

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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WRIT PETITION Nos.18337 and 21206 of 2016

COMMON ORDER:

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The case of the petitioners is that they are the legal heirs of Mutavallis and they are performing the functions of Mutavallis in respect of Ac.10.61 cents in Sy.No.600, Ac.10.61 cents in Sy.No.600 and Ac.3.76 cents in Sy.No.747, respectively in Sirivella Village and Mandal. The 5th respondent, who alleged to have got appointed as Mutavalli of 'Dargah HZT. Shane Shah Vali (RH)' vide order dated 05.04.2012, and other shareholders of the said Dargah filed O.S.No.89 of 2015 on the file of Wakf Tribunal, Hyderabad, and obtained *ex parte* injunction order in I.A.No.280 of 2015. The petitioners also filed O.S.No.158 of 2015 on the file of Junior Civil Judge, Allagadda, Kurnool District, against the 5th respondent and the same is pending for adjudication. While so, the notice dated 11.04.2016 was issued by the 4th respondent-Mandal Surveyor, Sirivella Mandal under the directions of 3rd respondent-Tahsildar, directing to appear for survey of the subject land, is not only contrary to law and against the provisions of Wakf Act, 1995 (for short 'the Act'). Survey of the Wakf land has to be conducted only by the Survey Commission of Wakf under Section 4 of the Act and therefore, respondents 3 and 4 have no jurisdiction or right over the subject property. Hence, these Writ Petitions.

The learned counsel for the petitioners submits that by virtue of Section 4 of the Act, Mandal Revenue Officer has no jurisdiction to issue notice.

On the other hand, the learned counsel for the 5th respondent submits that the petitioners have no *locus standi* to file the writ petitions and they cannot inherit any rights automatically after the death of Mutawallis and relied on the decision of this Court reported in **Syed Jamil Ahmed (died) per L.Rs. v. Meer Ahmed Ali Khan (died) per L.Rs.**^[1], wherein it was held that Mutawalliship is not hereditary and legal heir cannot be treated as Mutawalli.

Heard Learned counsel for implead Wakf Board.

In **Syed Jamil Ahmed (died) per L.Rs. v. Meer Ahmed Ali Khan (died) per L.Rs.**(supra), at para-3 it was held as follows:

“If the Muthavalli is appointed by the Wakf Board, Muthavalli ship is not hereditary and the legal heir of the Muthavalli cannot be termed Muthavalli as the appointment comes to an end immediately after the death of the person who has been appointed as Muthavalli. Where the Board appoints the Muthavalli, it is not a hereditary. The Court below did not deal with the contentions of the respondents and the objections have not been considered regarding the contention that the muthavalliship appointed by the Wakf Board is not hereditary. The respondents sought to come on record as legal representatives of Muthavalli which cannot be permitted if the muthavalli is appointed by the Board. It is not the case of the respondents that they are the persons interested in the Wakf Board, and therefore, they have a right to come on record independently. The lower appellate Court, without considering all these questions, allowed the application only on the ground that the petitioners herein are the sons of the Muthavalli, and they are taking care of the suit property after the death of their father and they are interested in the property and they can be brought on record. The said order of the Court below is illegal as Muthavalliship appointed by the Wakf Board is not hereditary. Accordingly, the order under revision is set aside and the Court below is directed to reconsider the matter afresh in the light of the above observation in accordance with the law after giving reasonable opportunity to both the parties.”

Even according to the petitioners, they are not Mutawallis but they are claiming as legal heirs of Mutawallis, I do not see any reason to entertain these Writ Petitions at the instance of writ

petitioners.

Accordingly, these Writ Petitions are dismissed. No costs.

As a sequel, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

Date: 19-07-2016

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[\[1\]](#) 2002(6) ALD 318