

Court No. - 8

Case :- WRIT - C No. - 1004580 of 2004

Petitioner :- Administration Waqf No-19 Dargah Syed Salar Masood And Anr

Respondent :- Rashid Ali And 11 Ors

Counsel for Petitioner :- Z Zilani, Akram Azad, Nirmal Srivastava, Umesh Kumar Srivastava

Counsel for Respondent :- C.S.C

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner.
2. No one has appeared for the respondents.
3. Present petition has been filed challenging the order dated 27.09.2004 as well as the order dated 22.03.2004 contained in Annexure Nos.19 & 6 respectively.
4. From perusal of the record, it transpires that a Civil Suit was filed by one Rafiqullah Khan against three defendants mainly alleging that the plaintiff was the Chairman appointed by the Waqf Board for a period three years and an injunction was sought against the defendants restraining them from interfering in the functioning of the plaintiff. In the said suit, an injunction application was also filed. The injunction application was disposed off by the trial Court restraining the defendants from interfering in the functioning of the plaintiff. The said injunction order dated 11.11.2003 was challenged by filing a miscellaneous appeal.
5. While hearing the miscellaneous appeal, the appellate authority referring to the Scheme of Administration pertaining to the Dargah in question passed an order disposing of the appeal for running the institution in terms of the Scheme of Administration. It is argued that an application came to be filed by some of the employees claiming themselves to be the employees of Dargarh purporting to be under Section 39, Rule 2(a) CPC alleging that the directions given by the appellate Court were not being obeyed.
6. In terms of the said application, an order came to be passed directing payment of salary to the employees concerned. The said order is under challenge by the petitioner claiming himself to be the Administrator appointed in terms of the Scheme of Administration. The petitioner was not a party to the suit.

7. Considering the fact that the suit itself was premised on the allegation that the plaintiff therein was appointed for the period of three years, the term of the said three years has come to an end and admittedly, the petitioner claims to have been appointed as an Administrator subsequent thereof, as such, *prima-facie*, the suit itself had become infructuous as the term of the plaintiff has admittedly come to an end.

8. Even otherwise, in terms of the reliefs claimed with the suit, the dispute was confined with the allegations levelled by the plaintiff that he is being restrained from functioning. The nature of the order passed by the appellate Court clearly transgressed the reliefs as claimed with the suit.

9. The order passed on 22.03.2004 exceeded the jurisdiction of appellate powers as prescribed under Order 43 of CPC. The appellate authority took into account that the members of the advisory board of the Dargah should play a role for the welfare of the Dargah, and premised on the said, issued directions for running the Dargah on the basis of Scheme of Administration. The said order was clearly exceeding the powers conferred upon the appellate authority by virtue of Order 43 of CPC.

10. After passing the said order, the further order passed by the trial Court on 27.09.2004 on an application filed under Order 39 Rule 2(a) of CPC is further bad in law as the appellate Court exceeded the said powers which is confined to consequence of disobedience or breach of injunction.

11. The said two orders i.e. 22.03.2004 and 27.09.2004 are clearly beyond the scope of powers conferred upon the appellate Court, as such, the same cannot be sustained and are quashed.

12. The writ petition is ***disposed off*** in above terms.

13. This order is being passed only in view of the fact that while entertaining the writ petition, this Court had stayed the further proceedings initiated on an application under Order 39 Rule 2(a) of CPC.

Order Date :- 17.10.2023

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