
(2011) 06 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16064 of 2011

Mir Qamar Hasan Razvi

APPELLANT

Vs

A.P. State Wakf Board, Hyderabad

RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Waqf Act, 1995 — Section 42, 63, 64, 65, 83

Citation : (2011) 5 ALD 407

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : M. Mehdi Hussain, for the Appellant; Mir Masood Khan, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—There is an ancient Wakf Institution, namely, Kohe Imam-e-Zamin (AS) in Tirumulgerry Village and Mandal, Hyderabad. An extent of 300 acres is attached to the said wakf institution. According to the petitioner, the office of mutawalli is hereditary and his father rendered service as mutawalli to the said institution till his death in the year 1996. The petitioner approached the Wakf Board to recognize him as hereditary mutawalli. There being no action on the part of the Wakf Board, he: filed Writ Petition 6136 of 2003. The said writ petition came to be disposed of on 18.4.2003 directing the Wakf Board to take action on the representations by conducting an enquiry. Pursuant to the direction given in the writ petition, the Wakf Board appointed an Enquiry Officer, who conducted enquiry and submitted his report on 29.6.2003. Ultimately, proceedings came to be issued on 4.6.2008 appointing the petitioner as mutawalli to the said institution u/s 63 of the Wakf Act, 1995 (for brevity, "the Act"). The appointment of the petitioner as mutawalli came to be published in Andhra Pradesh Gazette dated 3.7.2008. In the Gazette, the term of the office of the petitioner as mutawalli has been indicated as one year. Therefore, he submitted another application on 22.11.2008 to recognize him as hereditary

mutawalli u/s 42 of the Act. The Wakf Board considered the representation dated 22.11.2008 and issued proceedings on 5.1.2009 appointing him as mutawalli of the institution u/s 42 of the Act.

2. While he was rendering the services as mutawalli, a committee was appointed by the Board to conduct ceremonies for a period of three days under proceedings bearing No.27/KIZ/DM/2006/ Zone-II, dated 25.7.2009. The petitioner questioned the said proceedings by filing Writ Petition No. 15071 of 2009 and he also moved WPMP No. 19800 of 2009 seeking for interim relief. An interim order came to be passed in WPMP No. 19800 of 2009 on 28th July, 2009. Subsequently, the said writ petition came to be dismissed as infructuous on 2.12.2010. The petitioner also filed OS No. 101 of 2009 before the Andhra Pradesh Wakf Tribunal, Hyderabad seeking injunction against Shankar Lal Yadav and Dhan Sing Yadav and obtained an order of status quo, vide orders in IA No. 302 of 2009 on 26th August, 2009. While so, the Chief Executive Officer, A.P. State Wakf Board issued proceedings vide F. No. 36/B2/ RR/2007/Z-II, dated 7.6.2011, whereunder the management of the institution has been taken over by the Board u/s 65 of the Act and directed Janab Mir Jafer Ali Sajidi, Assistant Secretary, A.P. State Wakf Board to take complete charge of the institution along with attached properties and manage them till further orders. For better appreciation, I may refer the relevant portion of the proceedings dated 7.6.2011, which reads as hereunder :-

In the reference 2nd read above, Janab Mir Qamar Hasan Razvi had filed WP No. 15071 of 2009 for constitution of Jashan Committee vide Proc.No.27/KIZ/DM/06/Z-II, dated 25.7.2009 and obtained interim order in WPMP No. 19800/2009, dated : 28.7.2009 and the same WP was disposed on 2.12.2010.

In the reference 3rd read above, the I/c. Task Force, APSWB has submitted a report stating that Janab Mir Qamar Hasan Razvi.

(1) has allowed the labour in Sama Khana without permission of the Board as the same Sama Khana is for Zaireen of the subject Wakf Institution.

(2) the above said labour are engaged in construction work.

(3) The above said mutawalli has raised the construction wall without permission of the Board.

