
(2012) 02 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2560 of 2012

Syed Shah Ahmed Moinuddin @ Hyder Pasha, Hyd

APPELLANT

Vs

Chairman, A.P. State Wakf Board, Hyd and Another

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Waqf Act, 1995 — Section 66

Citation : (2012) 02 AP CK 0053

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu

1. Originally, the petitioner's late father Syed Fareed Pasha Quadri was Muthawalli of Dargah Hazrath Syed Shah Nadeemullah Hussani Sahab and Mosque at Bahadurpura, Kishanbagh, Hyderabad. The petitioner's father died on 06.01.1984; and after his death, the petitioner's elder brother Syed Shah Ahmed Kaleemullah Quadri, was appointed as Muthawalli on 24.12.1997. The petitioner alleges certain misdeeds on the part of Muthawalli in respect of the property endowed to the Dargah-cum-Mosque and made an application on 15.12.2011 to Andhra Pradesh State Wakf Board in that regard, while marking copies thereof to Chairman of the Wakf Board and the Government. In that application, the petitioner claimed appointment of himself as Muthawalli. The Government of Andhra Pradesh in Memo No.23.12.2011 called for report of Chief Executive Officer of A.P. State Wakf Board, Hyderabad, on the subject. In that memo dated 23.12.2011, the subject is shown as appointment of the petitioner to the Dargah as Muthawalli. The office of Muthawalli in this Dargah has not fallen vacant. Until and unless action is taken on the existing Muthawalli on the allegations made by the petitioner and until and unless the post of Muthawalli falls vacant in this Dargah, the question of considering the petitioner's application for his appointment as Muthawalli will never arise at all. Further, the

Government has no role in the appointment of Muthawalli for a Dargah, unless the contingency u/s 66 of the Wakf Act, 1995 exists. The said contingency is to the effect that a deed of Wakf or any decree or order of Court of any scheme of management of any Wakf shall provide that a Court or any authority other than the Wakf Board may appoint or remove a Muthawalli. The petitioner could not bring to the notice of this Court that the contingency as noted in Section 66 exists in the case of the present Dargah, for the Government to exercise the power of appointing a Muthawalli for this Dargah. Therefore, the Government's Memo dated 23.12.2011 is unwarranted and amounts to interfering with functioning of the Wakf Board.

2. In any event, application of the petitioner is dated 15.12.2011. The petitioner cannot expect action on his application with supersonic speed. The question of appointing, much less consideration of appointing the petitioner for the post of Muthawalli in this case does not arise at all, as the office of Muthawalli is not lying vacant in this Dargah. Therefore, the Writ Petition does not lie.

3. In the result, the Writ Petition is dismissed. However, the 1st respondent/State Wakf Board may go into the allegations of misdeeds by the existing Muthawalli and take appropriate action in that regard.