
(2017) 07 AP CK 0052
In the Andhra Pradesh High Court
Case No : 1315 of 2017

SK. Farooq and others

APPELLANT

Vs

Telangana State Wakf Board and others

RESPONDENT

Date of Decision : 21-07-2017

Acts Referred:

Constitution of India, Article 25 -
Freedom of conscience and free profession, practice and prop-agation of religion
Waqf Act, 1995, Section 23, Section 8

Citation : (2017) 07 AP CK 0052

Hon'ble Judges : B.Siva Sankara Rao

Bench : SINGLE BENCH

Advocate : M/s Bharadwaj, Farhan Azam Khan, K.Raghuveer Reddy

Judgement

1. The self-same 10 petitioners in both the Writ Petitions maintained against the self-same respondents 1 and 2 with unofficial 3rd respondent respectively by names R.1-Telangana State Wakf Board rep. by Chief Executive Officer, Nampally, Hyderabad, R.2- Dargah Hazarath Janpak Shabeed, Janpahad village, Nereducherla Mandal, Nalgonda District and R.3-Md.Masood Ali, the so called bidder. 1(a).The prayer in W.P.No.1315 of 2017 reads as follows:-

to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the 1st respondent in issuing the e-procurement tender notice dated 16.12.2016 purporting to auction the offering items of the 2nd respondent Dargah namely Hundi, Neem Tree Hundi, Chirag Bathi, Udi, Fateha, Thaviz and Pottel Juba, Nimboo and Narial Bandish, Sandal and Flower and vehicle Fateha, is arbitrary, irrational and without jurisdiction and consequently direct the respondents to forbear from proceeding with the said auction in respect of the said offering items/religious rites and grant such other relief as it deems fit in the circumstances of the case.

1(b).The prayer in W.P.No.14547 of 2017 reads as follows:-

to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the 1st respondent contained in Proceeding in F.No.06/AUC/DJPK/NLG/2014-15/Z-III, dated 17.04.2017 giving a contract on weekly basis of the offering items/religious rites in Dargah Hazrath Syed Mohiuddin Toulia @ Zampak Shahid(RHH) to the 3rd respondent ignoring the orders of the Honourable Court in W.P.No.1315 of 2017, is arbitrary, illegal and without jurisdiction and consequently set aside the same and direct the 1st respondent not to auctioning the offering items/religious rites of the Dargah either on weekly basis or otherwise and grant such other relief as it deems fit in the circumstances of the case.

2. Pending disposal of the Writ Petition interim reliefs sought and in W.P.No.1315 of 2017, the interim order passed by another Bench of this Court on 06.01.2017 is by staying the schedule opening of the bid on 12.01.2017 initially for two weeks from that date and later the same was extended from time to time including until further orders and in W.P.No.14547 of 2017 the interim order passed by the another Bench of this Court on 04.05.2017 is that the schedule opening of bid on 12.01.2017 is stayed initially for a period of two weeks and there was an observation that prima facie the Court is of the view that through the order, dated 06.01.2017, directed the respondents 1 and 2 not to open the bid on 12.01.2017. What was prevented by doing through the interim order dated 06.01.2017, cannot and could not be allowed to be carried out by the 1st respondent to the proceeding impugned in the Writ Petition. The Court further of the view that the respondents 1 and 2 ought to have worked out by vacate stay petition instead of issuing proceeding impugned in the Writ Petition. Since the learned standing counsel has contended that the financial exigency and loss is one of the reasons for issuing proceeding impugned in the writ petition and the Court is of the view that in the matter relating to wakf, endowment or church either profit or loss is not the basis on which these decisions are guided. The impugned proceeding in the Writ Petition is thus suspended for a period of four (4) weeks as the impugned proceeding defeats the order in W.P.No.1315 of 2017 and in view of the urgency canvassed, directed the Registry to post both the Writ Petitions on 01.06.2017. It is ultimately until further orders, the interim order is extended after hearing both sides while reserving the matters for orders on 15.06.2017.

