

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.3375 of 2017

ORDER:

Heard, Sri T. Srikanth Reddy, learned counsel for the petitioner and Ms.Sofia Begum, learned Standing Counsel for Telangana State Wakf Board for respondents.

An order of removal passed by the Telangana State Waqf Board against the petitioner under Section 64 of the Waqf Act, 1995 vide proceedings No.29/Z1/T/Hyd/2014, dated 29-12-2016 is under challenge in the present writ petition.

Earlier, the writ petitioner herein filed W.P.No.35187 of 2016 questioning the proceedings, dated 04-05-2016. This Court, by way of an order, dated 21-10-2016 disposed of the said writ petition and the last two paragraphs of the said order read as under:

"5. The second respondent-board has placed before the Court the file on the subject. The board is unable to satisfy the Court that the procedure is followed. Learned standi ng counsel fairly admits to this factual omission in issuing notice to petitioner. The impugned proceeding, on the short ground, is set aside.

The writ petition is ordered accordingly. It is made clear excepting the proceeding impugned in the writ petition this Court has neither considered any other issue pending with the board against the petitioner nor has taken note of any other order passed in this behalf. The interference by this Court on the technical ground

does not, however, preclude the board in acting in accordance with law. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.”

In pursuance of the said order passed by this Court the Chief Executive Officer of the State Waqf Board issued a show cause notice bearing F.No.29/Z1/T/Hyd/2014, dated 26-11-2016 asking the petitioner to show cause as to why action should not be taken under Section 52-A of the Waqf Act, 1995.

Responding to the said show cause notice, the petitioner herein submitted an explanation on 15-12-2016. Thereafter the Chief Executive Officer, Waqf Board passed the present order under challenge ordering removal of the petitioner from the office of Muthawalli under the provisions of Section 64 of the Waqf Act, 1995.

According to the learned counsel for the petitioner, the said order of removal is in utter violation of the mandatory provisions of Section 64 of the Waqf Act, 1995 and violative of Article 14 of the Constitution of India. It is further submitted by learned counsel for the petitioner that though the petitioner submitted an explanation the contents of the same were not taken into consideration by the Chief Executive Officer while passing the order under challenge. It is further submitted that except stating that the explanation is not

convincing the Chief Executive Officer did not advert to the contents of the explanation.

On the contrary, it is contended by Ms.Sofia Begum, learned Standing Counsel for Waqf Board that the present writ petition is not maintainable in view of the availability of alternative remedy of appeal to the Waqf Tribunal under the provisions of Section 64(4) of the Waqf Act, 1995. It is further submitted by learned Standing Counsel that the Chief Executive Officer, only after considering the explanation and by recording the valid and cogent reasons, passed the order under challenge.

Section 64 (4) of the Waqf Act, 1995 which is relevant for the present case reads as under:

“64. Removal of mutawalli.-

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.”

A reading of the above provisions of law makes it evident that an order passed under any of the clauses (c) to (i) of sub-section (1), is appealable to the Tribunal constituted under the Act and the decision of the Tribunal on such appeal shall be final.

In view of the above provision of law, which enables the petitioner to file appeal against the order under challenge before the Tribunal, this Court is not inclined to go into various factual controversies as pointed out by the petitioner. However, having regard to the submissions made by learned counsel for the petitioner and keeping in view the nature of controversy, this Court is inclined to grant some time for the petitioner herein to avail the alternative remedy.

For the aforesaid reasons, the writ petition is disposed of, keeping it open for the petitioner herein to avail alternative remedy of appeal as provided under Section 64 (4) of the Waqf Act, 1995 within a period of three (3) weeks from the date of receipt of a copy of this order. It is further made clear that *status quo* as on today with regard to the management of the Waqf shall be maintained for a period of four (4) weeks.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

February 01, 2017

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A.V. SESA SAI, J

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