

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION NO.38632 OF 2018

%15.11.2018

DARGAH HZ.SHAIK SHA VALI AND HAZ. SHA SHA VALI (Rh)
at Yellarthi Village, rep.by its Mutawalli and Sajjada-
Nasheen Dr.Syed Tajuddin Ahamad Quadri,
S/o. Syed Shah Mohammed Quadri, Aged about 60 years,
Occu: Retired Physician, r/o. Yellarthy village, Holagunda
Mandal, Kurnool District.

...Petitioner

Vs.

\$ State of Andhra Pradesh, rep.by its Principal Secretary,
Minority Welfare Department, A.P. Secretariat, Velagapudi,
Amaravathi, Guntur District and two others.

...Respondents

!Counsel for the petitioner(s) : Sri S.M.Subhani

Counsel for the Respondent(s) : Govt.Pleader for Social Welfare
(AP) for respondent no.1;
Sri S.Arifullah, standing counsel
For respondents 2 and 3.

<Gist :

>Head Note:

? Cases referred:

AIR 1975 Kerala 123
AIR 1993 Kerala 224
AIR 1998 Andhra Pradesh 61
(2007) 10 SCC 88
(2013) 7 SCC 25
2014 (3) ALD 613
(1997) 3 SCC 261
2011 (1) ALD 61 (SC)
(2014) 16 SCC 65
(2014) 16 SCC 51
(2014) 1 SCC 603
WA 1210 of 2018 High Court at Hyderabad dt 19.9.2018
2013 (1) ALD 211

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.38632 OF 2018

Between:

DARGAH HZ.SHAIK SHA VALI AND HAZ. SHA SHA VALI (Rh)
at Yellarthi Village, rep.by its Mutawalli and Sajjada-
Nasheen Dr.Syed Tajuddin Ahamad Quadri,
S/o. Syed Shah Mohammed Quadri, Aged about 60 years,
Occu: Retired Physician, r/o. Yellarthy village, Holagunda
Mandal, Kurnool District.

.....Petitioner

and

State of Andhra Pradesh, rep.by its Principal Secretary,
Minority Welfare Department, A.P. Secretariat, Velagapudi,
Amaravathi, Guntur District and two others.

.....Respondents

JUDGMENT PRONOUNCED ON : 15.11.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : YES
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked :
to Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
see fair Copy of the Judgment ? :NO

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.38632 OF 2018

ORDER:

Dr. Syed Tajuddin Ahamed Quadri is Mutawalli of Dargah Hazrath Shaik Shah Vali and Shah Sha Vali (Rh) at Yellarthi village, petitioner in the writ petition. This writ petition is filed challenging the proceedings of the Chief Executive Officer, A.P.State Wakf Board, dated 26.04.2016 appointing the deponent as Mutawalli with certain conditions and the proceedings of the Chief Executive Officer of the Wakf Board dated 24.09.2018, where under Executive Officer is appointed to the petitioner-institution and the request of the deponent to the affidavit to give financial power/status is rejected.

2. When the writ petition is taken up for consideration, learned senior counsel Sri R.Raghunandhan Rao appearing for A.P.State Wakf Board raised preliminary objection on maintainability of writ petition, without availing remedy available under Section 83 of the Wakf Act, 1995 (for short, 'Act, 1995') i.e., filing application before the Wakf Tribunal for redressal of grievances raised in the writ petition. Having regard to this objection, submissions of learned counsel for petitioner and the learned senior counsel for Wakf Board were heard on the issue of maintainability of writ petition.

3. According to learned counsel for petitioner, as long as Mutawalli is appointed and is in office, it is not permissible for the Wakf Board to appoint Executive Officer and, therefore, the appointment of Executive Officer to the same institution being *ex facie* illegal, without power or jurisdiction, petitioner need not avail the remedy of filing case before the Wakf Tribunal constituted

under the Act, 1995. He would further submit that once Mutawalli is in Office, Mutawalli is entitled to discharge all the administrative functions of the institution which include the financial aspects of the Wakf institution and the Wakf Board has no competence to exclude financial powers of Mutawalli. Thus, exercise of power by the Board excluding financial powers of Mutawalli being beyond the scope and competence of the Wakf Board, the writ petition challenging the same is maintainable. By referring to the material placed on record, he also sought to contend that illegally disciplinary action was initiated against him at the instance of political leaders belonging to the ruling party and citing initiation of disciplinary action, financial powers are withdrawn, whereas initiation of disciplinary action at the instance of political leaders being *ex facie* illegal, the same cannot be the basis to deny the exercise of financial powers by Mutawalli. He would submit that on account of denial of financial powers to Mutawalli, petitioner-institution is subject to hardship and suffering and unable to meet the day-to-day commitments due to non-availability of funds to the institution and the competence of Mutawalli to exercise financial powers.

