

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1256 of 2019

ORDER:

Heard.

2. This Writ Petition is filed challenging the action of the second respondent in appointing the sixth respondent as Mutawalli of Ashur Khana, vide order dated 25.09.2019.

3. Section 83 of the Wakf Act, 1995 (for short, 'Act, 1995') provides for establishment of Wakf Tribunal and accordingly Wakf Tribunal is established in the State of Telangana. The Wakf Tribunal is conferred with wide amplitude of powers for determination of any dispute, question or other matter relating to a Wakf or Wakf property including the one agitated in this Writ Petition.

4. In W.P.No.38632 of 2018 similar issue was considered wherein the petitioner challenged the proceedings of the Chief Executive Officer dated 26.04.2016 appointing the deponent as Mutawalli with certain conditions and also the proceedings of the Chief Executive Officer dated 24.09.2018 whereunder the Executive Officer was appointed to the petitioner-Institution and the prayer of the deponent to give financial power/status was rejected. On due consideration of the provisions of Act, 1995 and the law laid down by the Hon'ble Supreme Court in a catena of judgments, this Court held as under:

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 It is contended that financial powers of Mutawalli are withdrawn and illegally Executive Officer is appointed.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 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 **Board of Wakf, West Bengal vs. Anis Fatima Begum and another**¹, 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.

5. In view of the availability of alternative remedy under Section 83 of Act, 1995 and as considered by this Court in the above referred Writ Petition, this Writ Petition is not maintainable and is accordingly dismissed granting liberty to the petitioner to avail appropriate remedy including the remedy provided under Section 83 of Act, 1995.

6. Miscellaneous Petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

P.NAVEEN RAO, J

25th January, 2019.
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¹ 2011 (1) ALD 61 (SC)