

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11522 OF 2004

ORDER:

This writ petition is filed challenging the Proceedings of the Andhra Pradesh State Wakf Board issued in F.No.B3/33/CTR/2002, dated 07.11.2003, registering the Dargah Hazaraat Jumle Peer Shah and Dada Peer and Burial ground situated in Survey No.224/8 of an extent of Ac.0.91 cents and Mosque Azam situated in Survey No.224/7 in an extent of Ac.0.22 cents of Dargah Mitta, Panagal Village, Srikalahasti, Chittoor District, as wakf property under Section 36 of the Wakf Act, 1995 (for short 'the Act') and consequential proceedings of the Chief Executive Officer, A.P. State Wakf Board, Hyderabad vide Proceedings No.2/CTR/k/2004, dated 04.03.2004, appointing the respondents 4 to 14 as Managing Committee of Dargah Hazaraat Jumie Peer Shah and Dada Peer, as violative of principles of natural justice, arbitrary, illegal and contrary to the provisions of Section 36 of the Act.

2. The case of the petitioner is that about 400 years back, his great great grandfather by name Hazarat Khaja Syed Shah Jumle Peer Shah @ Symed Jumle Pir Vali Allah, attained salvation on the western banks of Swarnamukhi river at Srikalahasti. In memory of their grandfather, they established a Dargah called 'Hazarat Khaja Syed Shah Jumle

Peer Shah Chistiul Khader Vali Allah and Dada Peer'. As per their custom and understanding, the eldest son shall be Sajjadanashin of the said Dargah. His father's father namely late Dargah Syed Jumle Shah being the eldest son of his father was the Sajjadanashin and in that capacity, he used to manage the affairs of the said Dargah and he expired in the year 1947. After his death, the petitioner's father being the eldest son, Sajjadanashinship devolved on him and in that capacity, he is looking after the affairs of the said Dargah. Since 1947, his father has been looking after all the affairs of the said Dargah including 'Urs' and 'Gandham' functions. The Dargah has only an extent of Ac.0.91 cents in Survey No.224/8 of Panagal Village, Srikalahasti, Chittoor District. The Dargah is existed in an extent of Ac.0.10 cents and the graveyard is existed in an extent of Ac.0.30 cents out of Ac.0.91 cents. The remaining portion of the land is occupied by the third parties by constructing residential buildings. One Mr. P.Ahmad Sheriff and two others on 21.06.1982 proclaimed in their village that they are Mujawars of the Dargah and they tried to celebrate the Gandham festival. In those circumstances, he filed a suit in O.S.No.342 of 1982 on the file of the Principal District Munsif, Srikalahasti for declaration that he is the Chief Mujawar (Sajjadanashin) and he is having full authority for administration, maintenance, management of the daily pujas and celebration of Urs festival at Dargah and also for grant of permanent injunction

restraining the defendants from interfering in any way with his administration, management and maintenance of the Dargah and also for performing daily pujas. His case, in the suit is that he succeeded his father as a Chief Mujawar of the Dargah, which is a religious institution where Muslims and Hindus congregate and worship and that he is the in-charge of the maintenance, management and improvement of the Dargah and the defendants are strangers and that they have nothing to do with the Dargah. He celebrated Urs from 11.06.1982 to 13.06.1982 with the help of public contributions in a grand manner. When the defendants proposed to celebrate Gandham festival and Kawali music without his permission, his supporters were objected. Thereafter, the defendants proclaimed in the village that they are the Mujawars of the Dargah and published the pamphlets that they would perform Gandham festival on 21.06.1982. The suit was dismissed on 25.03.1989 by holding that the petitioner is only a Mujawar along with the third defendant namely Syed Fakruddin, Ibrahim and Vali Mohammed and that the petitioner is not the Chief Mujawar. It is also held that the defendants 1 and 2 therein, who are the respondents 9 and 14 in this writ petition, are not Mujawars of the Dargah. The trial Court has erred in understanding the expression 'Sajjadanashin' as Chief Mujawar. Aggrieved by the said decree and judgment, he filed A.S.No.8 of 1989 on the file of the Court of Subordinate Judge, Srikalahasti,

Chittoor District. The first and second defendants in the suit, who are the respondents 9 and 14 herein, filed cross-objections in the said appeal against the decree and judgment passed in O.S.No.342 of 1982 insofar as holding that they are not Mujawars and holding that D.Ibrahim and Vali Mohammed are also Mujawars. After dismissal of the suit, one Syed Vali Mohammed, who was held by the trial Court as Mujawar, has also got filed a suit in O.S.No.118 of 1992 for declaration that he is the Mujawar of the Dargah and for permanent injunction restraining the petitioner's father and his men from interfering with the peaceful possession and enjoyment of his right in performing pujas, maintenance, management and administration of Dargah in question. The suit was dismissed by decree and judgment dated 03.05.1997, holding that he is not the Mujawar of the Dargah and the Court found that he is not residing in Panagal Village and he is not entitled for any injunction. The respondents have no bona fides and with an ulterior motive, they are making attempts to dislodge his father as Sajjadanashin.