3. The common averments in the respective affidavits in support of the respective two Writ Petitions of the 1st petitioner for and on behalf of all the other petitioners are that the petitioners are the devotees of the 2nd respondent-Darga, a Wakf Institution within the meaning of Wakf Act,1955,(for short, the Act) in the State of Telangana and are thereby interested in protecting the purity and religious characters of the 2nd respondent. 3(a). The cause of action for filing the present writ petition is the e-procurement tender notice issued by the 1st respondent, dated 16.12.2016 inviting sealed tenders from experienced, appropriate class firms/contractors for the offering items along with Hundis at the Dargah. The auction notification has notified that the auction will be in

respect of Hundi, Chirag Bathi, Udi, Fateha, Thaviz, Poteel Juba, Nimboo, Narial Bandish, Sandal, Flower and vehicle Fateha.

3(b). It is averred that all these items are of religious faith and they are religious rites and said auction notification converts incorporeal things into the materialistic world and the Wakf Board which is the supervisory body over all the Wakf institutions in the State, it cannot conduct auction of religious rites which go along with the recognition of the person performing those religious rites, for the law of contract does not apply to such religious rites and functions. It is also averred that a Hundi of a temple, Masjid or Dargah cannot be subjected to auction since the Hundi collections are meant for the almighty and not for successful bidder in the auction. Similarly above stated religious rites can be performed only by religious persons and not by any person. The freedom of religion guaranteed by Article 25 of the Constitution of India ensures that the religious faith shall not be intermeddled by the action of the State or the instrumentalities. Thus, the action for the 1st respondent-Wakf Board in initiating the auction in respect of religious rites and functions, is absolutely without any authority of law or jurisdiction.

3. In the 2nd W.P.No.14547 of 2017 besides the above, further submitted that the cause of action for filing the Writ Petition is the impugned proceeding of the 1st respondent dated 17.04.2017 by which the offering items/religious rites are given on a weekly contract to the 3rd respondent herein. The impugned proceeding has referred to the above said 1st writ petition, however, said the 1st respondent, without even following the procedure of tenders, has granted the offering items to the 3rd respondent on nomination basis, which is arbitrary and without jurisdiction, for none of the provisions of the Wakf Act, enable the 1st respondent to grant such a nomination contract.

3(d). It is also averred that the offering items are intangible things which cannot be subjected to a contract to an individual. It is the performance of religious rites which have to be done by a well known Khadim or Mujawar. Hence the impugned proceeding of the 1st respondent in F.No.06/AUC/ DJPK/NLG/2014-15/Z-III, dated 17.04.2017 is not only arbitrary but also contemptuous.

4(a). On the other hand, in W.P.No.1315 of 2017 the respondent-Chief Executive Officer of the Telangana State Wakf Board, filed counter denying all the averments and allegations made against him. He submits that one of the persons who erroneously laid claim to rights and interest pertaining to the subject Wakf Institution particularly had suffered adverse order dated 22.09.2016 from this Court in W.P.Nos.27712 of 2014 and 24198 of 2015. He had failed to establish any of his right consequent to which the auction had been conducted at the subject Wakf Institution on the previous occasion. On that the 1st respondent herein preferred a Writ Appeal No.890 and 891 of 2015 and later withdrawn vide orders dated 07.10.2015. Thereafter the writ petitioner therein Mr. Syed Moinuddin approached Forum Telangana State Wakf Tribunal and preferred I.A.No.324 of 2015 in O.S.No.17 of 2015. The plaintiff therein had failed to

