

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.6088 of 2012

ORDER:

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This Civil Revision Petition under Section 83(9) of the Wakf Act, 1995 ('the Act 43 of 1995', for short) by the unsuccessful applicant is directed against the orders dated 16.07.2012 of the learned Presiding Officer of the A.P. Wakf Tribunal, Hyderabad ('the Tribunal', for short) passed in OA.no.9 of 2009.

2. I have heard the submissions of the learned counsel for the revision petitioner/applicant ('the applicant', for brevity) and the learned counsel for the respondent/respondent ('the respondent', for brevity). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The applicant filed the OA before the Tribunal under Section 83(2) of the Act 43 of 1995 requesting to set aside the proceedings in F.no.01/B2/M/Hyd/2008 Zone-1 dated 06.05.2009 issued by the Chief Executive Officer (CEO) of the Wakf Board whereby an enquiry was ordered against the applicant by appointing an Enquiry Officer. The said application was resisted by the respondent. No oral or documentary evidence was adduced before the Tribunal. On merits, the Tribunal while refusing to set aside the proceedings, which are impugned in the OA, had disposed of the OA giving liberty to the Wakf Board to appoint an Enquiry Officer from the empanelled officers in the list appended to the memo dated 07.05.2012 and directed that the enquiry shall go on. However, the Wakf Board is also further directed to furnish the copies of all the documents being relied upon by it to the applicant to enable him to prepare and participate in the enquiry ordered against him. Aggrieved of the said orders, the applicant preferred this revision petition.

4. The case of the applicant, in brief, is this:

Originally the father of the applicant was the Mutawalli of Masjid-e-Faseeh Jung, Nizam Shahi Road, Moazzam Jahi Market, Hyderabad ('the subject Wakf', for short). On demise of his father, the applicant was appointed as Mutawalli of the said Wakf institution vide proceedings dated 29.12.2004. Since the said date, he is discharging his duties diligently and is looking after and managing the subject Wakf and its property. The applicant was surprised on receiving a notice from the Enquiry Officer informing that an enquiry is initiated against him on certain allegations. To the said notice, a Photostat copy of the proceedings ordering enquiry was annexed. The copies of the complaints and the copies of the material papers relating to the enquiry are not furnished by annexing the same to the said notice. On enquiry, the applicant came to know that Mohd.Iftekhar Uddin Khan and Shaikh Maqbool Ahmed, who are inimical to him, with a pre-plan, had filed different representations dated 30.01.2009 by making false allegations that he is mismanaging the institution and its properties. In the representation of the said Iftekhar Khan, it is alleged that the appointment of the applicant as a Mutawalli is incorrect and that the applicant is adopting deleterious and devious methods and that he is not related to late Nawab Faseeh Jung and that the applicant is not in a position to pay proper attention to the upkeep of the subject Wakf and is not taking care of the same and that the applicant is busy in attending to the matters relating to the other institutions and that the applicant has miserably failed in his primary duty of protecting the interests of the subject Wakf. The impugned proceedings also disclosed that one Shaikh Maqbool made another representation dated 30.01.2009 against the applicant requesting to conduct an enquiry under the aforementioned provision of the Act 43 of 1995 and that on receipt of the above representation, the matter was placed before the Sub-Committee (Towliath) of the respondent and that the said Committee in its meeting held on 16.03.2009 resolved to appoint Haji Mohd.Imaduddin as the Enquiry Officer and that pursuant to the said recommendation made by the said committee, the matter was placed before the respondent Board and that the respondent

Board has resolved to agree with the recommendation of the said committee for the said appointment of the Enquiry Officer to conduct enquiry and that thereafter the CEO of the respondent Board has issued the proceedings appointing the said person as the Enquiry Officer for conducting an enquiry into the allegations leveled against the applicant. However, the CEO of the respondent has no powers to appoint an Enquiry Officer to conduct enquiry under Sections 70 and 71 of the Act 43 of 95 as held by this Court in the decision in 2003(6) ALT page 72 (NOC). The said two representations filed by two different persons on the same day would indicate that they had hatched a plan in collusion with each other and made false and fictitious allegations in the *mala fide* representations made by them only to harass the applicant and cause injustice to him. The elder brother of his father by name S.M.Amjad Ali i.e., the senior paternal uncle of the applicant was the notified Mutawalli as per the proceedings dated 16.08.1984. Prior to him, his father was appointed as a Mutawalli by resolution dated 13.07.1982. It is pertinent to mention that the applicant is appointed as Mutawalli in the place of his deceased father *vide* proceedings dated 29.12.2004, after duly following the procedure. The proceedings were not challenged within a period of one year from the date of the publication. If the complainants are aggrieved, they ought to have challenged the appointment of the father of the applicant by way of a suit for declaration or in the alternative they might have challenged the appointment of applicant within the prescribed period of limitation. They did not do so. The appointment of Mutawallis from the family of the applicant is continuing since two generations and three persons from three generations of his family functioned as Mutawallis. The allegations in the complaints are false and baseless and are intended to grab the enjoyment of the subject Wakf from the hands of the applicant. The impugned proceedings are *mala fide* and were issued blindly without the application of mind. For ordering enquiry, no powers are conferred under the provisions of the Act 43 of 1995.