It is stated that the lower appellate Court allowed A.S.No.8 of 1989 by decree and judgment dated 11.08.1993 holding that the petitioner is the Sajjadanashin and also holding that the defendants 1 to 3 are the Mujawars. Aggrieved by the said decree and judgment, the respondents in the appeal, filed Second Appeal No.583 of 1993 before this Court and this Court, by decree and judgment dated

09.04.2002, allowed the Second Appeal by confirming the decree and judgment passed in O.S.No.342 of 1982 on the file of the Principal District Munsif Court, Srikalahasti, Chittoor District. By the date of disposal of the second appeal, the third appellant in the second appeal died on 22.01.2002. On advice, the petitioner filed Review C.M.P. along with an application in C.M.P.No.11488 of 2004 to condone delay in filing the review petition.

It is further stated that the Mandal Revenue Officer, Srikalahasti Mandal accompanied by Circle Inspector of Police, Srikalahasti along with their staff and the respondents 4 to 14 came to his house and threatened to sign on the papers to show that he had handed over the possession of the Dargah, but he resisted the same. The respondents 4 to 14 informed that the first respondent has registered the Dargah as wakf property under the Act and the second respondent appointed them as Managing Committee to the Dargah, but the Mandal Revenue Officer refused to furnish the same. Thereafter, with great difficulty, he secured the proceedings of the first and second respondent dated 07.11.2003 and 04.03.2004 respectively, wherein the first respondent by the said proceedings registered an extent of Ac.0.91 cents situated in Survey No.224/8 and an extent of Ac.0.22 cents situated in Survey No.224/7 as wakf property. The first respondent has registered the said property as wakf property basing on the judgment dated 09.04.2002, passed in Second

Appeal No.588 of 1993. Chapter V of the Wakf Act, 1995 deals with Registration of Wakfs. As per Section 36(7) of the Act, on receipt of an application for registration, the Board may, before the registration of the wakf make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard. In this case, the petitioner is managing the affairs of the Dargah on the date of registration, but the first respondent without issuing any notice to the petitioner and without conducting any enquiry about the genuineness of the application, has registered the Dargah in question as wakf. Questioning the registration of the Dargah as wakf property, the petitioner filed the present writ petition before this Court.

3. This Court, while directing notice before admission, granted *status quo* order on 08.07.2004 in WPMP No.14657 of 2004 and the same is ordered to be continued till disposal of the writ petition by order dated 16.09.2004.

4. The Chief Executive Officer of the first respondent filed counter on his behalf and also on behalf of the first respondent, stating that basing on the decree and judgment

passed in O.S.No.342 of 1982 declaring the properties as public wakf and the committee constituted is in terms of the provisions of the Act and the same was the subject-matter of Writ Petition No.9897 of 2004, which was dismissed on 18.06.2004. It is further stated that the land to an extent of Ac.0.91 cents in Survey No.224/8 is belonging to the Dargah and graveyard (Smashanamu). The registered sale deed in respect of the land in which the Dargah is situated, was taken in the name of the petitioner, Vali Mohammed and Syed Fakruddin. The trial Court observed that no one has any right of alienation. The trial Court, while dismissing the suit, observed that the plaintiff in the suit, writ petitioner herein, failed to establish his right as a Chief Mujawar and the property is a private property. It is further stated that the allegation of the petitioner that the Mandal Revenue Officer, Srikalahasti Mandal accompanied by the Inspector of Police, Srikalahasti along with their staff and the respondents 4 to 14 came to the petitioner's house, threatened to sign on the papers to show that the possession of the petitioner was handed over to them and with great difficulty, the petitioner resisted the same, is denied and stated that the same has been created to show cause of action to file the present writ petition as the Dargah was declared as public wakf by the trial Court and the alienation of the property is prohibited. Basing on the material available on record, the second respondent registered the Dargah and the properties attached

to it and constituted a Committee to manage the affairs of the Wakf institution and the same is in accordance with the provisions of the Act and there is no illegality or irregularity, and the writ petition is liable to be dismissed.

5. The respondent No.6 filed counter denying the contentions of the petitioners in the writ affidavit.

6. Heard the learned counsel for the parties and none appeared for the respondent No.6.

7. Sri A.M.Qureshi, learned counsel for the petitioners would contend that action of the second respondent in registering the Dargah as wakf property under Section 36 of the Act by proceedings dated 07.11.2003 basing on the judgment passed in Second Appeal No.588 of 1993, dated 09.04.2002, confirming the decree and judgment passed in O.S.No.342 of 1982, dated 25.03.1989 on the file of the District Munsif Court, Srikalahasti and the property situated in Survey No.224/8 of an extent of Ac.0.91 cents and the land to an extent of Ac.0.22 cents in Survey No.224/7 of Panagal Village, Srikalahasti, stating that A.P. State Wakf Board is Mutavalli, is unknown to law and contrary to the provisions of Section 36 of the Act as no application is filed by the petitioner being in administration and management of the wakf as Mujawar as held by the trial Court in O.S.No.342 of 1982, dated 25.03.1989. When he has not moved any application and any other person moves an application for

registration being a Mujawar (Mutavalli) is entitled for notice and hearing under Section 36(7) of the Act. As per Section 3(i) of the Act, “mutawalli” means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is anaib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property: Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation.