(4) The above said Mutawalli has allowed to 1. V. Krishna 2. G. Yadagiri 3. V. Sushella 4. V. Chandraiah R/o. Subash Nagar 5. Ram Narvade R/o Chennapuram for quarrying without permission of the A.P. State Wakf Board. As such, the I/c. Task Force Team has suggested to take further necessary action as deems fit for the above said lapses of Janab Mir Qamar Hasan Razvi.

In view of the above lapses, the matter has been placed before the Hon''ble Chairman, who after careful examination ordered vide reference 4th read above to place the matter before the Board.

In pursuance of the orders of the Hon''ble Chairman, the matter was placed before the Board. The Board vide its resolution in the reference 5th read passed as follows:

The matter has been examined and it is found as per record that the then Special Officer appointed Janab Mir Qamar Hasan Razvi as temporarily Mutawalli u/s 63 of Wakf Act, 1995. The said period was already been expired. The WP No. 15071/2009 filed by the individual has also been dismissed. The Board therefore unanimously resolved to take the institution under direct management of the Wakf Board and Janab Mir Ali Sajidi, Asst. Secretary is authorized on behalf of the Board to takeover the institution and manage the same till further orders.

In pursuance to the Board's Resolution above, the Wakf Institution known as Kohe-Imam Zamin and its attached properties situated at Tirulgiri (V&M), Ranga Reddy District is hereby taken under Direct Management of the Wakf Board u/s 65 of the Wakf Act, 1995.

Janab Mir Jafer Ali Sajidi, Assistant Secretary, A.P. State Wakf Board is directed to take the complete charge of the subject Wakf Institution with attached properties under his control immediately and manage the same till further orders and report compliance.

The proceedings issued by the Chief Executive Officer, A.P. State Wakf Board are assailed in the writ petition.

3. When the writ petition came up for admission, learned Standing Counsel appearing for the A.P. State Wakf Board received notice on behalf of the respondent and filed counter.

4(a). It is stated in the counter-affidavit that the proceedings said to have been issued appointing the petitioner as mutawalli u/s 42 of the Wakf Act, 1995 are fabricated and the respondent is contemplating to take criminal proceedings against the person responsible for the issuance of the said proceedings. It is further stated that the claim of the petitioner to appoint him as hereditary mutawalli has already been negated. The said issue reached finality with the dismissal of OS No. 26 of 1998 by the Wakf Tribunal. Para (7) of the counter-affidavit needs to be noted and it is thus :--

In reply to Para 6 of the Affidavit, it is submitted that, on receipt of complaints both oral and written in regard to alienation of property, misuse of Wakf Property and quarrying the wakf property this respondent deputed the officials (Task Force Team) to verify and report into the matter. The Task Force Team reported that the petitioner herein allowing the labour to occupy the Samakhana attached to the institution and surprisingly these labour have engaged for construction work going on in the western side of the institution. During inspection it is also found true that the quarrying work is going on and stopped by the Task Force Team and that the petitioner herein without any manner and right raised construction of walls and foundation adjacent to the place where quarrying is going on. Further,

the petitioner is no more mutawalli of the Wakf, as such, the issuance of notice as pleaded has no legs to stand on. Further, filing of suit is denied for want of knowledge, the petitioner be put to strict proof of the same.

4(b). It is further stated in the counter that since the tenure for which the petitioner came to be appointed as mutawalli has been expired on 3.6.2009, the question of issuing notice to him before the impugned proceedings does not arise. The Board has examined the issue and unanimously resolved to take over the institution under the direct management so as to carry out the affairs smoothly and also to protect the wakf property.

5. The petitioner filed reply affidavit. It is stated in the reply affidavit that he filed petitions in various proceedings initiated by the Wakf Board seeking his impleadment as mutawalli of the institution as the Wakf Board failed to protect the properties of the institution. It is further stated in the reply affidavit that as on the date of issuance of the proceedings appointing the petitioner as mutawalli u/s 42 of the Act, the Chief Executive Officer was acting as Special Officer and therefore, the said proceedings cannot be said to be invalid. The suit being OS No. 26 of 1998 filed by him before the Wakf Board came to be dismissed on technical grounds and no final adjudication has been made with regard to the plea advanced by him.

6. When the writ petition came up for admission hearing, with the consent of the Counsel appearing for the parties, it is taken up for final disposal.