5. On behalf of the respondent Board, counter is filed *inter alia* contending as follows:

The material allegations in the OA of the applicant are false. The

subject institution was registered as a Wakf under the Towliath of 'SARKAR BA SEGHA MAZHAABI' vide file no.2686/2/1350 fasli. The applicant is appointed as Mutawalli of the subject Wakf after the demise of his father, who was a Mutawalli. There are complaints of mismanagement and irregularities in regard to administration and management of the day to day affairs of the Mosque. The said complaints prompted the respondent to appoint an Enquiry Officer to find out the truth and the veracity of the complaints. Therefore, the allegation that the applicant is rendering services and managing the mosque and its properties without any complaints from any corner is false. It is the prerogative of the respondent to appoint Enquiry Officer as contemplated under the provisions of the Act either upon a complaint received or by exercising the *suo motu* power. Such power is vested in the respondent to ensure that the institution is managed properly and is not mismanaged. On mere assumptions and presumptions, the applicant is trying to stall the enquiry ordered against him. False imputations were made against the Enquiry Officer appointed by the respondent. The applicant had admitted that he had received notices. He should have obtained all necessary material papers from the Enquiry Officer. The CEO implemented the orders of the Board. Therefore, the allegation that the CEO had appointed the Enquiry Officer is incorrect. As per the provisions of the Act, the applicant will have sufficient opportunity to present his case before the Enquiry Officer. Even the applicant admits that before appointing the Enquiry Officer, the matter was placed before a Sub Committee (Towliath) and that thereafter it was placed before the Board and that the Board by unanimous resolution had accepted the resolution of the Towliath Committee. Such a resolution is being implemented by the CEO in the shape of proceedings, which are impugned in the OA. For smooth functioning of the Board, a sub committee was constituted for scrutinizing the issues at length and to also examine the genuineness of the claims and rival claims of the parties. The recommendation of the committee is not finality in itself and the authority to take a decision vested with the Board. Besides the representation of Mohd.Iftekar Khan, the Board has received complaints from the others also and as such the Board is constrained to order enquiry and

appoint an Enquiry Officer. The allegations that the respondent Board has no power to order an enquiry into the allegations of mismanagement leveled against the applicant is false. The proceedings are legally valid. After thorough examination of the contents of the complaints against the applicant, it was resolved to order an enquiry and appoint an Enquiry Officer. This respondent is having powers of general superintendence over all the Wakf institutions and also the Mutawallies, who are the Trustees/managers of the Wakf institutions; therefore, in view of the fiduciary relationship, every Mutawalli has to discharge his duties and responsibilities with due diligence. And on failure to do so and on the complaints that are received against him, he is obligated to face an enquiry as contemplated under the provisions of the Act. The applicant admittedly appeared before the Enquiry Officer; and he had also narrated in his application, the events that had taken place in the enquiry so far conducted. The OA is misconceived and is liable to be dismissed.

6. The learned counsel for the parties advanced arguments in line with the pleadings.

7. I have perused the proceedings dated 29.12.2004 issued by the respondent Board appointing the applicant as Mutawalli of the subject Wakf and also the notice dated 08.05.2009 issued to the applicant by the Enquiry Officer and also the further notices issued by the Enquiry Officer, the copies of which are filed with material papers. I have further perused the Photostat copy of the proceedings, which are impugned in the Original Application and which are confirmed by the orders impugned in this CRP.

8. Now the short question for consideration is – ‘whether the proceedings in file no.01/B2/M/Hyd/2008 Zone-1 dated 06.05.2009 ordering enquiry against the applicant by appointing an Enquiry Officer to conduct an enquiry against the applicant in regard to the allegations leveled against him in the various complaints received against him are valid and sustainable under facts and in law?’