It is further contended that the petitioner is mujawar for all practical purposes and he is administering and managing the Dargah along with other mujawar being the Mujawar as declared in O.S.No.342 of 1982 and he is entitled for notice before registering the Dargah under Section 36(7) of the Act and the registration of the Dargah as wakf violates the principles of natural justice and contrary to Section 36 of the Act. The petitioner filed this writ petition under Section 226 of the Constitution of India though remedy is available under Section 83 of the Act, which is not an effective alternative remedy.

8. Sri Arifullah, learned Standing Counsel for the respondents 1 and 2 would contend that the first respondent registered the Dargah along with the land of an extent of Ac.0.91 cents under Section 36 of the Act. Basing on the decree and judgment passed in O.S.No.342 of 1982 as confirmed in Second Appeal No.588 of 1993, the Dargah is a public wakf as declared by the trial Court and the petitioner is only a Mujawar. The Mujawar is a caretaker of an institution who also sweeps the premises and he is not an administrator and in management of the Dargah, and therefore, he is not entitled for any notice under Section 36(7) of the Act and already the trial Court declared the Dargah as public wakf. There is no illegality or irregularity in registering the said Dargah along with land in an extent of Ac.0.91 cents in which the Dargah is situated.

9. In the facts and circumstances of the case and in the considered view of this Court, the Dargah Hazaraat Jumie Peer Shah and Dada peer is more than 400 years old and the petitioner's great great grandfather had got salavation on the banks of river Swarnamukhi. The petitioner's grandfather and his ancestors constructed the said Dargah in Survey No.224/8 of an extent of Ac.0.91 cents and they are the descendants of Hazarat Khaja Syed Shah Jumle Peer Shah @ Symed Jumle Pir Vali Allah. As per their customs, the eldest son of the family is the Sajjadanashin (Chief Mujawar) and accordingly, the petitioner's father was the Sajjadanashin and

after his death, the petitioner became the Sajjadanashin. When the third parties tried to interfere with the administration and management and also in conducting 'Urs' and 'Gandham' functions, he filed a suit to declare him as Chief Sajjadanashin and for permanent injunction restraining the defendants in interfering with the administration and management and in conducting 'Urs' and 'Gandham' ceremonies. But, the said suit is not filed to declare the said Dargah as public wakf. The observations of the trial Court here and there as public wakf could not be taken as declaration and the suit itself is filed for injunction restraining the defendants and to declare the petitioner as Chief Sajjadanashin. However, the trial Court declared him as Mujawar and dismissed the suit. The petitioner is managing the affairs of the Dargah along with other Mujawars. Undoubtedly, the petitioner being the Mutawalli (Mujavar) as defined under Section 3(i) of the Act managing the affairs of the administration of the Dargah and conducting 'Urs' and 'Gandham' ceremonies with public funds and with his supporters.

10. When an application for registration of Dargah under Section 36 of the Act is filed by the persons other than in management and nothing to do with the Dargah and without issuing notice to the person in management, the registration of Dargah as wakf is contrary to the provision of Section 36(7) of the Act and it amounts to violation of principles of natural

justice and accordingly the impugned proceedings in F.No.B3/33/CTR/2002, dated 07.11.2003, registering the Dargah as wakf property is liable to be set aside.

11. Further, the contentions of the learned Standing Counsel for the respondents 1 and 2 that the Dargah is declared as public wakf by the trial Court in O.S.No.342 of 1982; the petitioner is not the Mujawar; he is not in administration and management of the said Dargah; he is only a caretaker of the institution and sweeps the premises; he is not entitled for any notice before registering the Dargah as wakf property under Section 36 of the Act, are untenable as the petitioner was declared as Mujawar by the trial court, however held that the petitioner is not the Chief Sujjadanashin. Further, Section 3(i) of the Act clearly defines 'Muzawar' includes 'Mutawalli' and he is the administrator of the said wakf. His further contention that the writ petition is not maintainable when an alternative remedy is available under Section 83 of the Act, is untenable when the impugned action is an utter violation of the provisions of Section 36(7) of the Act and in violation of principles of natural justice.

12. Accordingly, the Writ Petition is allowed, setting aside the Proceedings of the first respondent in F.No.B3/33/CTR/2002, dated 07.11.2003 and consequential proceedings of the second respondent in Proceedings No.2/CTR/k/2004, dated 04.03.2004. No order as to costs.

13. Miscellaneous Petitions, if any, pending in this Writ
Petition shall stand closed.

JUSTICE M.GANGA RAO

29-03-2018
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THE HON'BLE SRI JUSTICE M.GANGA RAO



WRIT PETITION No. 11522 OF 2004

29-03-2018

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