

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.2236 OF 2017

ORDER:

Heard Mr.Shafath Ahmed Khan for petitioner and Mr.M.A.Mujeeb for respondents 2 to 4.

The petitioner claims to be the Mutawalli of Masjid-E-Rahmania at Aghapura, Hyderabad. The Chief Executive Officer of State Wakf Board/3rd respondent through proceedings F.No.08/Z/T/Hyd/2009-Z-1 dated 13.11.2015 appointed Janab Fathe Khan as Enquiry Officer to conduct enquiry into the allegations received against the petitioner vis-à-vis Masjid-E-Rahmania.

The Enquiry Officer submitted his report dated 25.04.2016 to 2nd respondent for consideration. The 3rd respondent through the proceedings impugned in the writ petition changed the Enquiry Officer and appointed Janab K.A.Wahid Khan as Enquiry Officer to look into the very allegations which were enquired into and covered by report dated 25.04.2016 given by Janab Fathe Khan. The petitioner challenges either the change of Enquiry Officer or appointment of Enquiry Officer to look into the allegations which constitute the basis for initiating enquiry through proceedings dated 13.11.2015.

On 24.01.2017, this Court has granted interim suspension. The 3rd respondent filed petition to vacate the interim order.

Mr.Shafath Ahmed Khan appearing for petitioner contends that the enquiry was initiated at the instance of one of the occupants of a mulgi located in the wakf property; the enquiry was conducted as per the requirement of law and a report is submitted. The report, according to him, exonerated the petitioner of all the

allegations levelled against the petitioner under Section 70 of the Wakf Act, 1995 (for short 'the Act'). Firstly, change of Enquiry Officer or appointment of another Enquiry Officer for the same charges is illegal, arbitrary and unavailable. He alternatively submits that the decision to appoint Enquiry Officer through proceeding impugned in the writ petition was taken when the competent authority was at the helm of affairs and there is nothing on record to show that the report to the extent required at least is referred and a decision objectively taken. Mr. Shafath Ahmed Khan does not dispute the jurisdiction or competence of Board to appoint Enquiry Officer for the purpose of arriving at the truth on allegations enquired into under Section 70 of the Act. In the case on hand, the complaint is restricted to the extent of arbitrary and illegal exercise of power by the respondents. For appreciating the submission of Mr. Shafath Ahmed Khan, this Court finds it convenient to excerpt the operative portion of the proceedings impugned in the writ petition.

“ In the reference 2nd read above, Janab Fathe Khan was appointed as Enquiry Officer to conduct detail enquiry who in the ref 3rd read above submitted a report. The report was examined and placed before the Competent Authority, TSWB, who in the ref 4th read above passed orders to conduct fresh enquiry through a different officer within 15 days and no adjournments.

Accordingly Janab K.A. Wahid Khan is hereby appointed as Enquiry Officer U/s. 70 of the Waqf Act 1995 to conduct a detailed enquiry on the allegations levelled against Mohd Khaleed Sharief and on various other allegations levelled against him, if any and submit report expeditiously within 15 days.

The Enquiry officer shall have the same powers as are vested in a Civil Court under the code of civil procedure 1908 (5 of 1908).”

Mr.Mujeeb submits that the scope of Section 70 of the Act takes care of preventing mismanagement and misadministration of Wakf properties and according to him, in the case on hand, the reading of report dated 25.04.2016 appears that the Enquiry Officer was taken off the garden path and therefore, the competent authority who is not bound by the report has taken the decision and no exception to appointment of another Enquiry Officer can be taken. He alternatively submits that even assuming without admitting that the order changing Enquiry Officer or appointing another Enquiry Officer in respect of the same allegations does not disclose reasons, without getting into the merits on the report submitted by Janab Fathe Khan and without prejudice to the rights and powers of Board, he submits that the Court considers passing appropriate order which can further the purpose and object of Section 70 of the Act.

Heard the counsel and taken note of the limited submissions.

Section 70 of the Act reads thus:

“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.”

In the case on hand, either the allegations against petitioner or the recommendations are still at the stage of consideration by the Wakf Board. The order impugned in the writ petition *prima facie* does not disclose reason for ignoring the report submitted by Janab

Fathe Khan. Though a reference to office order is made, the Board could have done better either by producing the file or excerpting reasons which weighed for the decision taken on 05.01.2017. Admittedly, now the Wakf Board is constituted according to the provisions of the Act and this Court is persuaded by the second submission of Mr. Shafath Ahmed Khan, and without prejudice to the jurisdiction of Board to examine, to meet the ends of justice and fair play, the following order is passed:

- a) the order F.No.08/Z1/T/Hyd/2009/Z-1 dated 05.01.2017 is set aside and the matter remitted back to 3rd respondent.
- b) The 2nd and the 3rd respondents are given liberty to look into the entire issue vis-à-vis subject wakf, the obligation of Board under Section 70 of the Act and proceed to take a decision from the stage of receiving the Enquiry Officer's report dated 25.04.2016.
- c) The 2nd and the 3rd respondents are directed, after remand, to take a decision as expeditiously as possible preferably within two months from today.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V. BHATT, J

Date: 13.09.2017

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