

THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition No. 15181 of 2019

ORDER:

This writ petition is filed questioning the impugned proceedings in F.No.18/KST/MC/2015/Z-V dated 06.08.2019, whereby the Chief Executive Officer, A.P. State Waqf Board renewed the period of the 3rd respondent Managing Committee, which was expired on 21.05.2019, for a further period of three years under Section 18 of the Waqf Act, 1995 (for short 'the Act'), as being illegal, contrary to the provisions of Section 18 of the Act and Andhra Pradesh Wakfs Managing Committee (constitutions, functions and duties) Regulations, 2009 (for short 'Regulations, 2009') and also contrary to the orders passed by this Court in Writ Appeal Nos.218, 219 and 224 of 2019 dated 06.08.2019.

2. The case of the petitioner is that he is the Muthawalli of Dargah Hzt. Syed Ali Hussain Shah Quadri (Rh) situated at Prakasam Barriage, Vijayawada, Krishna District. The 2nd respondent Board in its Gazette notification notified the said Dargah at Sl.No.715 as a notified Wakf vide Gazette dated 28.06.1962 under the Muthawalliship of his late father Syed Pasha Saheb. During the lifetime, his father had discharged the functions of Muthawalli of both the Dargahs i.e., Dargah Hzt. Syed Ali Hussain Shah Quadri and Dargah Hzt. Syed Shah Quadri and paid the statutory fund to the 2nd

respondent Board. In fact, both the Dargahs are situated at adjacent places as both are Murshad and Mureed (Guru and Shishya). The petitioner's forefathers are Muthawallies of subject institution and managing jointly both the Dargahs with House Nos.2/18/650 and 2/18/651 shown at Sl.No.715 gazette notification dated 28.06.1962. After demise of his father, the petitioner and his late brother were got appointed as Muthawallies of the wakf institution. The Wakf Board also issued proceedings in F.No.18/B3/KRM/96 dated 11.08.1998 appointing the petitioner and his brother Syed Anwar Basha as Muthawallies of Dargah Hzt. Syed Shah Quadri. But unfortunately, the name of the attached Dargah was not mentioned at Sl.No.715 of A.P. Gazette Part-II dated 28.06.1962. In pursuance of the said proceedings, the petitioner is managing the subject wakf to the best satisfaction of the devotees and also to the 2nd respondent without there being any complaints. The petitioner is regularly paying the Wakf fund to the 2nd respondent Board in the name of both the Dargahs jointly as both the Dargahs are one entity situated adjacent to each other in one compound with one Serial No.715 in the gazette dated 28.06.1962. The State Government during the year 2007 has conducted the second survey of Wakf properties in the State and the Survey Commission of Wakf has submitted its report No.CCP.49-25.4.2001 to the Government with regard to the subject Dargah Hzt. Syed Ali Hussain Shah Quadri by categorically

notifying the petitioner's name and also the name of his brother late Syed Anwar Basha as Muthawallies of the subject Dargah. In support of his contention, he filed copies of wakf fund receipts issued by the Inspector Auditor – 4th respondent. When the 2nd respondent constituted the 3rd respondent Managing Committee initially for a period of one year vide proceedings dated 04.12.2015, the said proceedings were not given effect to in view of the orders passed by the A.P. Wakf Tribunal in O.A.No.7 of 2016. O.A.No.7 of 2016 was filed by the petitioner against the respondents 2 to 4 challenging the proceedings of the 2nd respondent dated 29.01.2016 directing the Station House Officer, I Town Police Station, Vijayawada, to provide protection to the 3rd respondent for taking the charge of the subject institution from the petitioner. The Tribunal allowed the said O.A. by holding that the 2nd respondent Board cannot address the letter impugned therein directing the police for handing over the Management of the subject Dargah to the 3rd respondent Managing Committee against the procedure laid down under Section 68 of the Act. Being aggrieved by the proceedings dated 04.12.2015, the petitioner filed W.P.No.43005 of 2015 and the same was dismissed with a liberty to approach the Wakf Tribunal. Against which, the petitioner preferred Writ Appeal No.80 of 2016 and the same was admitted. Later, the said writ appeal was withdrawn as the tenure of the 3rd respondent Managing Committee was expired on 03.12.2016.

The 2nd respondent Board in spite of the order in O.A.No.7 of 2016, renewed the period of 3rd respondent Managing Committee for a further period of two more years vide proceedings dated 22.05.2017. Again, the 2nd respondent Board passed orders dated 22.05.2017 further renewing the period of 3rd respondent Managing Committee for a period of two more years. Questioning the said renewal order, the petitioner approached the Wakf Tribunal by way of O.A.No.12 of 2017. The said O.A. was dismissed by order dated 12.10.2017. Aggrieved by the same, the petitioner preferred C.R.P.No.5594 of 2017 before this Court. This Court, on considering the entire material, suspended the proceedings dated 22.05.2017 vide order dated 23.10.2017 passed in CRP.MP.No.7249 of 2017 in CRP No.5594 of 2017, initially for a period of three weeks and the same was extended from time to time and finally extended on 7th December, 2017 till 14.12.2017. While things stood thus, the 2nd respondent Board again passed the impugned order dated 06.08.2019, whereby further renewing the period of the 3rd respondent Managing Committee for a period of three more years. Assailing the said order on various grounds, the present writ petition is filed.

