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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th November, 2019

+ **CM(M) 1448/2017, CM APPLs. 46444/2017 & 42012/2018**

QAZI GULAM MEHBOOB SUBHANI (SINCE DECEASED)

THROUGH: LRS

..... Petitioner

Through: Mr. Javed Ahmad and Mr. Mehvish
Hameed, Advocates.
(M:9759755053)

versus

DELHI WAKF BOARD & ORS

..... Respondents

Through: Mr. Wajeeh Shafiq, Standing counsel
for R-1. (M:9953756236)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(oral)

1. The present petition has been filed challenging the impugned order dated 16th August, 2017 by which the judgment/decreed dated 4th March, 2013 was stayed by the ADJ/Waqf Tribunal.
2. There are two litigations which were filed before the Civil Court in respect of Dargah Hazrat Khwaja Qutbuddin Bakhtiar Kaki, Mehrauli. In one suit filed by the Petitioner i.e. C.S. 337/1996, a decree was passed by the Civil Judge, allowing him to enjoy his share of the income of the Dargah. In the said suit, the defence of the Waqf Board was struck off and the matter was decided ex-parte. However, subsequently in another suit i.e. CS No. 151/2002, filed by a third party, pursuant to orders passed by this Court, an order dated 22nd September, 2008 came to be passed. In the order dated 22nd September, 2008, the Civil Judge has directed as under:

“In these circumstances, I hereby direct the defendant No. 9/Delhi Waqf Board to constitute a managing committee for the proper management of the Dargah and the Delhi Waqf Board shall file the compliance report within one month from today.

However, the Delhi Waqf Board can consider the names of the plaintiffs as well defendants while constituting the managing committee. After the constitution of the committee, receiver appointed by this Court shall hand over the management of Dargah to the committee within a week thereafter and committee shall be free to manage the affairs of the dargah in accordance with the provisions of the Waqf Act.

Further in these circumstances there is no need to pass an order on the applications filed by the receiver. Hence, all the applications are disposed of accordingly.

Copy of the order be given dasti to Ld. counsel for Delhi Waqf Board.”

Thus, a committee was formed to take over the management of the Dargah, and the Petitioner and the Respondent No.2 were permitted to be made part of that management. In view of the said order dated 22nd September, 2008, in the impugned order, the Tribunal has taken the view that the judgment/decreed dated 4th March, 2013 passed in CS No. 151/2002 deserved to be stayed.

3. At the time when the stay order was granted, the Petitioner was not heard, and only Respondent No.2 and Respondent No. 1- Waqf Board were present. There is no doubt that there are two suits, which were filed in respect of the same Dargah. There are different orders that have been passed in these matters. The Tribunal will have to hear the appeal, which is

now pending before it and also take a holistic view of the manner in which the Dargah and the offerings therefrom have to be managed, considering the stand of the Delhi Waqf Board and the competing parties who claim rights in the same.

4. While observing that the appeal before the Waqf Tribunal would now be heard finally, as the appeal is ripe for hearing, the Petitioners are permitted to make all their submissions before the Tribunal, in which comprehensive orders shall be passed by the Tribunal. The Tribunal shall take into consideration the fact that in CS No.151/2002 the Petitioner herein, who had initially filed the suit in 1971, has now again been transposed as a Plaintiff. Considering that all disputes in respect of Waqf Property have to be adjudicated by the Tribunal, and also in order to avoid conflicting judgments in different proceedings, it is directed that CS No. 151/2002 titled *Taufiq Farooqui v Khwaja Syed Hilal Qutubi & Ors.* in which the Petitioner - Mr. Qazi Gulam Mehboob Subhani has been transposed as a Plaintiff, shall stand transferred to the Waqf Tribunal. The Waqf Tribunal shall proceed in accordance with law. Parties shall appear before the Tribunal on 15th January, 2020 . The records of the said suit be sent to the Tribunal. A copy of this order be communicated both to the Waqf Tribunal, as also to the Civil Judge before whom CS No.151/2002 *Taufiq Farooqui v Khwaja Syed Hilal Qutubi & Ors* is pending, for compliance of the present order.

5. The petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 28, 2019

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