

(2013) 07 KAR CK 0244

In the Karnataka High Court

Case No : Writ Petition No's. 15095-15097 of 2012 (GM WAKF)

Mr. K. Mohammed Obeidur Rahman

APPELLANT

Vs

The Administrator, Chief Executive Officer and Sri Rahman
Shariff

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Waqf Act, 1995 — Section 64(4), 64(g), 64(j)

Citation : (2013) 07 KAR CK 0244

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : S. Afsar Ahmed for M/s. Rowther and Rowther, for the Appellant;
Syed Suhail Ali for M/s. Common Law Partners, Adv for R.1 to 3, for the
Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 30.07.2011 which is impugned at Annexure-F to the petition. By the said order, the petitioner has been ordered to be removed from being the Matawalli in respect of Jamia Masjid Idgah (Sunni), Kempanahalli village, Kunigal Taluk. The grievance of the petitioner is that though he was performing the duties of Mutawalli for a long period in respect of the said Masjid, the order impugned herein has been passed without sufficient opportunity to the petitioner. It is contended that even otherwise, the allegations as made therein is not conclusively proved against the petitioner but the very order on the face of it would indicate that the said order has come to be passed in view of default of the petitioner in not replying to the show cause notice as also the final show cause notice.

2. It is contended that though certain allegations with regard to misuse of property had been made, the petitioner was in the course of obtaining details with regard to the same and as such, the petitioner would be in a position to

establish that the charges alleged against him is not true. Therefore, the order itself is bad in law. It is further contended that the order passed by the Chief Executive Officer is not sustainable inasmuch as it is the established position of law that the Board or the Administrator is to pass such orders of removal of Mutawalli. Therefore, the order calls for interference in that regard as well. Hence, it is contended that the order is liable to be set aside.

3. Learned counsel for the respondents on the other hand would refer to the order itself to point out that the allegations have not been controverted. According to the learned counsel even the inspection report would disclose that the allegation made by the Board against the petitioner is justified and in such circumstance, when the petitioner has not established that the charges alleged against him are false, the question of interference with the order does not arise. It is further contended that all legal provisions as contained under the Wakf Act has been followed and since an Administrator was in-charge, the order impugned has been issued to the petitioner with the approval of the Administrator. Therefore, the said order is valid. It is contended that the petitioner has violated Section 64(g) and (j) of the Wakf Act by his misdemeanor and the order passed in that regard can only be assailed by the petitioner by filing an appeal before the Tribunal as contemplated under Sub-Section (4) to Section 64 of the Wakf Act. It is therefore contended that the petition is liable to be dismissed.

4. Since the question of alternate remedy has been raised by the learned counsel for the respondents, I deem it fit to consider this aspect of the matter at the outset. It is no doubt true that Sub-Section (4) to Section 64 provides for an appeal as provided therein and in the normal circumstances, the same would have to be availed. The position of law is also not in dispute that mere availability of an alternative remedy would not disentitle this Court in all circumstances to entertain a petition when the grounds raised are within the exceptions. It is contended that the order is without compliance of natural justice. In the instant case, the order on the face of it would indicate that the order passed is due to the fact that the petitioner had not responded to the notices which had been issued. Though it can be said that the petitioner has not utilized the opportunity, when serious allegations are made against him, the matter may have to be looked at from that perspective. Further in a situation when this Court had retained the petition on file for more than a year, I deem it proper to examine the contentions put forth rather than relegating the petitioner to the appellate remedy on the facts and circumstance arising in the instant case since all that is required is to find out is whether an opportunity is to be granted. In that view, the petition is considered in that regard.

5. It is no doubt true that the learned counsel for the respondents has referred to the inspection report which is produced along with the petition. The factual aspects relating to that aspect of the matter would disclose that the inspection report has also been obtained by the petitioner under the Right to Information Act as seen from the letter at Annexure-C which is dated 03.10.2011. This in fact

would disclose that the details had been obtained by the petitioner through the right available under the Right to Information Act subsequent to the date of the order impugned herein i.e., 30.07.2011.

6. Be that as it may the allegations which had been put forth and the justifications thereto would require factual determination to come to a conclusion as to whether the allegations as made against the petitioner would stand proved. At this juncture, from the very perusal of the impugned order, the preface of it would indicate that the only reason for which the order has been passed is because the petitioner has failed to reply to the initial show cause notice and the final show cause notice. Furthermore, the petitioner has also produced certain medical records before this Court which is for the period 02.02.2011 i.e., prior to the period the show cause notice was issued and the ultimate order was passed. The age of the petitioner is also shown to be about 78 years.

7. Therefore, if these aspects of the matter are kept in view and the nature of the allegations are also taken into consideration, certainly, the petitioner should be granted an opportunity to put forth his contentions before the respondents so that the respondents can assess these aspects of the matter and thereafter come to a conclusion in accordance with law.

8. Having arrived at the above conclusion, the question that would also arise is as to whether in that light the order dated 30.07.2011 needs to be quashed at this juncture. In this regard, as noticed, the Idgah in question is under the Administrator even prior to the removal of the Mutawalli and the order impugned would also indicate that the Administrator would continue to function so. At the time of hearing, it is indicated that the Administrator is still functioning. The issue therefore would be that since the Administrator is presently in-charge, an opportunity if granted to the petitioner and if the Administrator is of the view that the charges alleged against the petitioner is not conclusively established and the petitioner has succeeded in pointing out that the charges alleged against him is not true, it would be still open for the Administrator to reconsider the approval granted by him to issue the order dated 30.07.2011 and pass fresh orders if necessary. This procedure could be followed by the committee, if a committee has been constituted subsequently.

Needless to mention that on providing opportunity if it is established that the charges alleged against the petitioner has not been dispelled by the petitioner it would be open for the Administrator/Committee hereafter to reconsider the order which had been made earlier. However it is made clear that the Administrator or the Committee shall provide opportunity to the petitioner and thereafter come to a conclusion in the manner as indicated above and take a decision as expeditiously as possible, but not later than five months from the date on which a copy of this order is furnished.

These petitions stand disposed of in the above terms.