

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

**W.P.NO.11285 OF 2017**

**ORDER**

This writ petition filed under Article 226 of the Constitution of India challenges the letter addressed by the 1<sup>st</sup> respondent – A.P. Wakf Board, represented by its Chief Secretary, in F.No.385/KNL/M/2011/Z-IV dated 21.03.2017, requiring the Station House Officer, Sirvel Mandal, Kurnool District, to take necessary action for avoiding inconvenience for law and order to the coming devotees for Urs celebrations.

Heard Sri N.Sriram Murthy, learned counsel for the petitioner, Sri Shaik Mohammad, learned Standing Counsel for the 1<sup>st</sup> respondent – Wakf Board and Sri S.M.Subhan, the learned counsel for respondents 2 and 3.

According to the learned counsel for the petitioner, since the petitioner is the Muthawalli of the subject institution, he alone is entitled to conduct the Urs celebrations and the respondents 2 and 3 cannot be allowed to conduct the said celebrations.

On the other hand, it is the submission of the learned Standing Counsel for the 1<sup>st</sup> respondent – Wakf Board so also the learned counsel for the respondents 2 and 3, that the forefathers of respondents 2 and 3 were recognized as Muthawallies and notification to the said effect was published

in Andhra Pradesh Gazettee dated 2.5.1963. It is submitted that in view of the provisions of Section 42 of the Wakf Act, 1995 (for short 'the Act'), there cannot be any objection for the petitioner herein for the participation of respondents 2 and 3 in the subject celebrations.

It is further submitted by the learned counsel for the respondents that the right of the respondents 2 and 3 can be traced out from the letter bearing Lr.No.47/KNL/Sirvel/2016 dated 7.3.2017 addressed by the Inspector, Auditor Wakf, Kurnool District to the 1<sup>st</sup> respondent - Chief Executive Officer, A.P.State Wakf Board.

The material available before this court discloses that by proceedings in F.No.385/KNL/M/2011/Z-IV dated 5.3.2012, the Chief Executive Officer, appointed the petitioner herein as Muthawalli of the subject Dargah and its attached properties in the place of his grandfather who is the notified Muthawalli under Section 42 of the Act. He made a representation to the Chief Executive Officer of the Wakf Board on 27.02.2017, requesting to address letters to the revenue and police authorities for arranging necessary police bandobust (security) to conduct the Urs celebrations. By way of letter dated 14.3.2017, the 1<sup>st</sup> respondent – Chief Executive Officer accorded permission to the petitioner herein, so also the respondents 2 and 3 to conduct Urs celebrations. Subsequently, on 18.3.2017, the petitioner herein

submitted a representation to the 1<sup>st</sup> respondent – Wakf Board, making allegations against the respondents 2 and 3, while requesting to provide police protection to conduct Urs celebrations. On 20.03.2017, the Inspector – Auditor, Waqf, Kurnool District submitted a report to the Chief Executive Officer, requesting to take further necessary action for celebrations of Urs.

It is also required to be noticed that vide letter dated 7.3.2017 the Inspector – Auditor Wakf, Kurnool District, also categorically stated that the petitioner herein as well as respondents 2 and 3 applied for appointing them as Mutawallies in the place of their ancestors. It is further clear from the said letter that thereafter objections were called for and the petitioner submitted his objections. It is also stated that objection was submitted by the petitioner herein without signature on his complaint.

Section 42 of the Act reads as under:

**42. Change in the management of wakfs to be notified.—**

(1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

In the present case admittedly from a reading of the letter dated 7.3.2017 addressed by the Inspector – Auditor Wakf, Kurnool to the Chief

Executive Officer, A.P.State Wakf Board, respondents 2 and 3 also applied for appointment as Muthawallies. According to the learned counsel for the respondents 2 and 3, information to the Wakf Board by the legal heirs is only sufficient in view of the provision of law, which is extracted above, with regard to change.

Obviously keeping in view the said provision of law, the Chief Executive Officer passed the order under challenge permitting the legal heirs of the Mutawallies notified by A.P. gazette dated 2.5.1963. Therefore, this court does not find any valid reason to meddle with the order under challenge.

Accordingly writ petition is dismissed. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

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**A.V.SESHA SAI,J**

DATE:04—04—2017

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