

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

W.P.M.P.No.28963 of 2017
IN/AND
WRIT PETITION No.22768 of 2017

ORDER :

This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“..to issue a writ or direction more particularly in the nature of writ of mandamus declaring the order F.No.15/ DCB/ Rahmatabad/ NLR/ 2016 dt.20.6.2017 passed by the respondent as illegal, arbitrary, unjust and contrary to the provisions of the Wakf Act, 1995 and pass such other order or orders as this Hon’ble Court deems fit and proper.”

2. W.P.M.P.No.28963 of 2017 is filed to incorporate additional grounds that the impugned Office Order is violation of the principles of natural justice and also statutory provisions, more particularly, under Section 72 of the Wakf Act, 1995 (for short ‘the Act’). Hence, the same is allowed.

3. Heard learned counsel for the petitioner and learned Standing Counsel for the Andhra Pradesh State Wakf Board, represented by Sri P.Veera Reddy, learned Senior Counsel and perused the prayer in the writ petition with supporting affidavit and other material on record including additional grounds raised in W.P.M.P.No.28963 of 2017.

4. The averments in the affidavit filed in support of the petition are that the deponent is functioning as a Mutawalli pursuant to the order of the learned Principal Senior Civil Judge,

Nellore, dated 06.01.2017 in I.A.No.661 of 2016 in O.S.No.50 of 1913. The impugned order is dated 20.06.2017 in F.No.15/ DCB/ Rahmatabad/ NLR/ 2016 passed by the respondent herein stating that the In-charge Accounts Officer of the Wakf Board inspected the Dargah Hazrath Syed Shah Haji Khwaja Rahamathullah Saheb Peer @ Nayab Rasool (Rn), SPSR Nellore District, and verified statement of Receipts and Payments of Wakf institution furnished by the deponent, Janab S.G.N.Hafeez Pasha, Sajjada Nashin and after scrutiny, the income is assessed and fixed the Wakf fund tentatively for the periods commencing from 1956 till 11.01.2017 of Rs.66,51,000/- and issued guidelines to the Sajjada Nashin of the Wakf institution and Inspector Auditor Wakf, SPSR Nellore District and I Additional Senior Civil Judge, Nellore District, stating that Sajjada Nashin shall open hundi in the presence of Inspector Auditor Wakf, SPSR Nellore District and 1st Additional Senior Civil Judge, Nellore District keeping in view of the previous practice of opening of Hundies; that the FDRs which are kept for corpus fund, shall not be withdrawn, but for, interest accrued only to fulfill the objects and payment dues to the Wakf Board with the permission of the Wakf Board; that in case of any donor comes forward to develop the Dargah with his own funds Sajjada Nashin shall issue no objection certificate for development and take up the activities with prior permission of the Wakf Board; that the expenditure for salaries is excessive and exceeding the income, the surplus staff

whose services are not needed and if continued as per court scheme, they shall be removed by the Sajjada Nashin as a measure of economy; that the Inspector Auditor Wakf shall have access to make surprise inspections of Sajjada Nashin and keep a vigil on the Income and Accounts as well supervision of maintenance which services rendered; that the Sajjada Nashin of Mosque and Hazrath Syed Shah Haji Khwaja Rahamathullah Saheb Peer @ Nayab Rasool (Rh) and Inspector Auditor Wakf SPSR Nellore District are directed to follow the instructions scrupulously and submit report from time to time.

5. It is the impugment that no principles of natural justice followed, there was no any show cause notice before issuing the notice by saying tentative assessment which does not arise to pay. Apart from it, there are final directions even referring to the court lis if at all with Court's permission and not otherwise such directions also do not arise in the teeth of the provisions of the Act. It is also further submission that the Wakf Board did not render any such service to the Dargah till 06.01.2017 and entire administration of Dargah till that date was under the control of I Additional Senior Civil Judge, Nellore, in O.S.No.50 of 1913 and the impugned proceedings, directing to pay Rs.66,51,000/- towards wakf fund right from the year 1956 does not arise and the Wakf Board is not entitled to the so called annual contribution and from reading of Section 72 of the Act, the annual contribution collection arises, where services are