7. Heard learned Counsel appearing for the petitioner and learned Standing Counsel appearing for the respondent.

8. Learned Counsel appearing for the petitioner submits that the respondent Board having recognized the petitioner as hereditary mutawalli by issuing proceedings u/s 42 of the Act has to follow the procedure contemplated u/s 64 of the Act for removal of the petitioner as mutawalli of the institution and there being no such procedure followed before issuance of the proceedings impugned in the writ petition, the said proceedings are liable to be set aside and the petitioner is to be allowed to manage the affairs of the institution. In support of his submissions, reliance has been placed on the judgment of this Court in Mulla Rahim Saheb v. A.P. State Wakf Board, 1997 (2) ALD 79. Learned Counsel would contend that the proceedings impugned in the writ petition came to be issued without hearing the petitioner and therefore, the said proceedings are in violation of the principles of natural justice.

9. Learned Standing Counsel appearing for the respondent submits that the very writ petition is not maintainable as the petitioner has an alternative remedy by way of approaching the Wakf Tribunal as provided u/s 83 of the Act. He would also submit that the Board has not issued the proceedings dated 5.1.2009 and the said proceedings have been fabricated for the purpose of the writ petition.

10. Learned Standing Counsel placed on record the entire file relating to the

institution maintained by the A.P. State Wakf Board. By referring the file, learned Counsel contends that the proceedings pressed into service by the writ petitioner have been fabricated, in which case, the petitioner has no basis to contend that he has been appointed as mutawalli of the institution u/s 42 of the Act. In support of his submissions, reliance has been placed on the judgment of the Supreme Court in Board of Wakf, West Bengal Vs. Anis Fatma Begum and Another, and I. Salam Khan Vs. The Tamil Nadu Wakf Board and Others,

11. The scope of the Tribunal constituted under the Wakf Act came to be considered by a Division Bench of this Court as well as the Supreme Court. It has been held in Anis Fatma Begum's case (supra), that the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf Property. The words "any dispute, question or other matters relating to a Wakf or Wakf Property" are words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner, which arises, relating to a Wakf or Wakf Property can be decided by the Wakf Tribunal. A Division Bench of this Court in Allauddin Charities and Zakath Wakf Vs. Hameed Ali and Others, considered the scope of Section 83 of the Wakf Act and held as hereunder :--

Under sub-section (5) of Section 83, the Tribunal constituted under sub-section (1) of Section 83 shall be deemed to be a civil Court and shall have the same powers as may be exercised by a civil Court under the CPC while trying a suit or executing a decree or order. The jurisdiction of the civil Court is specifically barred u/s 85 of the Act. Therefore, when the Tribunal has been conferred with the power to determine any dispute, question or other matter relating to a Wakf or Wakf Property under the Act and acts as a civil Court for all purposes, this Court, in exercise of the jurisdiction under Article 226 of the Constitution, cannot permit a party to bypass such statutory remedy and assign itself the role of statutory authority or Tribunal by dealing with the disputed questions of fact or title. It is only after the issue or dispute is determined by the Tribunal at the first instance, the High Court, in exercise of the power under the proviso to sub-section (9) of Section 83 of the Act gets jurisdiction and can go into the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order it may think fit. Therefore unless the party aggrieved of the orders of the CEO has availed of the alternative remedy available to him under the Statute and the Tribunal has determined the issue or dispute or the nature of the property as provided under the provisions of the Act, this Court, cannot go into the question of validity of the orders passed by the Chief Executive Officer.

Since the Wakf Act provides an efficacious alternative remedy to the petitioner to challenge the order of the Chef Executive Officer, A.P. State Wakf Board, before the State Wakf Tribunal, the petitioner has to avail the said remedy.

12. It is well settled principle of law that when a statutory Tribunal or a Court has been conferred with certain powers in relation to any dispute, such authority should be allowed to play its role as per the statutory provisions.

13. Therefore, the writ petition is dismissed reserving liberty to the petitioner to approach the Wakf Tribunal by instituting appropriate proceedings. No order as to costs.