9. The subject Wakf of which the applicant is a Mutawalli is a registered

and Gazetted Wakf is not in dispute. The applicant is the successor Mutawalli and was appointed on the death of his father is also not in dispute. Two complaints from Mohd.Iftekhar Uddin and Shaikh Maqbool Ahmed were received by the respondent against the applicant is also not in dispute. Pursuant to the allegations leveled against the applicant in the said and other complaints an enquiry was initiated against the applicant by appointing an Enquiry Officer *vide* proceedings dated 06.05.2009, which are impugned in the OA. The legality of the said proceedings is now under challenge. A perusal of the decision in 2003(6) ALT 72 (NOC) would show that this Court having regard to the facts of the cited case had held that the Chief Executive Officer of the respondent Board as the CEO or while acting as a special officer on super-session of the Wakf Board by the Government under Section 99 of the Act cannot issue proceedings under Sections 70 and 71 of the Act 43 of 95 and conduct an enquiry against Mutawalli as the Wakf Board which is authorized in that regard is entitled to do so but not the CEO himself. In the case on hand, it is not the case of the applicant that the State Government had issued a notification under the said provision of law superseding the Board for its inability to perform the duties imposed upon the Board by the Act 43 of 1995. Therefore, the decision is not helpful to the applicant.

10. Dealing with the next set of contentions of the applicant that the Board is only empowered to order an enquiry, but, the Board has delegated its function to a Towliath Committee; and that the Towliath Committee had taken a decision in regard to ordering an enquiry; and that it had appointed an Enquiry Officer also; and that the Wakf Board had blindly accepted such recommendations without application of its mind, be it noted that there is no dispute in regard to the fact that the Board had appointed a Sub-Committee (Towliath Committee) on receipt of representations from Mohd. Ifteqaruddin Khan and Shaikh Maqbool Ahmed. It is pertinent to note that certain documents were also enclosed to the complaint made by Mohd. Ifteqaruddin Khan. A request was also made for appointing an Enquiry Officer to conduct enquiry into the appointment of the applicant and his demeanor. The substance of the complaints is that the applicant is grossly negligent in

managing the Wakf property; and that the affairs of the institution are being mismanaged by the applicant and his nominees, who are not musallis of the Mosque; and that lot of nuisance is being caused; and that their acts are detrimental to the interests of the Masjid; and that the applicant had failed in discharging his primary duty namely protecting the interests of the Wakf and smooth management of its affairs while checking illegal activities and encroachments. In fact, the other complainant, Shaikh Maqbool Ahmed, had filed an affidavit also along with his complaint. On receipt of such complaints only the matter was placed before the Sub committee of the Board. The said Sub-Committee in its meeting held on 16.03.2009 resolved to appoint Haji Mohd. Imaduddin, as the Enquiry Officer. The proceedings, which are impugned in the OA, disclose that pursuant to the recommendation made by the Towliath Committee, the matter was again placed before the Board. The Board by its resolution no.215 of 2009 dated 29.04.2009 had unanimously resolved to agree with the recommendations of the Towliath Committee. Pursuant to the said resolution of the Board, the CEO had issued proceedings dated 06.05.2009, which are impugned in the OA. Thus, on the complaints with verifiable information received against the activities of the applicant, the Mutawalli of the subject Wakf, and on reference of such complaints to the Sub Committee (Towliath Committee) appointed by the respondent Board, a decision was taken by the Sub-Committee that an enquiry should be ordered. However, while recommending that the enquiry should be ordered, the Sub- Committee had also appointed an Enquiry Officer. Be that as it may. When the recommendation of the sub committee was placed before the Wakf Board, it recorded its agreement with the view of the sub committee and also its recommendation for appointment of Haji Mohd. Imaduddin as an Enquiry Officer and then passed a resolution, as already noted supra. Therefore, the contention that recommendation of the Sub-Committee was blindly accepted by the respondent Board without application of mind and without exercising its independent discretion cannot be countenanced. The contention that since the Board is having multifarious activities, it had appointed a Sub-Committee to look into the various complaints being received against Mutawallies of Wakf institutions and to

examine the truth or otherwise of the allegations *prima facie* while making recommendations for either ordering or not ordering enquiries on such complaints deserves countenance. In the case on hand, the record does not disclose that the Sub-Committee's recommendation was straight away accepted and that on the other hand, the proceedings impugned in the OA itself disclose that the recommendation was placed before the Board and that the Board has passed a resolution having recorded its agreement with the recommendation of the Sub-Committee. Though the applicant doubted the integrity of the Enquiry Officer appointed to conduct an enquiry against him, even the order impugned discloses that the said Enquiry Officer is no longer on the panel of empanelled Enquiry Officers and he had already ceased to hold such position as an Enquiry Officer on the panel of the Enquiry Officers of the Wakf Board. Therefore, while confirming the impugned proceedings, the learned Presiding Officer of the Tribunal gave liberty to the Wakf Board to appoint a new Enquiry Officer from the empanelled Enquiry Officers in the list of officers and directed that the enquiry shall go on.

11. Having thus analyzed the facts and examined the contentions of the revision petitioner, this Court, for the reasons assigned, is satisfied that there is no error much less a jurisdictional error in the orders impugned calling for interference.

12. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

30th March, 2016
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