establish any of his right in the subject Wakf Institution on the previous occasion and the matter is pending. Consequently the writ petitioner therein again approached the competent Forum Telangana State Wakf Tribunal and preferred I.A.No.57 of 2016 in O.A.No.808 of 2016 and the matter is pending. Further the Writ Petitioner therein filed Writ Petition No.45218 of 2016 pre-emptively to prevent the 1st respondent herein from further proceeding with the auction notification impugned herein the instant Writ Petition wherein he had failed to obtain any successful orders from the Honble court and the writ petition is pending adjudication, the present writ petition (W.P.No.1315 of 2017) has been filed as apparent at instance of Mr.Syed Moinuddin by another set of persons on the very same grounds to show that they are aggrieved because successive cases cannot be filed by different set of persons seeking the same relief even when done in public interest litigation. The instant writ petition is nothing but gross abuse of process of law and the orders passed by the Honble Court attracts the principles of res-judicata. In any case, the present Writ Petitioners in the instant Writ Petition are stopped from approaching this Court for the very same relief where the said Mr.Syed Moinddin was unsuccessful. They intend to continue unjust enrichment in the absence of any vested right and to circumvent the 1st respondent from proceeding to auction the offerings being the practice previously at the 2nd respondent subject Wakf Institution as well as similarly other Dargah. The petitioners have sought perpetuation of illegality by approaching this Court preferring the instant Writ Petition. As such the Writ Petition is liable to be dismissed in limini for this reason alone.

4(b). It is also the contention that the items that have been put to auction cannot be any dispute for the devotees visit the Dargah, there is a vehicle parking. Tai Bazari which is auction of shops premises for different purposes of selling such as flowers, Sandal (powder or paste), coconuts besides broken coconut counter, laddu prasadam, Jhanda (flag) may be put up by devotees themselves at the specified place and the Dhati being the offering made, nimboo (lemon) and narial (coconut), bandish (usually done/wrapped up in cloth), Jubah (slaughter/sacrifice of goat/sheep) etc., and the bidder collects the skin and head and legs(sheep/goat) collection.

4. The other contention is that Courts in India have no ecclesiastical jurisdiction and that they may not be deciding the question of ritual except insofar as the decision of such questions is a necessary incident to the decision of civil rights. It is well established that a right to worship in a particular place is a civil right and that a right to perform a religious office to which obligations and emoluments are attached is also a civil right. These issues involve question of fact to be decided by the State Wakf Tribunal Constituted under the Wakf Act, 1995. It may now be relevant to enquire what is the nature of the tenets and beliefs to which Sufism subscribes to and as such an enquiry would serve to assist us in determining whether the sect can be regarded as a religious denomination or a section thereof within Article 25 of the Constitution of India. According to Murray T. Titus Islam, like Christianity, has its monastic orders and Saints, the underlying basis

of which is the mystic interpretation of the religious life known as Suffism. The men imbued with Sufi doctrine came very early to India and those earliest comers where or when they arrived cannot be definitely ascertained. The opinion is that though Sofism is found so extensively, it is not the religion of a sect as it is rather a natural revolt of the human heart against the cold formalism of a ritualistic religion, and so while Sufis have never been regarded as a separate sect of Muslims they have nevertheless tended to gather themselves into religious orders. Those have taken on special forms or Organization, so that today there are a great number of such orders, which, curiously enough, belong only to the Sunnis and the subject Wakf institution being one amongst these. 4(d). The respondent No.1 further states that severe resistance and interference in the management in turn also resulting in huge monetary loss to the Wakf Board and the subject Wakf Institution Dargah of renowned Sufi Saint Hazarath Janpak Shaheed(RA) from the petitioners and those set up as affront. The 1st respondent had put these offerings to auction and the petitioners if they desire could have offered bids as the Dargah Janpak Shaheed (RH) being notified, Wakf Institution can get higher bids in all probability when there is competitive bidding as the amounts received would ultimately benefit the community at large. It is settled law as held by this Court and the Apex Court in catena of judgments that there must be auction and the tender shall be sufficiently called transparently with sufficient scope for competition. Despite the said legal position the contention of the petitioners is contrary to the provisions of the intent of the Wakf Act, 1995 and the rules made therein. The petitioners have now approached this Court with the alibi erroneously contending infringement under Article 25 of the Constitution of India and for the aforesaid reasons the petitioners are not entitled for any relief from this Court.