3.1 He would submit that once Mutawalli was appointed, he is entitled to discharge all the administrative functions attached to the Office of Mutawalli including the exercise of financial powers and, therefore, no constraint or restriction can be imposed in exercise of financial powers. It is not correct to assume that Mutawalli requested for denial of financial powers while seeking his appointment as Mutawalli and, therefore, denying financial powers is contrary to the mandate of the Act and being *ex facie*

illegal, petitioner need not avail the remedy before the Wakf Tribunal.

4. According to the learned counsel, Section 64 of the Act, 1995 vests power for removal of Mutawalli, and if Mutawalli is removed and appeal preferred by Mutawalli to the Wakf Tribunal is pending, the Board is competent to file an application to the Tribunal under Section 64(6) of the Act, 1995 for appointment of a receiver to manage the Wakf pending decision in the appeal. Thus, only in the contingency provided in Section 64(6) of the Act, 1995, any other person can be appointed to deal with the management of Wakf in the absence of Mutawalli. Except above contingency in any no other circumstance, as long as Mutawalli is working, no other person can be appointed to deal with the affairs of Wakf Institution. He would further submit that Section 65 of the Act, 1995 provides for assumption of direct management of Wakf property by the Board. This contingency may also enable appointment of Executive Officer. The provision in Section 38 of the Act, 1995 is subservient to other provisions of the Act and Section 38 has to be read inconsonance with Sections 64(6) & 65 of the Act, 1995. Thus, appointment of Executive Officer by the order dated 24.09.2018 impugned is *ex facie* illegal and, therefore, petitioner need not avail the remedy of preferring appeal before the Wakf Tribunal.

4.1 Learned counsel would submit that without putting on notice and affording opportunity to Muthawalli, if the Executive Officer is appointed, it is *ex facie* illegal and is vitiated on this ground alone. Learned counsel for petitioner further contended

that as per Section 38 of the Act, 1995, the Board alone is competent to appoint Executive Officer, whereas by the order impugned, the Chairperson of the Board appointed the Executive Officer and the same is *ex facie* illegal.

5. In support of his contention, learned counsel for petitioner placed reliance on the following decisions:

i) **The Kerala Wakf Board vs. The Union of India and others¹**; ii) **Puthanpalli Jaram vs. The Kerala Wakf Board represented by its Secretary and others²**; iii) **M.A.Aziz vs. A.P. State Wakf Board and another³**; iv) **M.P.State Agro Industries Development Corpn. Ltd., and another vs. Jahan Khan⁴**; v) **State of Madhya Pradesh and others vs. Sanjay Nagayach and others⁵**; and vi) **Alhaj Mohd. Quadeeruddin vs. Anjuman-e-Rifah-al Fuqra Biyabani Dargha Hazrath Khaja Hassan Bahraina Shah Shabeb Kibla, Hyderabad and others⁶**.

6. *Per contra*, according to learned senior counsel, Section 83 of the Act, 1995 provides legal remedy before Wakf Tribunal. A Mutawalli or any person interested in the Wakf institution or any other person aggrieved by the order made under the Act or Rules made there under is entitled to file an application before the Wakf Tribunal for determination of any dispute, question or other matters relating to Wakf or Wakf property. Provision in Section 83 of the Act, 1995 is very wide and encompass all aspects of Wakf institution, petitioner has to file application before Wakf Tribunal to seek redress his grievance. He would submit that on a reading of proviso appended to Sub-section (9) of Section 83, it is clear that the Board or any person aggrieved can challenge the decision of

¹ AIR 1975 Kerala 123

² AIR 1993 Kerala 224

³ AIR 1998 Andhra Pradesh 61

⁴ (2007) 10 SCC 88

⁵ (2013) 7 SCC 25

⁶ 2014 (3) ALD 613

Wakf Tribunal before this Court. It is thus clear that statute prescribes a particular mode of availing legal remedy. The said remedy is an effective and efficacious remedy. Thus, without availing said remedy, writ petition is not maintainable.

