

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.29482 OF 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the second respondent in issuing proceedings F.No. 9/ B2/ M/ HYD/ 2002, dated 24.07.2018 in recognizing the third respondent as Muttawalli of the Dargah of late Hazrat Peer Elahi Baksh Shah-e-Irfan, Peer Abdul Aziz Shah Irfani and Peer Syed Shah Asadullah Hussaini Irfani (RA), for a period of three years, as illegal, improper and incorrect.

2) The averments in the affidavit filed in support of the writ petition would show that the Dargah Peer Elahi Baksh, is well known as Dargah of Hyderabad and number of devotees visit the Dargah of late Hazrat Peer Elahi Baksh Shah-e-Irfan and Peer Abdul Aziz Shah Irfani (RA). The father of the petitioner by name Syed Asadullah was one of the devotees of late Abdul Aziz Shah and his entire family has been serving on the said dargah, from the generation to generation and for that Abdul Aziz Shah, who was descendent of Peer Elahi Baksha, in whose name the dargah was constructed, appointed the father of the petitioner as Khalifa and Sajjada Nasheen. The said Abdul Aziz Shah died on 11.12.1963. The said Abdul Aziz Shah,

purchased a piece of land at Nampally during the life time of Saint Hazrat Khaja Elahi Baksh and also constructed a tomb over the grave of Elahi Baksh, a Sama Khana and four mulgies over the land purchased by him and also executed a waqf deed, dated 13.05.1945. After the death of Abdul Aziz Shah, one Zahoorullah, who is the brother of the third respondent, has set up a false claim stating that he was appointed as Sajjada Nasheen for the subject waqf institution and accordingly filed O.S.No.87 of 1967 against the father of the petitioner. After conducting a detailed trial, the said suit was dismissed, with a finding that the father of the petitioner was appointed as Sajjada Nasheen and Muttawalli of the subject Dargah. Against the said judgment, the said Zahoorullah filed A.S.No.280 of 1972, which was also dismissed. Challenging the same, S.A.No.683 of 1975 came to be filed before this High Court, which was remanded back to the first appellate Court. After a detailed enquiry, the first appellate Court dismissed the appeal. Aggrieved by the same, S.A.No.642 of 1978 came to be filed before this High Court. By an order dated 20.10.1987, this High Court dismissed the second appeal holding that the family of the third respondent has no entitlement over the said dargah and the father of the petitioner alone is entitled to hold the post of Sajjada Nasheen and Muttawali. The father of the petitioner

continuously discharged his duties as Sajjada Nasheen and Muttawalli and developed the Dargah by putting his efforts and was performing annual Urs by spending huge amounts. It is stated that the father of the petitioner died in the year 1986. During his life time, the petitioner herein was appointed as Khalifa, Sajjada Nasheen and Muttawalli of the Dargah. After the death of his father, the petitioner resumed the duties of Sajjada Nasheen and Muttawalli and the same was informed to the Waqf Board by the petitioner and the Waqf Board acknowledged the services rendered by the petitioner. The petitioner made a representation for issuance of Towliath proceedings in his name, to which the Waqf Board had issued a notification dated 29.09.2011, while so, the third respondent filed his objections and claimed that he is Muttawalli and Sajjada Nasheen of the said Institution. The Waqf Board appointed an enquiry officer, who without appreciating the Court orders submitted his report, basing on which, the Waqf Board issued the impugned proceedings. Challenging the same, the present writ petition is filed.

3) Sri M.A.K.Mukheed, learned counsel appearing for the petitioner, took me through the judgments of the trial Court, appellate Court as well as the High Court to show that the father of the petitioner herein was recognized as Sajjada Nasheen and Muttawalli of the subject Dargah.

4) On the other hand, Smt. Rehana Khanam, learned counsel appearing for the third respondent, would contend that there is no justification for interference with the order passed by the Waqf Board, since the Gazette notification referred the name of the father of the petitioner as second person and that the un-official respondent was not a party to the earlier orders, as such, the earlier orders passed by the Courts are not binding upon him. It is stated that no scrap of paper was filed to show that the father of the petitioner was appointed as Muttawalli. Only after his demise, the petitioner moved the Waqf Board in the year 2002, seeking appointment as Sajjada Nasheen and Muttawalli of Dargah. It is stated that after the death of original Wakif, Abdul Aziz Shah, the father of the petitioner should have made a similar request to the Waqf Board. In the absence of the same, the request of the petitioner cannot be accepted.

5) The question that falls for consideration is whether the Waqf Board was justified in appointing the third respondent as a Muttawalli of the subject Dargah?

