

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.40563 OF 2018

Dated 12th November 2018

Between:

Syed Mahaboob Basha, S/o.Late Syed Ahamad.

...Petitioner

And

1. The A.P. State Wakf Board, rep.by its Chief Executive Officer, 4th Florr, Imdadghar Building, Kaleswara Rao Market,Tarapet, Vijayawada - 520003 and three others.

...Respondents

The Court made the following:



THE HON'BLE SRI JUSTICE P.NAVEEN RAOWRIT PETITION NO.40563 OF 2018**ORDER:**

The father of the petitioner was Muttavalli of Fathumiah Mosque at Sidhout Village. He died on 21.04.2015. After the death of the father of the petitioner, the petitioner applied to be designated as Muttavalli for effecting change in management. The issue is placed before the Wakf Board to recognise the petitioner as Muttavalli and to effect the change in management. While so, the petitioner alleges that the fourth respondent submitted an application to be appointed as Muttavalli of the said Mosque. The said application is under consideration by the Wakf Board.

2. According to the learned counsel for the petitioner, in the Board meeting scheduled to be held on 13.11.2018, agenda item No.17 is regarding appointment of fourth respondent as Muttavalli. Learned counsel would submit that challenging the notification issued on 27.03.2017, objections were filed on 17.04.2017. Alleging inaction on the objections filed and proceeding to conduct selection, W.P.No.15452 of 2017 is filed and the same is pending consideration on the file of this Court. He would further submit that as per Section 42(1) of Wakf Act, 1995 ("the Act" for brevity), the outgoing Muttavalli has to notify the incumbent Muttavalli and change of management of the Wakf Board to recognise the incumbent Muttavalli.

3. According to the petitioner, before the death of his father, when he was sick, he nominated the petitioner as Muttavalli and therefore, in accordance with Section 42 of the Act, the Board has no option but to notify the petitioner as Muttavalli and the exercise undertaken is *ex facie* illegal.

4. This Court is not inclined to go into the issue whether the petitioner is a valid person to be appointed as Muttavalli or whether Section 42 of the Act is attracted at this stage as only an agenda item was placed before the Board. The Board is entitled to exercise all the powers vested in accordance with the provisions of the Act. The Board has to consider the issue and has to take appropriate decision and such decision has to be given effect to. Only after a decision made by the Board is given effect to, the cause of action would arise and the Court cannot entertain the Writ Petition to consider whether the agenda item placed before the Board itself is valid. It cannot be assumed that the Board would be taking a decision to appoint the fourth respondent as a Muttavalli. Having regard to the provision under Section 42 of the Act, assuming as if the Board would take an illegal decision, this Writ Petition cannot be entertained and the relief as sought for cannot be granted. It cannot be said that the petitioner is remedy-less once a decision is given effect to. Further more, the petitioner filed W.P.No.15452 of 2017 in pursuant to the notification dated 27.03.2017 and the matter is pending consideration. It is always open to the petitioner to work out his remedies in the pending Writ Petition.

5. Having regard to the above, the Writ Petition is dismissed as premature leaving it open to the petitioner to avail the remedies as and when the decision is made by the Board and given effect to. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(P.NAVEEN RAO, J)

12th November 2018
RRB