7. Learned senior counsel would submit that on a reading of Sections 38, 64 and 65 of the Act, 1995, it is clear that the scope of application of Sections 38, 64 and 65 are entirely different. The application of Section 64 of the Act, 1995 is limited to anything contained in any other law or the deed of Wakf, whereas Section 38 of the Act, 1995 opens with non-abstante clause and is applicable notwithstanding any other provision in the Act. He would therefore submit that even assuming what is contended by the learned counsel for petitioner on the scope of Sections 64 and 65 of the Act, 1995 is valid, the Board has power to appoint Executive Officer under Section 38 of the Act, 1995 notwithstanding the provisions contained in Sections 64 and 65 of the Act, 1995 and, therefore, it is not necessary for the Board to exercise powers under Section 38 of the Act, 1995 only if Mutawalli was removed or only when the Board assumes direct management of Wakf institution.

8. With reference to the contention of learned counsel for petitioner, on violation of principles of natural justice, learned senior counsel pointed out that Section 38 of the Act do not envisage prior notice to the Mutawalli before appointing Executive Officer and, therefore, merely because Mutawalli was not put on notice, the order appointing the Executive Officer is not vitiated.

9. In response to the contention on competence of Chairperson, learned senior counsel drew the attention of this Court to the provision in Section 27 of the Act, 1995. According to learned senior counsel, Section 27 vests power in the Board to delegate powers exercisable by the Board. In exercise of powers vested in Section 27 of the Act, 1995, decision was taken by the Board to delegate the powers of Chairperson and the Chief Executive Officer. Once the power is delegated by the Board, by its resolution dated 12.04.2018 authorizing the Chairperson to appoint the Executive Officer and, the appointment of Executive Officer by the Chairperson is valid.

10. He would submit that for long time there was no Mutawalli to this institution. Mr.Syed Tajuddin Ahamad Quadri submitted application in the year 2014 to appoint him as Mutawalli. In the application filed by him, he has specifically stated that he does not want financial powers, but only wanted him to be recognized as Mutawalli. Considering said request, he was appointed by imposing the condition that he is not entitled to exercise financial powers. Person accepted the said condition and joined the Office of Mutawalli. He kept quiet all along and this writ petition is filed challenging the said decision by the institution after more than 2½ years. No justification is shown why the said proceedings are challenged at this distance of time and by the institution. In the order dated 24.09.2018, this very aspect was considered and having regard to the request made by Mr. Syed Tajuddin Ahamad Quadri and the order passed on 26.04.2016, his request to restore the financial powers was rejected. Further, the incumbent Mutawalli is facing enquiry. Enquiry Officer was appointed and as

enquiry against allegation is in progress, the Board decided against granting financial powers, more so when the allegations relate to financial irregularities. Having regard to the history of management of the affairs of the petitioner-institution, the Board felt it necessary to appoint Executive Officer and accordingly, the Chairperson has appointed Sk.Mohd.Haneef as Executive Officer.

11. He would further submit that as evident from the judgment in O.S.No.42 of 1986 on the file of Subordinate Judge at Adoni, the Mutawalli of the petitioner- institution was having financial powers only for two days during Urus and for the rest of the days in a calendar year, Mujawar was exercising financial powers. As per the Commissioner's Report on the survey of Wakf dated 09.02.1956, there was an agreement between the Manager and the Mujawar of Dargah to the effect that Hundi collections derived for two days at the time of Urus would go to the Manager and the Hundi collections for the rest of the calendar year would go to Mujawar. He would therefore submit that at no point of time, Mutawalli was having financial powers other than for two days during Urus. As incumbent Mujawar was indulging in financial irregularities, he was removed and the financial powers were withdrawn from Mujawar and directly assumed by the Wakf Board.

