

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

Writ Appeal No.2016 of 2017

JUDGMENT : (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the ad interim order passed by the Learned Single Judge in W.P.M.P.No.36860 of 2017 in W.P.No.29621 of 2017 dated 11.12.2017.

The respondent-writ petitioners questioned the order of removal passed by the appellant herein (2nd respondent in the writ petition) on 09.08.2017. A perusal of the said order shows that, pursuant to an enquiry held against the respondent-writ petitioners, charges, among others, of financial irregularities were held established; and the competent authority passed the order removing the respondent-writ petitioners as Muthawallis of the concerned Wakf.

While Section 64(3) of the Wakf Act, 1995 (for short "the Act") confers power on the State Wakf Board to remove a Muthawalli, on a decision being taken to do so by a majority of not less than two-thirds of the members of the Wakf Board, the impugned order was passed by the competent authority, appointed by the Government of Andhra Pradesh under G.O.Ms.No.30 dated 26.07.2017, as the elected body of the A.P. State Wakf Board has not assumed office till date.

Sri P.Veera Reddy, learned Senior Counsel appearing on behalf of the appellant (2nd respondent in the writ petition), would submit that, while the State Government had initiated steps for constitution of a Wakf Board, it is because of an interim order, passed in the writ petition by the Learned Single Judge of this Court, that the entire process was interdicted.

The question, whether in the absence of a duly constituted Wakf Board, the competent authority appointed by the Government under

Section 102 of the Act is disabled from removing the Muthawalli from office, necessitates examination in the writ petition. *Prima facie*, acceptance of the submission of Sri Vedula Srinivas, learned counsel for the respondent-writ petitioners, would mean that, even in cases where Muthawallis are found to have indulged in misappropriation of wakf funds, they should nonetheless be continued in office, since no Board is in existence and Section 64(3) of the Act requires two-thirds of the members of the Wakf Board to decide on the removal of the Muthawalli.

In any event, these are all questions which necessitate examination in the writ petition and an order of removal is, ordinarily, not interdicted by way of an interim order, that too before a counter-affidavit is filed by the respondents in the writ petition. We consider it appropriate, in such circumstances, to set aside the order under appeal and restore the WPMP to file.

Sri P.Veera Reddy, learned Senior Counsel appearing on behalf of the appellant, submits that the appellant would file their counter-affidavit in the writ petition within two weeks from today. It is open to the learned counsel for the respondent-writ petitioners to request the Learned Single Judge to take up the WPMP any day after two weeks. The appellant shall not fill up the vacancy of Muthawalli for the subject wakf till 31.01.2018.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

02nd January, 2018
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Date: 02.01.2018

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