3. The respondents 2 and 4 filed counter. The petitioner also filed reply to the said counter.

4. The respondents 3, 5 to 10 and 12 to 14 filed their counter, mainly stating that the petitioner is not the Muthawalli of the subject wakf institution – Dargah Hzt. Ali Hussaiah Shah Quadri (Rh), but he is the Muthawalli of Dargah Hzt. Syed Shah Quadri, which is adjacent to the Dargah Hzt. Syed Ali Hussain Shah Quadri, for which the 3rd respondent committee's period is renewed. The petitioner has no right to challenge the impugned proceedings as the 2nd respondent – Wakf Board has rightly constituted the 3rd respondent Managing Committee to manage the affairs of the subject wakf institution. The petitioner is claiming for Muthawalliship of the subject institution after death of his father and he is acting as a *de facto* Muthawalli of the subject wakf institution viz., Dargah Hzt. Syed Ali Hussain Shah Quadri (Rh), but the petitioner is the gazette notified Muthawalli of Dargah Hzt. Shah Quadri (Rh). Ignoring the second survey of the wakf institution, showing the petitioner's name as Muthawalli of the subject wakf institution, the 2nd respondent appointed the 3rd respondent Managing Committee is false as the said survey is not recognized by the Government under the provisions of the Act. Since 2013, the 2nd respondent is appointing Managing Committee for the subject wakf institution Dargah Hzt. Ali Hussaiah Shah Quadri (Rh). The appointment of the 3rd respondent Managing Committee to the wakf institution - Dargah Hzt. Ali Hussaiah Shah Quadri and its renewal under Regulation 22

of the Regulations, 2009, was upheld by the Wakf Tribunal in O.A.No.12 of 2017 dated 12.10.2017, which is the subject matter of C.R.P.No.5594 of 2017. The writ petition is not maintainable before this Court and the petitioner has to approach the Wakf Tribunal under Section 83(2) of the Act. Hence, appointment and renewal of the period of the 3rd respondent Managing Committee could not be said to be contrary to the provisions of Section 18 of the Act and Rule 22 of Regulation 2009 made therein.

5. Sri S.M.Subhani, learned counsel appearing for the petitioner would mainly contend that the 2nd respondent-Board issued Gazette notification No.26 dated 28.06.1962 recognizing the Dargah situated at House Nos.2/18/650 and 2/18/651 at Prakasam Barriage, Vijayawada, Krishna District as wakf institution and Sri Syed Pasaha Saheb was the hereditary Muthawalli of the said wakf institution. The Dargah was known as Hzt. Syed Shah Quadri. After death of the petitioner's father, the petitioner and his brother by name Syed Anwar Pasha were appointed as Muthawallies on 11.08.1998. He would further contend that the Dargah Hzt. Syed Shah Quadri was the disciple of Dargah Hzt. Syed Ali Hussain Shah Quadri, who were recognized as Mureed (Sishya) and Murshad (Guru) and the appointment of 3rd respondent-Managing Committee to Dargah Hzt. Syed Ali Hussain Shah Quadri (Rh) is illegal as there are no separate recognized wakf institution. The Wakf institution is

recognized as Dargah and the petitioner was appointed as Muthawalli of the said Dargah. The appointment of 3rd respondent is contrary to the provisions of Section 18 of the Act and contrary to the orders passed by this Court in Writ Appeal Nos.218, 219 and 224 of 2019 dated 06.08.2019, whereby the Division Bench of this Court categorically held that the person/authority managing the Wakf Board shall not in any manner deal with or alienate the properties of wakf except for payment of salaries, etc.

6. Sri K.Asah Ahamed, learned standing counsel for the 2nd respondent, while reiterating the averments of the counter filed by the respondents 2 and 4, would contend that as per the Survey Commissioner's report of wakf properties, Sri Syed Khaja Mohiuddin and Syed Anwar Pasha, who are the sons of late Khader Pasha, were the Muthawallies and the same was published in the Gazette dated 28.06.1962 at Serial No.715. The 2nd respondent appointed the 3rd respondent-Managing Committee to manage the affairs of the subject wakf institution i.e., Dargah Hzt. Syed Ali Hussain Shah Quadri (Rh) and the same is renewed from time to time. The petitioner has no *locus standi* to file the writ petition. The 3rd respondent-Managing Committee is performing the customary and religious ceremonies. The writ petition is not maintainable as there is an effective and efficacious alternative statutory remedy provided under Section 83(2) of

the Act. Hence, the writ petition is devoid of merit and is liable to be dismissed.

