

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.22705 of 2017

ORDER :

Heard at length, learned counsel for the petitioner, learned Government Pleaders for Social Welfare and Home appearing for respondent Nos.1 and 5, Sri M.A.Mujeeb, learned Standing Counsel, who offers to file vakalat for respondents 2 and 4 from the oral instructions and Sri A.M.Qureshi, learned counsel for respondent No.6, before ordering notice to respondent No.3, a proforma party and perused the prayer in the writ petition with supporting affidavit and other material on record.

A perusal of the record shows that it is within area of 8895 Sq.yards as grave yard covered by Gazette notification of the Wakf under the Muntakab of 1984, there is a separate Dargah as a separate Wakf of 250 Sq.yards, which is in fact the disputed factual aspect to adjudicate. According to the petitioner besides wakf covered by the grave yard only to the extent of 7139 Sq.yards Dargah area is separately notified as a Wakf for 250 Sq.yards and the petitioner is Muthawalli for the Dargah and the 6th respondent for the grave yard.

Learned Standing Counsel for the Wakf Board vis-à-vis learned counsel for the 6th respondent, who is Muthawalli for the entire grave yard covered by the Wakf submit that there is no separate

Wakf besides the factum of impossible even to conceive any existence of sub-Wakf within the main Wakf.

Undisputedly, between the parties, before the Wakf Tribunal, there is a suit for injunction maintained by the present petitioner including against 6th respondent that is pending in relation to Dargah. The impugned proceedings herein is the alleged taking of possession under a panchanama, which is also in dispute apart from the contention of there is no notice and opportunity to meet the basic principles of natural justice to the petitioner, who is the affected person being a Muthawalli of the Dargah in question. Even from the submissions by the learned Standing Counsel for the Wakf Board, there is no notice given to the petitioner before taking possession covered by the impugned panchnama. Earlier, there were representations and putting the said Dargah area claimed as a separate Wakf under lock and key, those were directed to be removed and after removal, from the complaint by 6th respondent herein, particularly, dated 16.08.2014 of some unsocial elements under the guise to visit the Dargah are also entering, thereby, to be kept in lock and key and it is the off-shoot practically for the impugned panchanama proceedings.

Having regard to the above and also for no notice and opportunity afforded to the petitioner before putting lock and key to the Dargah and from existence of Dargah and petitioner as its Muthawalli is in dispute, that is to be adjudicated by the Wakf

Tribunal having jurisdiction from the wording of Section 83 of the Wakf Act, for determination of any dispute, question or other matter relating to a Wakf or Wakf property can be decided, and also from the fact that already a suit for injunction is pending before the Wakf Tribunal filed by the writ petitioner against some of the respondents, the writ petition is disposed of by giving liberty to the writ petitioner to approach Wakf Tribunal by suit for declaration or the like and obtain any interim order therein within two months from today. In the meantime by restoring *status quo ante* of the Dargah lis and its possession to dated 16.08.2014, both parties are directed to maintain such *status quo ante* dated 16.08.2014. However, it is made clear that none of the observations in disposal of the writ petition will influence the Wakf Tribunal in deciding the *lis* on own merits.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed. No costs.

Dr. B. SIVA SANKARA RAO, J

Date:14-07-2017

Note:

Issue C.C. in two days.

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