

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 25538 of 2018

ORDER:

- 1) The present Writ Petition came to be filed seeking issuance of a Writ of Mandamus declaring the impugned proceedings vide F.No.12/KNL/M/2007/Z-IV, dated 05.07.2018 issued by the respondent No.2/A.P. State Waqf Board, as illegal and improper.
- 2) The averments in the affidavit filed in support of the Writ Petition would show that Waqf Institution Chowk Masjid situated at Nandyal town and Mandal, Kurnool District is notified in A.P. Gazette and the management of the waqf institution is by a Mutawalli which is by inheritance. Exercising the power under Section 42 of the Waqf Act, 1995 (hereinafter referred to as "the Act"), the Waqf board used to appoint a Mutawalli. The petitioner herein, who was said to have been recognized as a Mutawalli vide proceedings No.12/KNL/M/07/ZIV dated 29.03.2007, was looking after the management of the waqf institution i.e., Chowk Masjid and was regularly submitting the accounts and paying the waqf fund. While things stood thus, the proceedings F.No.12/KNL/M/2007/Z-IV dated 30.05.2008 came to be issued whereunder the appointment of the petitioner as Mutawalli was withdrawn. Challenging the same, the Writ petition No.18767 of

2018 came to be filed before this Court, which was disposed of on 07.06.2018. The relevant portion of the order is as follows:

"Therefore, the proceedings are directed to be treated as show cause notice and during the consideration of appointment of Mutawalli either under Section 42 or Section 63 of the Act, the proceedings are suspended; the petitioner is given 15 days time to submit both explanation and also a request for consideration of petitioner's claim as well for appointment as Mutawalli. The Board without fail passes an order within four (04) weeks thereafter and communicates to all the concerned."

Pursuant thereto, the petitioner submitted an explanation dated 21.06.2018 to the second respondent stating that the petitioner has to be recognized as a Mutawalli under Section 42 of the Act. The entire explanation of the individual along with record came to be placed before the Board in its meeting held on 04.07.2018. The Board unanimously resolved to appoint Sri Saheb Khan, Executive Officer of Waqf Board as an Enquiry Officer to enquire into the matter and submit his report for taking further action on the claim and eligibility of the petitioner as a Mutawalli. Pursuant thereto, the proceedings issued under Section 42 of the Act in favour of the petitioner and the proceedings dated 21.01.1997 issued in favour of P.V.H.Azeemuddin Basha, appointing him as Mutawalli under Section 63 of the Act were withdrawn with immediate effect. Subsequently, D.Altaf Hussain, Inspector

Auditor Waqfs, Kurnool District, was kept incharge of the subject institution and its entire attached waqf properties, till further orders. Further, in compliance to the said resolution, Sri Saheb Khan, Executive Officer of Waqf Board, was appointed under Section 71 of the Act to enquire into the matter and submit his report for taking further action on the claim and eligibility of the petitioner. Challenging the same, the present Writ Petition came to be filed.

3) One of the main grounds urged by the learned counsel for the petitioner is that the Waqf Board has no power to review its own decision under the provisions of the Act and as such withdrawing the proceedings dated 29.03.2007 appointing the petitioner as Mutawalli by virtue of the proceedings dated 05.07.2018 is without jurisdiction. It is further urged that the impugned order came to be passed without considering the explanation of the petitioner and the proceedings issued now are exactly identical to the earlier proceedings issued by the Waqf Board which were challenged in Writ Petition No.18767 of 2018. Referring to Sections 42 and 63 of the Waqf Act and the judgment of the Division Bench of Allahabad High Court in W.P. No.33995 of 2009 it is pleaded that when the statute does not provide for review of the order after appointing the petitioner as

Mutawalli, the question of withdrawing the petitioner as Mutawalli and then holding an enquiry is illegal, improper and incorrect.

4) A counter came to be filed by the second respondent denying the averments made in the affidavit petition except to the extent admitted by him. It is said that according to the Muntakab, the succession to the post of Mutawalli is hereditary and by custom. The succession of Mutawalli has to be in the line of descendants of the Mutawalli whose post falls vacant. In other words, it is urged that a son of Mutawalli may be recognized as a Mutawalli after his death. Whereas a nephew of a Mutawalli cannot be recognized as a Mutawalli under Section 42 of the Act, after the death of his uncle.