4(e).The 1st respondent being the statutory authority appointed u/Sec.23 of the Wakf Act, 1995 and bestowed upon with the power and duty under Section 25 to do all such acts as may be necessary for the control, maintenance and superintendence of Wakf (the Wakf institutions and their properties) has issued the auction notification through e-procurement tenders as faced with shortage of staff delegated to perform these function. The 1st respondent had appointed officials of the respondent who were discharging the functions and those petitioners have self-invented and designated mainly for purpose of frivolous litigation for which the petitioners are put to strict proof of the same. The alleged contention of the writ petitioners with regard to the respondent No.1 infringing with any of the petitioners individual religious rights is denied as false, baseless and legally untenable. The petitioners have attributed false allegations against respondent No.1 in the instant writ petitions which are baseless and sought for dismissal of the writ petitions.

4(f).It is also contended that the religion is founded by faith emanates from conscience and belief is result of teaching and learning of the Holi Quran wherein Hadith is a teaching of prophet. The 1st respondent-Wakf Board is bound to appoint and pay salaries to Mouzin, Qateeb and Pashimum for Namaz and

religious prayers. It is also referred to the expression in Queen Empress Vs. Ramzan and others that the Courts duty to take judicial notice of the Mohammedan Ecclesiastical law in deciding disputes with no way outside of the purview of the jurisdiction and the same was upheld in Constitutional Bench in Most.Rev.P.M.A.Metropolitan and others Vs. Moran Mar Marthoma and another .

5. Heard both sides and perused the material.

6. Before coming to the right to conduct public auction of several items impugned as connected with the religious rituals and belief etc., now to consider the dispute on maintainability of the writ petitions, even under Section 6 of the Wakf Act, any person interested can, to protect the Wakf property or its objectives, maintain a claim including against the Wakf Board and Muthavali of the Wakf in Question. Once the conducting of auction for several items involving religious faith and rituals itself is in question in impugning the tender notice dated 16.12.2016 and consequential proceedings thereon, the question of relegating the parties to avail the alternative remedies to approach the Wakf Board in the factual scenario also does not arise. Thereby the writ petitions are held maintainable irrespective of these questions also can otherwise be decided by the Wakf Tribunal within the meaning of Section 83 of the Wakf Act, and also by virtue of the latest expression of the Apex Court in Rajasthan Wakf Board Vs. Devki Nandan Pathak and others , reiterating the earlier expressions on the settled law also with reference to Section 85 of the Wakf Act. Further some persons, other than the petitioner, earlier even tried to interdict the auction process that is no way a bar to the maintainability of the present writ petition to consider the cause covered by the claim laid the petitioners under the premise that they are the devotees interested in the institution and to say that the rituals and offerings are to be properly done. Further, pendency of any matter before the Wakf Tribunal also not a bar in deciding the present lis within the scope concerned supra.

7. Coming to several items which are subject matter of the impugnement in the Writ Petitions by public auction concerned, the word Tawiz is an object which is hung on someone or something with a belief that it has the power to repel harm or bring about good fortune and recovery from illness. It is a blessed prayer written by a very noble and practiced spiritual person known as Peer Saheb or Sheikh. In conducting public auction of the rights to sell such sacredly prepared Tawizs, there is no infringement of the Quranic tenets, so also for vehicle parking, Tai Bazari for sale of flowers, sandal, coconuts and nimboos and also to collect broken coconuts and to sell prasadam after its offer to the Wakf. Even Jhenda being sold for the devotees themselves at the specified place to put up. Coming to Dhathi, being the coconut wrapped in cloth and bandish also with coconut, Nimboos etc., if any wrapped in cloth, there is no bar for sale of those items. Even for jubah by sacrifice of sheep, if a person is allocated to facilitate thereafter a bidder can collect the skin, head and legs as part of the commercial activities. As such among the 17 items published for auction and later given on

nomination basis which is also subject matter of impugning, main contention is in relation to Hundi, Neem tree Hundi, Chirog batti, Udi, Fateha besides Tawiz, Pottelu Juba, Nimboo, Narial Bandish, Sandal, Flowers and vehicle Fateha.