7. Sri M. Medhi Hussain, learned counsel appearing for the respondents 3, 5 to 10 and 12 to 14, while reiterating the averments of the counter, would mainly contend that the writ petition is not maintainable without exhausting the alternative remedy under Section 83(2) of the Act by approaching the Wakf Tribunal. The 3rd respondent- Managing Committee is appointed for the wakf institution – Dargah Hzt. Ali Hussain Shah Quadri, for which the petitioner is not the Muthawalli and he is the Muthawalli of Dargah Hzt. Syed Shah Quadri, which is adjacent. The Chief Executive Officer has not passed any independent order, but the competent authority appointed by the Government who stepped into the shoes of the Board, passed the order on 17.07.2019, which was implemented by the Chief Executive Officer who is the implementing authority and having administrative powers. Hence, the contention of the petitioner that the Chief Executive Officer has no power is untenable. He would further contend that the petitioner has paid the wakf fund to the 2nd respondent and the report shows that he has added his name after subject wakf institution when he is not the Muthawalli and managing the Dargah Hzt. Syed Ali Hussain Shah Quadri. Hence, the payment of wakf fund does not arise and the writ petition deserves to be dismissed.

8. In the facts and circumstances of the case and considering the submissions of the learned counsel, and on perusal of the record, this Court found that as per A.P. Gazette No.26 dated 28.06.1962 at Sl.No.715, Dargah situated at H.Nos. 2/18/650 and 2/8/651 at Prakasam Barriage, Vijayawada, Krishna District was notified as wakf institution and Sri Syed Pacha Saheb was the hereditary Muthawalli of the said wakf institution. As pleaded by the learned counsel for petitioner, Dargah Hzt. Syed Shah Quadri is the disciple of Dargah Hzt. Syed Ali Hussain Shah Quadri, who is Murshad (Guru). Both the Darghas are situated at adjacent to each other as both are Murshad and Mureed (Guru and Sishya) and the forefathers of petitioner were Muthawallies of the subject wakf institution. The Wakf Board vide proceedings F.No.18/B3/KRN/96 dated 11.08.1998 appointed the petitioner as Muthawalli of Dargah Hzt. Syed Shah Quadri (Rh). The subject wakf institution to the knowledge of one and all are called as Murshad and Mureed. Both the Dargahs are recognized as single wakf institution and notified as Dargah Hzt. Shah Quadri (Rh) at Sl.No.715 with Door Nos.2/18/650 and 2/18/651 vide Gazette notification dated 28.06.1962 and the petitioner was appointed as Muthawalli to the said wakf institution by proceedings No.F/18/B3/KRM/96 dated 11.08.1998 and he is discharging the functions of Muthawalli and regularly paying wakf fund to the 2nd respondent-Wakf Board. It

appears against him also, one writ petition was filed to initiate action against him for misappropriation of funds filed by 3rd respondent Managing Committee. Be that as it may, appointment of 3rd respondent Managing Committee for one of Dargahs by name Dargah Hzt. Syed Ali Hussain Shah Quadri (Rh) under Section 18 of the Act referring to the wakf institution - Dargah Hzt. Syed Shah Quadri near Prakasam Barriage without separately notifying as a separate wakf institution by gazette notification. Only to prevent the petitioner illegally from managing the wakf institution (both the Dargahs), the 3rd respondent Managing Committee is constituted under Section 18 of the Act and as per the Regulation 2009 and its renewal under Regulation 22 of the Regulation 2009, is illegal, arbitrary and contrary to the provisions of the Act.

9. The wakf institution is a spiritual institution especially the devotees offered their prayers. It is the responsibility of the Muthawalli or the Management to maintain calm and congenial atmosphere to perform the prayers. It is not a place to fight each other, between the groups for administration of the wakf institution by dividing two Dargahs of Guru and Shisya for the benefits of two groups. At any stretch of imagination, these two Dargahs by virtue of rituals could not be said to be separate Dargahs and separate wakf institutions to appoint the 3rd respondent for one of the Dargah where the Guru tomb is situated. It is not even

notified and recognized separately, however for the reasons best known to the 2nd respondent wakf board to provide administrative power for two warring groups created by appointing the 3rd respondent Managing Committee for Dargah Hzt. Syed Ali Hussain Shah Quadri (Guru Dargah) and the division of two Dargahs are unwarranted and illegal.

10. The petitioner being the hereditary Muthawalli has every right to administer and maintain the notified wakf institution including the Dargah Hzt. Syed Ali Hussain Shah Quadri (Guru) as long as he is recognized as Muthawalli of said Dargah and functioning as per the provisions of wakf institution and rules made thereunder. If he incurs any disqualification, it is open for the 2nd respondent to take appropriate action as per law.

11. Hence, the Chief Executive Officer of the Wakf Board is directed to take appropriate action to see that the petitioner being an hereditary Muthawalli should discharge his functions as Muthawalli as per the provisions of the Act. The 2nd respondent – Wakf Board is directed not to recognize the Guru's tomb - Dargah Hzt. Syed Ali Hussain Shah Quadri as a separate wakf institution as it is not notified as such, which creates some disturbance in the premises of wakf institution and as well as in the minds of the devotees.

12. In view of the above discussion, the Writ Petition is allowed, setting aside the impugned order dated 06.08.2019

passed, renewing the period of the 3rd respondent, as being illegal and contrary to the orders passed in Writ Appeal Nos.218, 219 and 224 of 2019 dated 06.08.2019. However, there shall be no order as to costs.

13. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

JUSTICE M.GANGA RAO

29-07-2021
anr