12. On instructions, learned senior counsel would submit that separate account is created by the Wakf Board and the entire earnings from this petitioner-institution are kept in separate account. As of now, there is balance of 80,00,000/-. The income derived from the petitioner-institution is spent only for the development activities and other requirements of the petitioner-

institution and this money is not diverted for any other purpose. He would submit that there is inordinate delay in challenging the orders denying the financial powers while appointing Mutawalli by order dated 26.04.2016 and the order dated 24.09.2018 is not in continuation of earlier orders. Under the guise of challenging the order dated 24.09.2018, Wakf institution cannot challenge the earlier orders after long lapse of time and the writ petition is liable to be dismissed on the ground of delay and latches. He would submit that both proceedings are independent and, therefore, the delay and latches is attracted against the proceedings dated 26.04.2016.

13. To appreciate the respective contentions, it is expedient to look into the provision in Section 83 of the Act, 1995. Section 83 of the Act, 1995 reads as under:

“83. Constitution of Tribunals, etc. :-

(1) The State Government shall, by notification in the Official Gazette, constitute as many as Tribunals as it may think fit, **for the determination of any dispute, question or other matter relating to a Wakf or Wakf property**, eviction of a tenant or determination of rights and obligations of the lesser and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;

(2) **Any mutawalli person interested in a Wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application** within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, **to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf.**

(3) Where any application made under sub-section (1) relates to any Wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within with in the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the Wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having

jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the Waqf or any other person interested in the Waqf or the Waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such Waqf or Waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage, which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

(4) Every Tribunal shall consist of-

- (a) one person, who shall be member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;
- (b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;
- (c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.

4A. The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed.

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court.

(8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reviews or modify such determination or pass such other order as it may think fit.”

14. A bare reading of Section 83 of the Act, 1995 would make it clear that jurisdiction vested in the Wakf Tribunal is very wide and encompasses all aspects concerning Wakf matters. It empowers the Wakf Tribunal to adjudicate on all disputes flowing out of the provisions of the Act, 1995. It vests all powers exercisable by Civil Court. It is headed by judicial officer of the rank of District Judge. This Section provides enough safeguards for the aggrieved person to seek redress of his grievance. Section 83 of the Act, 1995 also provides remedy before this Court against the decisions made by the Wakf Tribunal.

15. The Wakf Tribunal is the Court of first instance (**L.Chandra Kumar vs. Union of India and others**⁷), where aggrieved person has to agitate his grievance and if he is aggrieved by the decision of Wakf Tribunal, he can come before this Court under proviso to Section 83 (9) of the Act, 1995.

16. In **Board of Wakf, West Bengal vs. Anis Fatima Begum and another**⁸, on construing the relevant provisions of Wakf Act, Supreme Court held:

“10. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.

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⁷ (1997) 3 SCC 261

⁸ 2011 (1) ALD 61 (SC)

14. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

18. It is well settled that when there is a special law providing for a special forum, then recourse cannot be taken to the general law vide Justice G.P.Singh's principles of Statutory Interpretation (9th Edn.2004, pp 133-134)." (Emphasis supplied)

17. In **Akkode Jumayath Palli Paripalana Committee vs. P.V.Ibrahim Haji and others**⁹, Supreme Court held that Wakf Tribunal is competent to go into dispute with regard to management and peaceful enjoyment of the mosque and madarsa and the assets which relate to wakf.

18. In **Bhanwar Lal vs. Rajasthan Board of Muslim Wakf**¹⁰, the suit was instituted in Civil Court much prior to coming into force of Wakf Act, 1995, Supreme Court, therefore, held that Civil Court jurisdiction is not ousted. Incidentally, Supreme Court also observed that suit pertaining to renewal of trustees and rendition of accounts would fall within the domain of the Tribunal (paragraph-30).

19. A Mutawalli/person interested in the Wakf can file application aggrieved by an order made under the Act. It is contended that financial powers of Mutawalli are withdrawn and illegally Executive Officer is appointed. The orders impugned in

⁹ (2014) 16 SCC 65

¹⁰ (2014) 16 SCC 51

this case are made by the Chief Executive Officer/Chairperson in exercise of powers vested in them by the Act. It is crystal clear that Wakf Tribunal is competent to deal with issues agitated in this writ petition. The remedy provided under Section 83 is an effective and efficacious remedy and an aggrieved person has to avail the said remedy before invoking the jurisdiction of this Court.

