

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.11549 of 2015

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Between:

Mr. Mir Baquar Ali Khan

PETITIONER

AND

1. The State of Telangana, rep. by its Principal Secretary, Department of Minority Welfare (WAKF Department), Secretariat Buildings, Hyderabad, and others.

RESPONDENTS

ORDER:

Heard learned counsel for the petitioner, learned Assistant Government Pleader for Social Welfare for the 1st respondent and Sri M.A.K. Mukheed learned Standing Counsel for respondent Nos.2 to 4 and with the consent of all the counsel the writ petition itself is taken up for disposal at the admission stage.

This writ petition is filed to declare the proceedings in

F.No.43/B2/M/HYD/2005, dated 16.02.2015 of the 4th respondent, as illegal and arbitrary.

The order impugned in the writ petition reads as under:

“In partial modification to this Office Proceedings 4th read above and in view of the Orders passed vide reference 5th read above Sri K.A. Wahed Khan is hereby appointed as Enquiry Officer in place of Sri Mahboob Peeran Enquiry Officer APSWB to conduct Enquiry as envisaged U/Sec 64(3) of the Wakf Act, 1995.

The Enquiry Officer is requested to conduct the Enquiry as early as possible. The Enquiry Officer shall have the same powers as are vested in Civil Court under the case of Civil Procedure 1908 (5 of 1908) for enforcing the attendance of witness and production of documents.”

On earlier occasion, vide proceedings dated 03.08.2012 allegations in relation to misappropriation of funds for personal use; not developing wakf institution properly; and fraudulently dealing with the wakf property were made against the Muthawalli and an Enquiry Officer, viz., Janab E. Ismail Sahabis has been appointed for conducting enquiry under Section 70 and 71 of the Wakf Act, 1995 (for short ‘the Act’). When the enquiry was half way through the Enquiry Officer has expressed his inability to continue with the enquiry on account of his ill-health and he intended to conclude the same. He stated to have sought to relieve him from the duty of conducting enquiry. Considering his request, the Executive Officer has decided to appoint Janab G. Mahabob Peeran as enquiry officer and vide the impugned proceedings the enquiry was directed to be conducted under Section 64 (3) of the Act. So far as the change in the Enquiry Officer the petitioner does not have any objection. Now the grievance of the petitioner is only with respect to the scope of enquiry that is required to be conducted. The grievance of the petitioner is that the earlier enquiry ordered is under Sections 70 & 71 of the Act i.e., with regard to administration of the wakf institution, whereas the present enquiry has been initiated under Section 64 of the Act with regard to discharge of functions by Muthawalli. Aggrieved by the same, the petitioner filed the present writ petition.

A perusal of the Board Resolution No.307 dated 23.06.2012 reveal that after discussion with respect to the complaint made against the petitioner, the Board has resolved to appoint an Enquiry Officer to conduct enquiry against the Muthawalli under Sections 70 and 71 of the Act. As against the allegations made by Janab

Syed Ameenullah Shah Quadri and pursuant thereto, Enquiry Officer was appointed on 03.08.2012.

The submission of the learned counsel for the petitioner that the enquiry is half way through and substantial progress has been made, has not been denied by the learned Standing Counsel appearing for respondents 2 to 4. Now in the impugned proceedings dated 16.02.2015 the scope of the enquiry has been changed to Section 64(3) of the Act. To appreciate the contentions of the learned counsel for the petitioner as well as the learned Standing Counsel, it may be apt to refer Sections 64 (1) (2) (3) vis-à-vis Section 70 of the Act, which read as under:

Section 64.— **Removal of Mutawalli:** (1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli –

- a. has been convicted more than once of an offence punishable under Section 61; or
- b. has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or
- c. is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or
- d. is an un-discharged insolvent; or
- e. is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or
- f. is employed as a paid legal practitioner on behalf of, or against, the wakf; or
- g. has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of Section 46; or
- h. is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or
- i. continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the wakf or in respect of any money or other wakf property; or
- j. willfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

- k. misappropriates or fraudulently deals with the property of the wakf.

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights if any, in respect of the wakf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority not less than two-thirds of the members of the Board.

Section 70.— Inquiry relating to administration of wakf. – Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

A perusal of the above provisions leave no manner of doubt that so far as the enquiry contemplated under Section 70 of the Act, it is in relation to administration of wakf institution and the scope of enquiry under 64 is omissions and commissions on the part of the Mutawalli i.e., the person, who is the in-charge of the wakf institution. Some times it may also happens that while conducting enquiry in relation to the affairs of the wakf institution there may be need and necessary of fixing the responsibility on the individual, who was responsible for such omissions and commissions. However, for each of the proceedings there should be prior enquiry before appointing the enquiry officer in relation to the specific allegations.

In the present case, it is not disputed by the respondents that there was no independent Board resolution and no mandate has been given to the Chief Executive Officer to initiate enquiry under Section 64 of the Act. In that view of the matter, the impugned notice is unsustainable.

In response to the notice before admission the learned Standing Counsel Sri M.A.K. Mukheed appearing on behalf of the respondents 2 to 4, on specific instructions, submits that liberty may be given to the respondents to modify the order dated 16.02.2015 confining the enquiry only with respect to the earlier proceedings

dated 03.08.2012.

In view of the same, the writ petition is disposed of directing the respondents to give instructions to the Enquiry Officer, viz., Janab E. Esmail Saheb, retired Judge, appointed vide proceedings dated 16.02.2015, to confine his enquiry only in relation to the notice which was issued earlier on 3.08.2012 and to complete the same as expeditiously as possible. No costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

CHALLA KODANDA RAM, J.

28th April, 2015

Js.