswamy Temple had called for applications for appointment of archaks and the last date fixed for submitting the application was 12.04.2023 and necessary action would be taken for appointment of archaks.

6. Learned counsel appearing for impleading applicants contended that the petitioners were ineligible to be appointed as archaks. He submitted that petitioners' father himself had submitted a letter to the Tahsildar dated 29.03.2007 contending that his children i.e., Jagadeesh Dixit, Ravi Dixit and Venkatesh Dixit were ineligible to be appointed as archaks and therefore, the request of the petitioners for being appointed as archaks could not be considered.

7. A reading of the impugned order indicates that the petitioners were heard in the matter, and they had filed a joint affidavit requesting that they be appointed in terms of their affidavit. Further, as noticed above, the Commissioner for Religious and Endowment Department had refused to accept their request on the ground that it had not been established that they were hereditary archaks. It is not in dispute that in order to claim hereditary archakship, it would be necessary that not only father of the petitioners, but also their grandfather and great grandfather should have performed the role of archaks in Sri Mahabaleshwaraswamy Temple and merely because the father of the petitioners had performed the role of archak in the year 1979, the petitioners cannot claim to be hereditary archaks.

8. The petitioner in W.P.No.54745/2016 has in fact stated as follows in the very first paragraph of his writ petition:

> "The petitioner and respondents No.5 and 6 are the sons of late Sri. M.N Subramanya Dixit. And they are performing the Poojas since 2007 in Sri. Mahabaleshwaraswamy Temple, K.R.Puram, Bangalore East Taluk, Bangalore, since their father's time. Their father Sri M.N.Subramanya Dixit was performing the

> Poojas in the said temple since about 1960 and 1979 he was officially appointed as Archak and he was performing Poojas for more than 50 years. Earlier to him Sri.Nanjunda Dixit, the maternal grandfather of the petitioner, was performing poojas in the aforesaid temple, for about 45 years during his lifetime. Thus, since more than 100 years the petitioner and his ancestors have been performing the Poojas in the said temple. Sri M.N.Subramanya Dixit died on 15-01-2011 leaving behind his three sons viz., the petitioner and the respondents 5 and 6."

9. A reading of this passage would indicate that admittedly only their father M.N.Subramanya Dixit had been performing pooja in the temple and before him, it was Nanjunda Dixit, his father-in-law i.e., the maternal grandfather of the petitioners who was performing the pooja.

10. It may also be pertinent to state here that even in the written arguments submitted by the petitioners, they contend that their grandfather Nanjunda Dixit had handed over charge authorising the petitioners' father M.N.Subramanya Dixit to continue to perform the pooja of the temple as hereditary archak. Reliance is placed on document No.3 annexed to the written arguments to emphasize this assertion. This document dated 30.12.1980 reads as follows:

"ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ತಹಶೀಲ್ದಾರ ಸಾಹೇಬರವರ ಜನಾಬಿಗೆ

ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ಕೃಷ್ಣರಾಜಪುರದಲ್ಲಿರುವ ಶ್ರೀಮಹಾಬಲೆಶ್ವರಸ್ವಾಮಿ ದೇವರ ಅರ್ಚಕ ನಂಜುಂಡ ದೀಕ್ಷಿತ್ ಬರೆದುಕೊಂಡ ಅರ್ಜಿ ಏನೆಂದರೆ _____ಸ್ವಾಮಿ,

ಸ್ವಸ್ತಿಕ್ ಅಲೋಯನ್ಸ್ ಬರಬೇಕು ನಾನು ಸುಮಾರು 45 ವರ್ಷಗಳಿಂದ ದೇವರ ಪೂಜೆ ವಗೈರೆ ಮಾಡಿಕೊಂಡು ಬರುತ್ತಿದ್ದು ನಮ್ಮ ಅಳಿಯಂದರಾದ ಎಂ.ಎನ್ ಸುಬ್ರಮಣ್ಯ ದೀಕ್ಷಿತ್ ಎಂಬವರು ಈಗ 20 ವರ್ಷಗಳಿಂದಲೂ ಇವರು ಸಹ ಪೂಜೆ ಮಾಡಿಕೊಂಡು ಬಂದಿರುತ್ತಾರೆ. ನನಗೆ 72 ವರ್ಷ ವಯಸ್ಸಾಗಿದೆ ಎಲ್ಲಾ ನಿಕ ಕುಟುಂಬದಲ್ಲೇ ಇರುತ್ತೇವೆ. ಇದೇ ದೇವಸ್ಥಾನಕ್ಕೆ ಸೇರಿದ ಎಲ್ಲಾ ಸಂಬಳ, ವಗೈರೆ ಎಲ್ಲಾ ಎಂ.ಎನ್ ಸುಬ್ರಮಣ್ಯ ದೀಕ್ಷಿತ್ ರವರಿಗೆ ಸೇರತಕ್ಕದ್ದು. ಸುಮಾರು ಎರಡು ವರ್ಷಗಳಾಯಿತು ನಾನು ಅರ್ಜಿ ಕೋಟ್ಟಾಯಿತು ಇವರು ಸಂಬಳ ತೆಗೆದುಕೊಳ್ಳುತ್ತಾರೆ. ಈಗ ಇವರಿಗೆ ಸ್ವಸ್ತಿಕ್ ಅಲೋಯನ್ಸ್ ಕೊಡಬೇಕಾಗಿ ಪ್ರಾರ್ಥನೆ.

ಇಂತಿ
ಅ॥ನಂಜುಂಡ ದೀಕ್ಷಿತ್
ಕೃಷ್ಣರಾಜಪುರ
ಮಹಾಬಲೇಸ್ವರಸ್ವಾಮಿ ಟೆಂಪಲ್
ತಾ॥30–12–1980"

11. As could be seen from this document also, even the grandfather of the petitioners states that his son-in-law – M.N.Subramanya Dixit was performing the pooja along with him and he should be permitted to continue as archak.

12. Since the petitioners admit that it was their maternal grandfather who was performing the pooja, obviously they cannot claim that archakship was hereditary. In fact, in the impugned order also, a finding has been recorded that the father-in-law of the petitioners' father i.e., Nanjunda Dixit (maternal grandfather of the petitioners) was performing archakship in the temple.

13. In the light of the fact that the petitioners are claiming the right of archakship by virtue of their maternal grandfather being the archak, it is obvious that they cannot claim that archakship was hereditary. In order to claim the post of hereditary archak, the line of succession should be on the paternal side and not on the maternal side. Therefore, there is no merit in the writ petitions and the same are accordingly ***dismissed***.

14. Consequently, I.A.1/2017 in W.P.No.54745/2016 and I.A.2/2021 in W.P.No.48392/2016 filed for impleading are also rejected.

Sd/-
JUDGE

PKS