5) Having regard to the above, it is said that when Sri P.V.H.Mohiddin Basha i.e., one of the Mutawalli passed away, the petitioner, who was his nephew was appointed in his place as Mutawalli. Further, as on the date of his appointment, his natural father was alive and was discharging duties as Mutawalli under hereditary quota, as contemplated under Section 42. Since the application of the petitioner was not under Section 42, but it was under Section 63 and as the sons of the deceased stated in writing that they are not interested to be appointed as Mutawalli, the authorities thought to rectify the mistake by withdrawing the

original appointment of the petitioner as Mutawalli vide proceedings dated 29.03.2007. Therefore, it is pleaded that the performance of the petitioner as a Mutawalli has no bearing whatsoever with the withdrawal of his original appointment as Mutawalli.

6) The argument that no opportunity was given to the petitioner, is also untenable for the reason that pursuant to the order passed by this Court earlier, the petitioner submitted his explanation dated 21.06.2018 and thereafter the impugned order came to be passed. It is further stated that the 3rd respondent was appointed as an Enquiry Officer to enquire into the claim and eligibility of the petitioner as Mutawalli. But the petitioner wants him to continue under the old proceedings, on the ground that there is no power of review which is said to be incorrect. It is further stated that withdrawing the original proceedings, by passing a fresh order for appointment of a Mutawalli, does not amount to a review. In view of the above, it is pleaded that there are no merits in the Writ Petition and the same is liable to be dismissed.

7) From the averments referred to above, it is clear that earlier, in the month of May 2018, the Board represented by its Chief Executive Officer, while withdrawing the proceedings of the

petitioner and appointing Azeemuddin Basha as Mutawalli, directed both the individuals to approach the Board with fresh applications for recognition, under the provisions of the Waqf Act. Under the said order, Sri Altaf Hussain, Inspector Auditor Waqfs, Kurnool was kept incharge of the subject institution and its entire attached waqf properties till further orders. Challenging the same, a Writ Petition came to be filed, in which this Court while considering the issue that the petitioner was not given an opportunity to explain before his services were withdrawn, directed the petitioner to submit his explanation.

8) The record discloses that subsequent to the orders passed by this Court, the petitioner gave an explanation on 21.06.2018 stating that after the death of P.V.H.Mohiuddin Basha, he was looking after the management of the Waqf institution being the legal descendant of Waqif and Mutawalli and as such he is entitled to be recognized as Mutawalli under Section 42 of the Waqf Act. But no orders are passed except appointing one Saheb Khan to conduct enquiry and submit a report for further action. The impugned proceedings also shows that the Enquiry officer was directed to hold an enquiry as to whether the petitioner can be appointed as Mutawalli. Reading of the impugned proceedings as well as proceedings dated 30.05.2018, show that both of them are

almost identical except last two paragraphs. After considering the explanation submitted by the petitioner, the Board withdrew the appointment of both the individuals as Mutawallis and one D.Altaf Hussain was kept incharge of the Waqf property till further orders. Further, one Saheb Khan was appointed as Enquiry Officer under Section 71 of the Act and he was directed to submit a report for taking further action on the claim and eligibility of Sri P.V.H.Javid Miah as Mutawalli.

9) Though a comment has been made about the applicability of Section 71 of the Act, but a reading of Section 71 of the Act, makes it clear that the Board may either on application received under Section 70 or on its own motion hold an enquiry in such manner as may be prescribed or authorize any person in this behalf to hold an enquiry into the matter relating to Waqf and take such action as it thinks fit. Section 63 of the Act postulates that when there is a vacancy in the office of the Mutawalli, and there is no one to be appointed under the terms of the deed of the waqf, or where the right of any person to act as mutawalli is disputed, the board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit. Therefore, to decide the issue as to whether the petitioner is entitled to be appointed under Section 42 of the Act, the Board authorized one Saheb

Khan, the Executive Officer to hold an enquiry and submit his report. The petitioner who has submitted his explanation can as well raise his pleas before the Enquiry Officer, who is authorized to conduct enquiry, as to whether the petitioner can be appointed as a Mutawalli under Section 42 of the Act. Further, since the petitioner has submitted his explanation wherein he has raised the issue relating to the power of the Board to review its earlier order, this court is of the opinion that the petitioner shall wait till appropriate orders are passed by the authority, to whom the power has to be delegated by the Board and thereafter avail his remedies.

10) With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:03.10.2018

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