

HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

I.A.NO.1 of 2023 in W.P.No.21698 of 2023

ORDER:

Through this petition, the petitioner sought suspension of the order of the 1st respondent passed in Memo No.1952210/1DM-II/2023, dated 28.07.2023, pending disposal of the main Writ Petition.

2. The petitioner filed the main Writ Petition for a Writ of Mandamus declaring the order of the 1st respondent issued in Memo No.1952210/1DM-II/2023, dated 28.07.2023 as illegal, arbitrary and one without jurisdiction and consequently direct the 2nd respondent to receive the application and consider the case of the petitioner for appointment as Mutawalli of Hazarath Syed Majili Baba Dargah, Nallakunta, Vijayawada, Krishna District.

3. Through the said Memo, the 1st respondent has considered the representation made by the 3rd respondent for extension of tenure of the Mutawalliship for the subject Dargah, by invoking Section 66 of the Waqf Act, 1995.

4. The said memo is assailed in the main writ petition on the grounds that, Section 66 of the Waqf Act (for short, 'the Act') only deals with appointment as well as removal of Mutawalli by the State Government but not in relation to renewal, however, the Government without any authority or jurisdiction has renewed the term of the 3rd respondent, as such prayed to suspend the said memo pending consideration of this Writ Petition.

5. Heard Sri O.Manohar Reddy, learned senior counsel for the petitioner, learned Government Pleader attached to the office of the learned Additional Advocate General for respondent Nos.1 &2 and Sri V.S.R.Anjaneyulu, learned Senior Counsel for respondent No.3.

6. Sri O.Manohar Reddy, learned senior counsel, in elaboration would submit that, the Act nowhere provides for renewal of Mutawalliship and Section 66 of the Act would only deals with appointment and removal of Mutawalli and the said provision cannot be stretched to the extent of deriving power for extension of the period of tenure of Mutawalli. However, without any power or authority the 1st respondent has issued the impugned memo and thereby extended the tenure of the 3rd respondent for the post of Mutawalliship. The learned senior counsel would further

submit that, in view of the extension orders issued by the 1st respondent, the authorities are not receiving the application of the petitioner seeking his appointment as Mutawalli, even though he is fully competent and eligible for being appointed as such. Hence, prayed to pass interim orders suspending the memo pending consideration of the main Writ Petition.

7. On the other hand, Sri V.S.R.Anjaneyulu, the learned senior counsel for the 3rd respondent, would submit that the interim relief and the main relief are one and the same and granting interim relief would tantamount to granting main relief itself, which is impermissible under law. The learned senior counsel would further submit that before extending the 3rd respondent's term for Mutawalliship, a notification has been issued calling for objections for such extension. The petitioner did not submit any objections and accordingly, the term was extended. Thus, the petitioner is debarred from questioning the extension orders. The petitioner is only an imposter and he was planted by some others, only with a view to deprive the right of the 3rd respondent in participating in election. The writ petition itself is not maintainable and there are no merits in this application and the same deserves dismissal, however, sought time for filing counter.

8. The learned Government Pleader attached to the office of the Additional Advocate General representing the respondent Nos.1 and 2, would submit that Section 63 of the Act empowers the Wakf Board to appoint any person as Mutawalli. Apart from it, Section 97 of the Act authorizes the State Government to give to the Board general or specific directions which it thinks fit and in the performance of its functions. The learned Government Pleader would further submit that, the memo has been issued by the Government to fill up vacuum and that too pursuant to the orders dated 12.05.2023 passed by this court in W.P.No.12583 of 2023. Further, since the rights accrued in favour of the third respondent are sought to be questioned, the petitioner ought to have filed the writ of certiorari instead of Mandamus. Further, a detailed counter is to be filed for effective disposal of the writ petition. Hence, prayed to dismiss the petition.

9. The principles which govern grant of interim relief in a writ petition under Article 226 of the Constitution of India are akin to the ones contemplated under Order 39 Rule 1 & 2 of the Code of Civil Procedure, viz., prima facie case, balance of convenience and irreparable injury.

10. The relief sought in this petition is suspension of the memo issued by the 1st respondent pending disposal of the writ petition, whereby the tenure of Mutawalliship of the 3rd respondent was extended.

11. The contention of the learned senior counsel for 3rd respondent that final relief cannot be granted by way of interim relief, is not an absolute principle. In exceptional cases, where the facts and circumstances warrant, the interim relief which will have the effect of granting final relief can be granted.

12. The learned counsel for the parties have taken shelter of different provisions of the Waqf Act in support of their respective contentions. The impugned memo shows that pursuant to the orders of this Court dated 07.07.2023 passed in W.P.No.16258 of 2023, the representation of the 3rd respondent for renewal was considered. If the memo impugned is suspended till disposal of the writ petition, in case the writ petition ultimately turns out to be not maintainable, the loss that may occasion to the 3rd respondent cannot be restored. However, the converse can be set right through remedial actions. Thus, the petitioner could not satisfy any of the three basic requirements for granting interim relief.

13. In view of the facts and circumstances of this case, this Court is of the considered opinion that, ends of justice would be met, if the main writ petition itself is decided by fixing a specific date for filing counter as well as replies, rather than suspending the memo, which would amount to granting the main prayer itself.

14. This Court is refraining from addressing anything on the main merits of the writ petition and has made the needful observations only to the extent required for the purpose of dealing with this application.

15. In view of the above, the petition is dismissed. There shall be no order as to costs.

JUSTICE RAVI CHEEMALAPATI

05th September, 2023
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HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

I.A.No.1 of 2023 in W.P.No.21698 of 2023

5th September, 2023

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