

(2002) 07 AP CK 0058

In the Andhra Pradesh High Court

Case No : W.A. No. 1103 of 2002 and W.P. No. 3287 of 2002

Zaheer Ahmed Khan

APPELLANT

Vs

Chief Executive Officer, A.P. State Wakf Board and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Waqf Act, 1995 — Section 14, 5, 70, 71, 96

Citation : (2003) 6 ALD 72 : (2003) 3 ALT 738

Hon'ble Judges : S. Anand Reddy, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Y. Anupama Devi, for the Appellant; S.M. Subhah, S.C. for Respondent Nos. 1 and 2 and Syed Sharaf Ahmed, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—During the course of hearing the writ appeal, on the basis of submissions made by the learned counsel representing the parties, we primarily believed that the writ petition could also be decided along with the writ appeal, so that the issue involved in the writ petition could be set at naught by this Court. Accordingly, we summoned the writ petition to be taken up at 2-15 PM along with the writ appeal and decide the Writ Appeal along with the Writ Petition by the following order.

2. The Writ Appeal is filed by the petitioner assailing the order passed by the learned single Judge in the above writ petition in WVMP No. 905 of 2002 in WPMP No. 4030 of 2002 dated 20-6-2002.

3. The writ petition is filed by the appellant seeking a writ of mandamus declaring the proceedings No. JC/RR/ 2000/B2, dated 12-9-2001 issued by the 1st respondent as illegal, improper, unjust and without jurisdiction and pass such other relief as may deem fit and proper in the circumstances of the case. It is the case of the Petitioner that Durgah Koh-e-moula Ali, Malkajgiri, Ranga Reddy district is a religious Wakf. Some other agricultural lands situated at Malkajgiri

and Mallapur area are attached to the said institution. The institution and the properties attached to it have been notified in the A.P. Gazette as required u/s 5 of the Wakf Act, 1995 (hereinafter referred to as "the Act"). The petitioner claims to be functioning as Mutawalli of the said Durgah. Prior to it, his late father Sri Gulam Ali Khan was the Muthawalli, who died on 22-5-1988. Thereafter, he was appointed as Mutawalli by the A.P. State Wakf Board as per the Rules and Regulations.

4. It is stated by the petitioner that the 1st respondent issued impugned proceedings in JF/2000/B2, dated 12-9-2001, appointing the 2nd respondent as Enquiry Officer u/s 71 of the Act, to enquire into certain allegations against the petitioner and the erstwhile A.P. State Wakf Board and other officials. One Sri Navazuddin, Secretary of the A.P. Minorities Organisation, Hyderabad seems to have levelled allegations of corruption, attributing to the erstwhile A.P. State Wakf Board and the official in his appointment as Mutawalli.

5. Sri P. Gangaiah Naidu, learned senior counsel for the petitioner submitted that the 1st respondent has no authority to appoint an Enquiry Officer against the petitioner, as during that relevant period, there was no Wakf Board and as such in the absence of any authority either from the Government or from other source, delegating powers to the Respondent, for ordering enquiry, the 1st respondent could not have instituted enquiry u/s 71 of the Act by appointing the 2nd respondent as Enquiry Officer. It is in this background, the writ petition was filed and initially, stay of initiation of enquiry was obtained and later on a petition being filed by the contesting respondent, the learned single Judge vacated the said interim order by an order dated 20-6-2002 against which the present writ appeal is filed.

6. However, the learned counsel representing the Wakf Board as well as the contesting respondent in the writ petition submitted that as provided u/s 99 of the Act, the 1st respondent is competent to appoint an Enquiry Officer and that the procedure followed by the 1st respondent could not be termed as without authority, that the learned single Judge has rightly vacated the interim orders and therefore, it is submitted that no interference is called for in this writ appeal.

7. The respondents take recourse to the provisions u/s 99 of the Act to justify the action of the 1st respondent. In order to appreciate the contention, we trace the provisions appearing u/s 99 of the Act, which reads as follows:--

"Section 99. Power to supersede Board: (1) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has willfully and without sufficient cause failed to comply with any direction issued by the Central Government u/s 96 or the State Government u/s 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the Wakfs in the State, the State

Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months:

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under Sub-section (1) superseding the Board.

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all property vested in the Board shall, during the period of supersession, vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under Sub-section (1), the State Government may-

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Board in the manner provided in Section 14."

8. On a reading of the above provisions, it would appear to us that if the State Government is of the opinion that the Board is unable to perform or has persistently made default in the performance of the duty imposed on it, the State Government is entitled to supersede the Board by notifying in the Official Gazette for a period not exceeding six months, provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause, why it should not be superseded, and shall consider the explanations and objections if any of the Board.

9. The contention on behalf of the respondents is that the powers vested in Section 99 available to the 1st respondent in the absence of the Board being constituted by virtue of the Memo issued by the Government Memo No, 1439/Wakf.1/A1/ 2001, dated 28-6-2001.

10. We are unable to appreciate this contention. As discussed above a reading of the provisions of Section 99 would appear to us that in case of any irregularity, the Board has to be superseded by issuing a Notification and affording an opportunity to the Board. It is not the case of the Board that the Board is superseded without affording an opportunity. It is their case that the time of the Board is expired and fresh Board was not constituted. The above referred

Government Memo is pressed into service by the respondents to contend that this Memo empowers the 1st respondent to take steps. A reading of the above Memo, which is placed before us, does not give us any inference that the said Memo is issued u/s 99 of the Act and has empowered the 1st respondent to exercise such duties as conferred under Sections 70 and 71 of the Act, which should be performed by the Board in normal circumstances. The Memo is only on the question of empowering the Chief Executive Officer and Accounts Officer for issuing cheques in a given circumstance. Excepting this, the Memo does not confer any other powers to the 1st respondent.

11. As discussed by us there is nothing before us to hold that the 1st respondent is authorized to take recourse to Sections 70 and 71 of the Act and initiate proceedings against the writ petitioner. On this ground we set aside the order, which is impugned in the writ petition, and consequently we allow the writ petition.

12. During the course of hearing, it is brought to our notice that a competent Board has now been constituted and if that be so, it would be open to the Board, if it so desires, to take appropriate action against the petitioner.

13. Since we allow the writ petition, no further orders are necessary to be passed in the Writ Appeal and hence we close the Writ Appeal in the light of the decision rendered in the writ petition. No costs.