20. It is settled principle of law, that writ remedy is discretionary and equitable remedy. Ordinarily, writ Court do not entertain the writ petition if the petitioner has an effective and efficacious remedy available to seek redressal of his grievance. The rigor of this rule is relaxed and writ petition is entertained notwithstanding availability of alternative remedy, if the Court is satisfied that the authority, who passed the order, is not competent to pass such order or is made in *mala fide* exercise of power or there is failure of natural justice or is patently illegal. None of these parameters are attracted in this case. Even if these parameters are attracted writ Court need not entertain the writ petition where a judicial forum is specially established to adjudicate on all issues arising out of the Act, 1995. As held by Supreme Court in **Anis Fatima Begum**, Wakf Tribunal is an effective judicial forum to seek redress of grievance. Further, there are serious disputed questions of fact which require consideration by the Tribunal.

21. At this stage, it is appropriate to note the observation of Hon'ble Supreme Court in paragraphs 15 and 16 in **Commissioner of Income Tax and others v. Chhabil Dass Agarwal**¹¹:

¹¹ (2014) 1 SCC 603

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* [AIR 1964 SC 1419] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that ***the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.***

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. v. State of Haryana* [(1985) 3 SCC 267] this Court has noticed that if an appeal is from “Caesar to Caesar’s wife” the existence of alternative remedy would be a mirage and an exercise in futility.”

(emphasis supplied)

21.1. The decisions of Kerala High Court in the **Kerala Wakf Board** and **Puthanpalli Jaram** are of no relevance to the case on hand as they pertain to imposing of uniform rate on gross income of the Wakfs and computation of income to assess annual contribution respectively. The decisions of Division Bench in **Alhaj Mohd.Quadeeruddin** and **Syed Rasool Vs Maseed Peerlu**¹² are of no avail to the petitioner.

22. This leaves consideration of three primary submissions of learned counsel to maintain the writ petition notwithstanding availability of remedy under Section 83 of the Act, 1995. It is

¹² WA 1210 of 2018 High Court at Hyderabad dt 19.9.2018

contended that Executive Officer cannot be appointed as long as Mutawalli is working; that without prior consultation of/notice and opportunity to the Muthawalli, Executive Officer cannot be appointed; and financial powers of Mutawalli cannot be curtailed. These three aspects would make impugned decisions as *per se* vitiated and, therefore, petitioner need not be compelled to undergo the rigmarole of filing application before Wakf Tribunal and undergoing full trial.

23. *Prima facie*, the contentions of learned counsel for petitioner that Section 38 can be invoked only in the contingency provided by Sections 64(6) and 65 of the Act, 1995 is not valid. As rightly contended by the learned senior counsel appearing for Wakf Board, Section 38 is having wider scope and on account of non-abstante clause in Section 38 of the Act, 1995, this provision prevails over any other provision in the Act. Further, on closure scrutiny of provisions in Sections 64 and 65 of the Act, 1995, it is clear that Section 64 deals with removal of Mutawalli, Mutawalli preferring appeal to Wakf Tribunal and while appeal is pending, steps required to be taken by the Board to protect the Wakf institution. Section 65 deals with the contingency where the Board itself assumes the responsibility of managing the affairs of the Wakf institution and in such a case what course should be adopted by the Board. Scope of Section 38 of the Act, 1995 is far wider. It is not necessary for Wakf Board to exercise powers under Section 38 of the Act, 1995 only in the case of removal of Mutawalli and appeal against removal pending before the Wakf Tribunal or where the Wakf Board itself assumes the responsibility of the affairs of Wakf institution. It is dehorse those provisions.