rendered by the Wakf Board and not otherwise and the impugned order and the guidelines thereunder are beyond the scope of the provisions, particularly, Section 50 of the Act imposes a duty on Mutawalli to carry out the directions of the Board in accordance with the provisions of the Act or of any rule or order made thereunder and not otherwise and such directions are even contrary to Section 50 of the Act. It is also in saying I Additional Senior Civil Judge, Nellore, who was administering till 06.01.2017 when no longer in administration, the question of opening of hundi in the presence of I Additional Senior Civil Judge, Nellore, does not arise to issue one such directions and it is not even contemplated for opening of the hundi in the presence of the Inspector Auditor of the Wakf Board and the said guidelines also only to withdraw interest by imposing conditions does not arise and such directions and situation are not contemplated by the Act. The salaries about Rs.5,50,000/- p.m. are paying out of interest on FDR and hundi collections and the direction that interest shall be only be used to pay dues of the Wakf Board is without justification there from and for any donor to make development of the Wakf Board, the imposition of condition of the prior permission of the Wakf Board is required is also unsustainable and thereby the impugned notice and the proceedings are liable to be quashed. It is not in dispute as also pointed by the learned Standing Counsel for the respondent that petitioner Dargah paid towards wakf fund from January, 2017 to

March, 2017 by way of demand draft for Rs.1,19,215/- drawn on Syndicate Bank with covering letter dated 11.04.2017.

6. Heard both sides and perused the material on record.

7. Learned counsel for the petitioner reiterated the above stand in the course of submissions impugning said office order dated 20.06.2017.

8. Whereas, it is the submission of the learned Senior Counsel for the respondent that Section 32 of the Act enables the Wakf Board to have supervision and the Superintendence that is vested statutorily by virtue of the supervision and the guidelines issued in the impugned notice are pursuant to the said provision and thereby, the guidelines issued no way requires interference, much less, by entertaining the writ petition and the impugned Office Order can be questioned as it is only a provisional assessment and if at all an explanation to be filed to show how the assessment is not correct to consider for the payment on fixing time and thereby, sought for dismissal of the writ petition for otherwise there is an alternative remedy to approach the Wakf Tribunal.

9. The core issue is from 1956 to 06.01.2017 whether there is any element of service by the Wakf Board involved to the petitioner-Wakf to charge the annual contribution. As per Section 72 of the Act, the payment of contribution is for the services rendered or to be rendered is not in dispute. Subsequent to

06.01.2017, the contribution is paying as referred supra, is also not in dispute.

10. In the impugned Office Order, it is nowhere stated atleast to give opportunity to explain from the so called assessment made and what is the basis in imposing the conditions as alleged guidelines in page No.2 of the impugned Office Order.

11. Coming to the maintainability of the writ petition, law is fairly settled that mere existence of alternative, even an efficacious remedy, by itself is not a bar, when there is a complaint of violation of principles of natural justice or violation of the statutory provisions to exercise the pleary jurisdiction, but for a self-restraint to the extent necessary even there are no limitations for exercise of the power under Article 226 of the Constitution of India. Having regard to the above and in the factual scenario, the writ petition is held maintainable.

12. The facts no way require repetition. There is no any show cause notice inviting reply before the impugned order served to pay. However, in view of the dispute covered by the factual matrix with reference to the provisions referred supra, this Court feels it just, instead of quashing the impugned Office Order, by treating the same only as a show cause notice, by enabling the writ petitioner to submit a detailed reply including with those facts referred in the writ petition within one week from the date of receipt of copy of this order and thereafter the

respondent shall after full-fledged enquiry pass appropriate orders on own merits supported by reasons within two months and communicate the same to the writ petitioner and after receipt of the order, there must be one month time to enforce the order, so that the petitioner if at all aggrieved, in the meantime can pursue available remedy, more particularly, to approach the Wakf Tribunal because Section 83 of the Act enables for determination of any dispute, question or other matter relating to a Wakf or Wakf property and define the local limits and jurisdiction under this Act of each of such Tribunals also from the latest expression of the Apex Court in *Rajasthan Wakf Board v. Devki Nanda Pathak and others*¹. It is needless to say, before opening hundi, the petitioner shall intimate to the respondent-Wakf Board of the date and probable time to appear if at all.

13. Accordingly, the Writ Petition is disposed of. No costs.

14. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:17-07-2017
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¹ JT-2017(5) SC 84

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