

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4720 of 2013

ORDER:

Heard both sides and perused the grounds of revision and the impugned order of the Wakf Tribunal dated 12.06.2013 in O.A.No.29 of 2012 particularly from Para 17.

The application is filed under Section 83(2) of the Wakf Act (for short 'the Act') by Syed Shabir Ahmed against the 1st respondent-Andhra Pradesh State Wakf Board and the 2nd respondent-Proposed Managing Committee represented by its so called President S.Amjad Ali Khan for the wakf institution known as Roza Mosque, Kurnool District, impugning the resolution No.96/12 dated 25.02.2012 vide file No.474/KNL/M/2012 with a direction to the Board to implement the said resolution under which it is resolved to appoint the applicant as a Mutawalli of the Mosque, and to declare the resolution No.134/12 passed to constitute a Managing Committee for the wakf institution as not lawful and therefore order not to make such appointment by holding that it is against the provisions of the Act and Rules. It is on contest and from the documentary evidence on record covered by Exs.A.1 to A.12 for the petitioner and Exs.R1 to R10 for the respondents, the impugned order is passed and in saying the Board has not thought to implement the resolution No.96/12 dated 25.02.2012 and instead resolved to appoint the 2nd respondent as managing committee by another resolution dated 03.05.2012 which resolution the applicant contends not sustainable in seeking the reliefs. From that Para 17 of the order reads as follows:

“During the hearing,.....The learned counsel submits, the Tribunal is empowered to adjudicate the correctness or otherwise of the resolution passed by the wakf Board before it is implemented, since it is well settled now even if no order is passed by the wakf Board a party can invoke Section 83 (2) of the Wakf Act, and seek to adjudicate the matter brought before it. This tribunal is in agreement that, a party can approach the Tribunal if it is a matter concerning to a Wakf or Wakf property over its administration, even when no order is passed by the Board by invoking Section 83(2) of the Wakf Act. But here in this case a particular plea is raised by the applicant stating, the Board had resolved under its resolution dt.25.02.2012 to appoint him as a Mutawali, but after few months another resolution was passed on 03.05.2012, to appoint a Managing Committee respondent No.2. But the fact remains, that no order or proceedings were issued to give effect to both the resolutions. Usually the Wakf Board in consequent to it passing a resolution the implementation would be done by issuing proceedings through its Chief Executive Officer as is referred under Section 26 of the Wakf Act, while delineating the powers of the CEO. Therefore this Tribunal is of the view the applicant should have waited for the Board to issue proceedings implementing either of the resolutions passed, one in his favour dt.25.02.2012, the another in favour of respondents dt.03.05.2012, then approach the Tribunal and the Tribunal can call for the record and verify the correctness or otherwise of it under law. But this Tribunal has no such authority to direct the Wakf Board to implement a particular resolution of the Board to the one passed in favour of the applicant and not to implement another resolution passed in favour of respondent No.2. The passing of the resolution to appoint respondent No.2 as Managing Committee is within the authority of the Board, under Section 18, and where of course the settled law is, when there is a Mutawali for an institution appointment of such committee is not called for. When the resolution shown passed in favour of the applicant is perused, it is not that, the applicant was appointed as a permanent Mutawalli by recognizing him

being eligible for Mutawalliship for the subject Wakf institution..... However this Tribunal reiterates its view that, the Tribunal can not take-up and decide, when a person approaches the Tribunal invoking Section 83(2) of the Wakf Act, since it is not empowered to do so no where under the provisions of the Wakf Act, either to order to implement a particular resolution shown passed in favour of the applicant, or to direct not to implement another such resolution which is in favour of respondent No.2. Therefore the applicant ought to have waited till an order is passed or proceedings are issued by the Wakf Board electing to implement either of those resolutions.”

In the above conclusion by the Tribunal in saying there is no order of proceeding that were issued to give effect to both the resolutions, the Tribunal has no such authority to direct the Wakf Board to implement the particular resolution of the Board, the one passed in favour of the applicant and not to implement the another resolution passed in favour of the 2nd respondent.

In fact the Apex Court in **Board of Wakf, West Bengal Vs. Anis Fatma Begum and Another**¹, referring to previous expression and explaining the earlier judgment in **Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf**² by distinguishing the same held that when there is a special law providing special forum then recourse cannot be taken generally by civil suit and all matters pertaining to wakfs should be filed in first instance before the Wakf Tribunal constituted under Section 83 of the Act and should not be entertained by Civil Court or by the High Court straightaway under Article 226 of the constitution of India, for the reason the wording is in conferring the jurisdiction on the Wakf Tribunal. Even if no order has been under the Act, against which

¹ 2010 (7) Supreme 1059

² (2010) 8 Scale 698

he is aggrieved the party can approach the Wakf Tribunal to mention for determination of the correctness or otherwise of not only an order under the Act, but also for any dispute, question or other matter relating to wakf or wakf property as per the plaint in what Section 83(1) or 84 of the Act indicates. It is also observed that these words are wide amplitude.

Having regard to the above, the conclusion arrived by the Wakf Tribunal saying there is no order to invoke jurisdiction of the Tribunal is unsustainable as any dispute can be questioned even no order, thereby the dismissal order of the Tribunal is set aside by holding that the Wakf Tribunal has jurisdiction to decide the lis covered by the suit claim by remanding the matter to determine the issue if necessary by recording the oral and documentary evidence afresh.

Accordingly and in the result, the Civil Revision Petition is allowed and remanded the matter back to the Wakf Tribunal to decide afresh. The status quo order that was in force as on the date of disposal of the main O.A. by the lower Court holding want of jurisdiction since set aside revives without prejudice to the contest of both parties, if at all to file any counter and decide on own merits. As the O.A. is of the year 2012, the Tribunal shall make every endeavour subject to other preferences for early disposal of the O.A.No.29 of 2012.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 20.12.2017
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