
(2013) 03 AP CK 0060

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6163 of 2013

Galib Saheb

APPELLANT

Vs

Andhra Pradesh State Wakf Board

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Citation : (2013) 3 ALD 273 : (2013) 2 ALT 538

Judgement

L. Narasimha Reddy, J.—There is a wakf, by name Dargah Hazarath Syed Baji Sahaheed Aulia (Rh) at Peddakakani Village and Mandal, Guntur District. The petitioner states that his father, by name late Mastan Saheb was Muthawalli and that he succeeded to the office, on the death of his father. On a representation made by him, the A.P. State Wakf Board, respondent herein passed a resolution on 25.02.2102 to the effect that the petitioner be appointed as Muthawalli for the Wakf u/s 42 of the Wakf Act, 1995 (for short "the Act"). It is stated that on account of interference at various levels, orders of appointment could not be issued and on 11.02.2013, the respondent passed another resolution, wherein it has been decided to issue the orders of appointment. The grievance of the petitioner is that on a letter addressed by the Hon"ble Minister for Minorities Welfare, the Chairman of the Board has kept the resolution dated 11.02.2013 in abeyance through order dated 15.02.2013 and that the same has been communicated by the Chief Executive Officer through proceedings of the same date. He feels aggrieved by the said proceedings. Heard Sri K. Rathanga Pani Reddy, learned counsel for the petitioner and Sri Shafath Ahmed Khan, learned Standing Counsel for the respondent.

2. The Act provides inter alia for procedure to be followed in the matter of appointment of Muthawallis to the Wakfs. Basically, the contents of Wakfnama, under which the wakf is created, prescribes the manner in which the vacancy in the office of Muthawalli, as and when arises, must be filled. There does not exist any uniformity and hard and fast rule in this regard. Much would depend upon the intention of the person who create the Wakf. If the office is to be filled up by inheritance, the person, who succeeds to the interests of the Muthawalli, must

hold the office. In such an event, the Wakf Board has to take steps u/s 42 of the Act, to recognize the succession or the functioning of the successor. The provision reads:

42. Change in the management of wakfs to be notified,-(1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the muthawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board. (2) In the case of any other change in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

3. The question of making appointment of Muthawalli u/s 42 of the Act does not arise. It is only u/s 63 of the Act, that the Wakf Board can make appointment of Muthawalli and it reads:

63. Power to appoint mutawallis in certain cases.-When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

4. The case pleaded by the petitioner fits into the one u/s 42 of the Act. The only step that the Board could have taken was to recognize the functioning of the petitioner. However, the resolution passed by the Wakf Board was somewhat different. It reads:

The matter has been discussed and it is unanimously resolved to appoint Mohatarma Silar Bee as a Muthawalli U/s. 42 of the Wakf Act, 1995 in the share of the then Muthawalli of Late Abdul Gafoor as she is the paternal niece of Late Abdul Gafoor, Janab Sk. Galib is appointed as Muthawalli U/s. 42 of Wakf Act, 1995 in place of his father Late Mastan Saheb to his respective share. The all the Muthawallis are directed to pay the Wakf Fund separately to Wakf Board.

5. While reference is made u/s 42 of the Act, step is taken u/s 63 of the Act.

6. It may be true that once a resolution is passed, it must be enforced by the concerned authorities. The Chairman of the Board, who happens to be a party to a resolution, does not have the power to keep it in abeyance. It is only when an appeal is preferred to the Government or other authority under the relevant provisions of law, that an occasion would arise to pass interim or final orders. This Court would have certainly set aside the impugned order, but for the fact that the resolution, which the petitioner wants this Court to enforce, itself does not accord with law. Even now, the respondent can be required to take necessary steps in accordance with law.

7. Hence, the writ petition is disposed of directing that the respondent shall pass appropriate orders be it u/s 42 or 63 of the Act. The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to

costs.