

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No. 1077 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 22705 of 2017 dated 14.7.2017. The said writ petition was filed by the 1st respondent in this writ appeal to declare the action of the respondents in issuing letter dated 1.2.2017 addressed to the local police, followed by the Order dated 8.3.2017, as arbitrary and illegal.

The 1st respondent-writ petitioner claims that Dargah Hazrat Syed Asadullah Quadri is a wakf institution admeasuring 250 square yards situated beside Grave Yard, Intezam Jung, Gulbagh, Hanuman Tekdi, Hyderabad. The appellant herein (6th respondent in the writ petition) is the Muthawalli/Towliath of Mohammed Siraj-ul-Hassan Ansari.

While Sri A.M. Qureshi, learned counsel for the appellant, would contend that the alleged Dargah is located within the precincts of the burial ground, of which the appellant is the Muthawalli, Sri Mirza Nisar Ahmed Baig, learned counsel for the 1st respondent-writ petitioner, would contend that the Dargah is adjacent to the burial ground; and it is only because the entrance to the Dargah was blocked by certain encroachers, were the 1st respondent required to pass through the burial ground to administer the affairs of the Dargah. By the impugned proceedings dated 1.2.2017 the lock placed on the Dargah, by the 1st respondent-writ petitioner, was directed to be removed; and the Muthawalli was permitted to keep the same under lock and key in the presence of the Officer deputed by the Wakf Board, with the assistance of the police. Though this proceeding dated 1.2.2017 was subjected to challenge, the learned Single Judge has, in the order under appeal, restored status-quo ante of the Dargah and its possession from 16.8.2014 while granting liberty to the 1st respondent-writ petitioner to

approach the Wakf Tribunal. The 1st respondent-writ petitioner's claim before the learned Single Judge was that no notice was issued even before possession was taken under the impugned panchanama; earlier there were representations, and the Dargah was kept under lock and key; this was directed to be removed; on the basis of the complaint by the appellant-6th respondent dated 16.8.2014, that certain anti-social elements had visited the Dargah, it was kept under lock and key; and as an off-shoot, the impugned panchanama proceedings were issued.

Sri A.M. Qureshi, learned counsel for the 6th respondent, no doubt appeared before the learned Single Judge. The writ petition was, however, disposed of at the stage of admission even without a counter-affidavit being filed; and though the proceedings, impugned in the writ petition, was issued only on 1.2.2017, the learned Single Judge has directed status-quo ante as on 16.8.2014 .

Sri Mirza Nisar Ahmed Baig, learned counsel for the 1st respondent-writ petitioner, would submit that it would suffice if status-quo as on 1.2.2017 is directed to be maintained; and the writ petitioner's lock be placed on the Dargah, instead of the lock placed thereupon by the appellant. The fact that the Dargah has been under lock and key ever since 16.8.2014 is not in dispute. The dispute is now confined to the entitlement of the person to keep the Dargah under lock and key. It is wholly unnecessary for us, in proceedings under Article 226 of the Constitution of India, to examine these disputed questions of fact. The learned Single Judge has rightly relegated the 1st respondent-writ petitioner to the remedy of approaching the Wakf Tribunal. Suffice it, therefore, if the appellant herein is directed to hand over the keys to the 3rd respondent in this appeal, who shall retain the key with them till the proceedings before the Wakf Tribunal, instituted by the 1st respondent-writ petitioner, is decided finally.

The order of the learned Single Judge is modified as indicated herein above, and the Writ Appeal is disposed of accordingly. The keys,

as directed hereinafter, shall be handed over by the appellant, within two weeks from today, to the 3rd respondent in this appeal.

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

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

3rd August, 2017

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Date: 03.08.2017

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