6) It is to be noted here that the issue with regard the person to be appointed as Muttawalli insofar as this Dargah is concerned, started by way of filing O.S.No.87 of 1967 before the Court of the IV Assistant Judge, City Civil Court, Hyderabad. As seen from the record, after a full fledged

trial, the trial Court dismissed the suit holding that the plaintiff therein by name Mohd. Zahorullah Shah, failed to make out a declaration-cum-possession. Against that judgment and decree, the plaintiff filed A.S.No.280 of 1972 before the Court of I Additional Chief Judge-cum-Special Judge for Fertilizers and Transport Cases, City Civil Court, Hyderabad, which was dismissed confirming the findings of the trial Court. Assailing the same S.A.No.683 of 1975 came to be filed, which was remanded to the lower appellate Court with certain objections. On remand, the lower appellate Court, while holding that no oral or documentary evidence was adduced by the plaintiff with regard to his appointment as Sajjada Nasheen and Muttawalli, dismissed the same. Aggrieved by the same S.A.No.642 of 1978 came to be filed, which was also dismissed on 20.10.1987, holding that the plaintiff has no entitlement to be appointed as Sajjada Nasheen of the subject Dargah and also held that there is ample material, more particularly in the form of Ex.B26, to show that the first defendant therein (father of the petitioner herein) was appointed as Sajjada Nasheen and Muttawalli of the said Dargah. Though it is urged that the finding of this Court was confirmed by the Apex Court, but the order of the Apex Court is not placed on record.

7) A reading of para No.26 of the judgment in A.S.No.280 of 1972, reads as under:

“According to Ex.B26, the tenants of the Dargah told the Waqf Inspector that the 1st defendant carried out the repairs to the suit Dargah and bore funeral expenses of his Murshid and that they used to pay rents to the 1st defendant till about four months prior to the death of Abdul Aziz. Ex.B-26 further says that the 1st defendant is the Sajjada of the suit dargah, that Abdul Aziz delivered the dargah properties to him (1st defendant). Ex.B-18 is the certificate given to the 1st defendant by Deewan of Ajmeer-e-Sharif in appreciation of the services rendered by him to the suti dargah. It is admitted by PW.9 that the said certificate contains the signature of Deewan of Ajmeer Shariff. The Municipal Tax receipts Ex.B.37 to Ex.B-52) and the Electricity Bills Ex.B-53 to Ex.B65 have been filed by the 1st defendant to show that he has been paying the local taxes for the Dargah property. The Waqf Board permitted the 1st defendant to celebrate the Urs at his cost and issued orders to that effect under Ex.B-29 and Ex.B-21, Ex.B-23 and Ex.B-24. The permission sought by the plaintiff to celebrate the Urs was refused under Ex.B22. Ex.B-15 and Ex.B-16 are the letters dated 11.11.63 and 14.11.63 addressed by Abdul Aziz Shah to the 1st defendant. These letters show that Abdul Aziz Shah recommended the services rendered by the 1st defendant. I have carefully gone through the evidence adduced by

the 1st defendant but find no grounds to disbelieve it. In my view the evidence adduced by the 1st defendant establishes that he was appointed Sajjada of the suit darga. In view of the foregoing discussion, I hold that the plaintiff has not become entitled to the Sajjaship and Muttawalliship of the suit dargah by virtue of the waqf deed dated 08th Theer 1350 Fasli, that the plaintiff was not appointed as Sajjada or Muttawalli by Abdul Aziz Shah and that no declaration was made by the latter in this regard on 13th Moharram 1380 Fasli. These points are found accordingly.”

8) The said findings of the lower appellate Court were approved by this Court in second appeal. A reading of the said finding clearly indicates that the tenants of Dargah used to pay rents to the first defendant therein. The document Ex.B-26 further shows that the first defendant (father of the petitioner herein) is the Sajjada of the suit dargah as Abdul Aziz (original waqif) delivered Dargah properties to the 1st defendant (father of the petitioner). Accordingly, held that the plaintiff was not appointed as Sajjada or Muttawalli of subject Dargah by Abdul Aziz and no declaration was made latter in this regard.

9) Having regard to the findings, which are approved by both the Courts, it is very clear that the father of the petitioner herein was recognized/appointed as Sajjada Nasheen and Muttawalli of the subject Dargah. In spite of

there being such a categorical and specific finding, the Enquiry Officer, TSWB, Hyderabad, in his enquiry report has the audacity to say that “the findings in the judgment are only obiter and that they have not binding effect”, and accordingly did not give any importance to the findings given by the Court.

10) It may be true that the un-official respondent was not a party to the earlier proceedings, but as long as the finding of the Court, holding the father of the petitioner as Sajjada Nasheen and Muttawalli of the subject dargah, remain un-challenged, the same cannot be ignored, more so, having regard to the manner in which the observations of the Court, came to be dealt with by the Enquiry Officer.

11) Having regard to the above, the writ petition is allowed. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

01.11.2018
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