8. In fact among the above, the Hundi and Neem Tree Hundi concerned, any devotee places in a Hundi, his offering with faith to devolve said offering to the Darga or the pious place and it shall not to have some benefit to a contractor to collect the amount and to pay something out of it. From the very purpose of auction, the contractor without getting some benefit, a question of putting by paying deposit, does not arise practically as said participation is with commercial objectives on its face. The devotees will not pay the offerings for some intermediary person as a Contractor-cum- bidder of Hundi, to get the presentation to benefit, thereby the said auction of offering Hundi and Neem tree Hundi are uncalled for.

9. Coming to Tawiz, no doubt a sacredly prepared amulet or locket, however anybody can sell the same by participating in public auction after such sacred preparation and auction of such right to sell Tawiz so also bandish (prepared with Nimboo and Narial), provided, there must be some religious person like Mujawar/ Kadim at the Darga for the devotees on its purchase to present there and take the Tawiz and bandish, as the case may be.

10. So far as Chirog batti, it is the Imam/Kadim/Mujawar that has to present so also the giving of Udi for not by any private person as auction purchaser. Thus these performances cannot be by an auction-highest bidder.

11. Coming to vehicle Fateha and Pottelu Juba concerned, but for collection of the sacrificed goat or sheep parts to take by auction, no bidder of public auction can perform these religious offering on behalf of the devotee.

12. Therefore, the collection of Hundi and Neem tree Hundi and also the performance of the rituals for Chirog Batti, Udi, Vehicle Fateha and Pottelu Juba cannot be put to question; but for any auction and for sale of the items meant for Chirog batti, vehicle Fateha, Tawiz, bandish(items) besides collection of the offered broken coconuts, for sale of Nimboos and coconuts, for sale of Laddu prasadam after offering by Imam/Khadam/ Mujawar, as the case may be, as the very proposed conducting of auction to perform the religious rituals in relation to those supra by the auction purchaser concerned, same no way can be appreciated for those are not meant for commercial realization of income by the Wakf Board or by the Wakf in question like the Darga, but for while considering the maximum realization of the possible income by auction of what is referred supra, the preference of the offering and rituals at the Darga must be to the fulfillment of the desire and faith of the devotees.

13. In view of the above, the notice for auction of the Hundi, Neem tree Hundi, Chirog batti, Oodi, Vehicle Fateha and Pottelu Jubah are set aside so also the further consequential proceedings as those are part of the religious functions and whatever to be auctioned for the highest bidder to collect is as stated supra that

after Pottelu jubah to take parts of the sacrificed goat/sheep and the offered broken coconuts and sale of Nimboos and coconuts and any offer of Ladduprasadam meant for distribution and any bandish and after Tawiz having been piously prepared, only for sale of such prepared items for placing before the Darga and take back to wear it to the person or to the house or vehicle etc., respectively, as the case may be, and as such even question of entrusting said items by nomination basis to any person does not arise.

14. Having regard to the above and in the result, both the Writ Petitions are allowed to the above extent by setting aside the tender notice, dated 16.12.2016 and consequential proceedings including entrustment of any of the above by nomination basis, however by giving liberty to invite fresh tenders to conduct public auction of the items whichever permissible, other than those not permissible from what are declared supra. Needless to say for the religious performances in connection with the above, the Management of the Darga has to make their own arrangements under the supervision of the Wakf Board to fulfill the devotees desire with reference to the religious faith and customs. There is no order as to costs.

15. Consequently, miscellaneous petitions if any pending in these writ petitions, shall stand closed.