

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.35759 OF 2016

ORDER:

This writ petition is filed challenging the proceedings in F.No.29/K/CTR/2016/Z-IV, dated 01.10.2016, wherein the 1st respondent kept the proceedings dated 31.08.2016, issued constituting the managing committee for which petitioner has been appointed as President, in abeyance.

Both the counsel requested to dispose the main writ petition at the admission stage itself.

Learned counsel for the petitioner submits that the petitioner managing committee assumed charge only on 16.09.2016, thereafter, basing on a complaint dated 19.09.2016 the 1st respondent addressed a letter dated 28.09.2016 to the 3rd respondent and 4th respondents informing that there is a law and order problem. But, in fact there is no law and order problem in the subject institution and no complaint was registered nor evidence by any person in the town. It is further submitted that the 3rd respondent in collusion with the 6th respondent who has been sitting over the management of the Wakf property without there being any authority nor any authorization from the Wakf Board to maintain the subject institution, the aforesaid complaint was

invented and the impugned proceedings were issued without conducting any enquiry and without giving any notice and opportunity of hearing to the petitioner. He further submits that no criminal case is registered against the members of the Managing Committee of the petitioner, but in fact a crime was registered against the 6th respondent. He also submits that though the impugned proceedings refer to letter dated 28.09.2016 addressed by the 1st respondent, but the so-called crime was registered on 30.09.2016, that too after the constitution of the Managing Committee on 31.08.2016. He further submits that the impugned proceedings are issued without issuing any notice to the petitioner.

On the other hand learned Standing Counsel by relying on the order dated 25.06.2013 in WP.Nos.4471 and 5012 of 2013 and also relying on the Judgment of Supreme Court in ***Board of Wakf, West Bengal v. Anis Fatma Begum and another (2011 (1) ALD 61 (SC)*** submits that the petitioner has to avail alternative remedy by approaching the Wakf Tribunal constituted under Section 83 of the Wakf Act. He also submits that since there is law and order problem, the impugned proceedings are issued.

The 6th respondent filed counter reiterating the counter of the 1st respondent.

In this case it is to be seen that admittedly the impugned order is passed without issuing any notice to the petitioner which is in violation of principles of natural justice. Even in the counter also the said fact is not denied and no criminal case is registered against the members of the petitioner's Managing Committee. In fact, criminal case is registered against the 6th respondent, that too, after constitution of the petitioner's Managing Committee on 31.08.2016. Though the impugned order states that the committee members are involved in number of criminal cases, no particulars are given about the same in the counter affidavit.

Since the impugned order is issued in violation of principles of natural justice basing on the non existing fact, prima facie it appears that impugned proceedings are issued at the instance of the 6th respondent. Though Learned Standing Counsel raised plea of availability of alternate remedy by relying on the Judgment of Apex Court and this Court, since the impugned order is in violation of principles of natural justice, I am of the opinion that the writ petition can be entertained.

In view of the above facts and circumstances the writ petition is allowed and the impugned proceedings dated

01.10.2016 are set aside. However, this order will not preclude the competent authority from taking action in accordance with law but on the present set of facts. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

27.12.2016
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