24. As stated by the learned senior counsel, the Wakf Board has passed resolution in exercise of powers vested in it under Section 27 of the Act, 1995 delegating the power to the Chairperson of the Wakf Board to appoint Executive Officer under Section 38 of the Act, 1995. In **M.A.Aziz**, learned single Judge held that blanket delegation is not permissible and the resolution of the Board was vague. The resolution dated 12.04.2018 lists out items on which powers of the Board are delegated. Item 10 deals with delegation of power to appoint Executive Officer, traceable to Section 38. Prima facie, it cannot be said that delegation is vague and not valid. The power exercised by the Board under Section 27 of the Act, 1995 delegating the power to appoint the Executive Officer to the Chairperson vide resolution dated 12.4.2018 is not under challenge. The scope of Section 27 of the Act, 1995 has come for consideration in **Reknuddin Ahmed Muthawalli Sir Nizamath Jung Wakf Madina Mansion, Hyderabad v. Chief Executive Officer, A.P.State Wakf Board, Hyderabad and others**¹³. Learned single Judge observed as under:

“6. It is required to notice that Section 27 of the Act enables the Board by a general or special order in writing to delegate to the Chairperson or any other member, the Secretary or any other officer or servant of the Board or any area committee subject to such conditions and limitations as may be specified in the said order such of its powers and duties as it may deem necessary. Thus it is clear that the Board is authorized to delegate its power to either the Chairperson or any member or the Secretary or any other officer or servant as the case may be.

7. In the instant case, it is brought to the notice of the Court that the Board by its resolution delegated its

¹³ 2013 (1) ALD 211

power and Section 70 to the Chairperson. It is clear that the Chairperson is entitled to act as the delegate of the Board and exercise the power under Section 70 of the Act. Thus the appointment of the 2nd respondent herein as the enquiry officer to hold an enquiry into the affairs of the Wakf in question does not suffer from any infirmity.”

25. Section 38 does not envisage notice to Mutawali by the Board of its intention to appoint Executive Officer. It does not assign any role to Mutawalli before Board takes a decision to appoint Executive Officer. Prima facie, when the statutory scheme is express, it cannot be assumed otherwise. Be that as it may, this can also be agitated before the Wakf Tribunal.

26. In the facts of this case, *prima facie*, appointment of Executive Officer is not vitiated as without power and jurisdiction nor it is vitiated on the ground that notice was not issued. When exercise of power is traceable, whether there is sufficient justification to invoke such power in the case of petitioner institution is a matter for consideration on assessment of evidence brought on record before Wakf Tribunal. Be that as it may, these issues also can be raised before Wakf Tribunal.

27. While it is the case of petitioner that when Mutawalli is appointed to Wakf institution, he is entitled to enjoy all powers including financial powers, it is the stand of Wakf Board that settlement dating back to 1956 and decree in O.S.No.42 of 1986 on the file of Subordinate Judge at Adoni itself would disclose that financial powers were never vested in the Mutawalli except for two days in a year and that incumbent Mutawalli also volunteered to forego exercise of financial powers. It is further alleged that enquiry is pending against incumbent Muthawalli and therefore, financial

powers can not be vested in him. These are all questions of fact which require consideration. Suffice to note, *prima facie*, it cannot be said not entrusting financial powers to incumbent Mutawalli of petitioner-institution is contrary to the provisions of the Act and is not void *ab initio* to hold as such.

28. Further, by the order dated 26.04.2016, incumbent Mutawalli was divested of financial powers. Thus, it is for the incumbent to work out his remedies if he is aggrieved. As contended by learned senior counsel appearing for Wakf Board, for decades Muthawalli of petitioner institution was dealing with finances only for two days in a year. Further, it is not stated how the Wakf institution is affected if Mutawalli is not vested with financial powers, more so, when it is categorical assertion of learned senior counsel for Wakf Board that required funds are made available for day to day administration and towards development activity.

29. Having regard to the view taken by the Court with reference to availability of effective and efficacious remedy under Section 83 of the Act, the Court is not expressing any opinion on all other contentions urged by learned counsel for the petitioner. Suffice to note that even the observations on the scope of Section 38 of the Act, 1995, the competence of Chairperson to appoint the Executive Officer and the power of the Board to deny financial powers to Muthawalli are only incidentally referred to and dealt with, to test the contention on the validity of those orders as *per se* vitiated and not to compel the petitioner to go before the Wakf Tribunal.

30. The Writ Petition is dismissed leaving open to petitioner to avail remedy before the Wakf Tribunal constituted under Section 83 of the Act. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 15.11.2018
Kkm/tvk



HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.38632 OF 2018

Date: 15.11.2018

Kkm/tvk