

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No. 18071 of 2023

Between:

Mir Faiyaz Ali

... Petitioner

And

State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 16.08.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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> Head Note:

! Counsel for the Petitioner : Mr Khaja Arajuddin

^ Counsel for Respondent Nos.1&3: G.P. for Social Welfare

^Sr.Counsel for respondent No.2: Mr Vedula Venkata Ramana

^ Counsel for respondents 4 : Mr M.Layeeq Khan

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No. 18071 of 2023****ORDER:**

Heard the learned counsel for the Petitioner, learned Government Pleader for Social Welfare appearing on behalf of respondents 1 and 3, Mr Vedula Venkata Ramala, learned senior counsel appearing on behalf of respondent No.2 and Mr M. Layeeq Khan, learned counsel appearing on behalf of the 4th respondent.

2. This Writ Petition is filed praying to issue a Writ of Mandamus declaring the action of the 2nd Respondent in issuing impugned proceedings in file No.02/RR/M/2020 dated 30.05.2023 thereby recognizing the services of the 4th Respondent as Mutawalli under Section 42 of the Waqf Act in respect of Dargah Hazrath Amanullahsaheb, Qutub Shahi Mosque together with its attached land at Hameedullah Nagar, Shamshabad Ranga Reddy District without following the orders dated 17.03.2021 in W.P. No.5878/2021 of the High Court for the appointment of the petitioner as Mutawalli as arbitrary, illegal and in violation of Provisions of the Wakf

Act 1995, Rules 2000, Article 14 of Constitution of India and Principles of Natural Justice and consequently to set aside the impugned proceeding in file No.02/RR/M/2020 dated 30.05.2023 recognizing the 4th Respondent as Mutawalli under Section 42 of the Waqf Act in respect of Dargah Hazrath Amanullah Saheb, Qutub Shahi Mosque together with its attached land at Hameedullah Nagar, Shamsabad Ranga Reddy District.

3. The case of the Petitioner in brief, is as follows:

a) A Waqf Institution by name Dargah Hzt. Amanullah Saheb, Qutub Shahi Mosque etc. and the inam lands attached to it at Hameedullah Nagar, Shamsabad Ranga Reddy District were in existence since time immemorial. The said Waqf Institution has also been notified in A.P. Gazette dated 09.02.1989 and name of one Mehar Ali was wrongly printed as Mutawalli. In fact, the said Mehar Ali is resident of Hyderabad and died in the year 1975 itself.

b) The petitioner's ancestors were hereditary Mutawalli and Inamdars of the subject Waqf and its attached properties since time immemorial. The subject Waqf Institution and its

attached properties were managed and look after by the petitioner's ancestors and thereafter the petitioner is looking after the same. As such the subject Institution and its attached properties are in petitioner's control and capacity as Hereditary mutawalli and Inamdar. All the Revenue records relating to the said Waqf institute and the subject property stand in the name of the petitioner's ancestors thereafter in the name of the petitioner and the concerned pattadar Pass Book and title Deed of the same are in the name of the petitioner and his brothers as Inamdars.

c) The petitioner's ancestors used to perform the service as Mutawalli to the mosque and lead the prayer and religious service i.e Qateeb Service, and also Inamdars of the attached property of the subject mosque. During the regime of the then Ruler H.E.H Nizam, then ecclesiastical Department of Umoo-e- Mazhabi used to pay the remuneration to the petitioner's ancestors till the grant is re-entrusted in favour of the petitioner's grandfather. Subsequent to the demisal of the petitioner's grandfather, petitioner's father became hereditary Mutawalli & Inamdar.

d) Accordingly, after the death of the petitioner's father, the petitioner became the Mutawalli and Inanmdar and rendering the services of Khitabat and Imamat since last 40 years uninterruptedly. Since past 10 years, the petitioner submitted various representations dated 27.11.2020, 14.02.2021, 25.02.2021 16.06.2022, 27.11.2022 03.11.2022, 31.10.2022 to the 2nd Respondent Board to incorporate the petitioner's name as Hereditary Mutawalli and record the same U/s 42 of the Waqf Act 1995 but the 2nd Respondent did not take any necessary action.

e) Aggrieved by the same, the petitioner file W.P. No. 5878/2021 challenging the inaction of the 2nd Respondent and this court passed orders dated 17.03.2020 directing the 2nd Respondent to pass appropriate order within three (03) months from the date of receipt of the copy of order.

f) Subsequently, the Petitioner filed suit in O.S. No. 58/2022 for permanent injunction against the 4th Respondent for attempting to encroach the Waqf land and said suit is pending. However, the 2nd Respondent issued impugned proceedings in file No. 02/RR/M/2020 dated 30.05.2023

recognizing the 4th Respondent as Mutawalli U/Sec. 42 of the Waqf Act 1995, disregarding the Orders of the division Bench of this Court in W.A. No. 213/2014 dated 04.03.2014.

g) The above said impugned proceedings state that one Mehar Ali was the Mutawalli of the subject Waqf Institution who is said to have died issue less in the year 1975, however, the 4th Respondent as per impugned proceeding filed application for appointment dated 23.01.2020, after 45 years from date the demise of Mehar Ali without explaining the reasons for such abnormal delay in submission of the application.

h) On contrary, after dismissal of the petitioner's ancestors, the petitioner continued in the management of the subject Waqf, paying electricity bills, salaries to the staff and carried out renovation of the mosque by spending more than fifteen (15) lakhs and managing the affairs.

i) Learned counsel for Petitioner places reliance on the judgment passed by the High Court of Tamil Nadu in case of Gopalakrishnan Tmt, where it was held that a notification issued in the name of a dead person is nullity. The same

views have been taken in 2006(4) CTC 757, (2006) 4 MIJ 65. Thus, notifying the name of a dead person as Mutawalli is *void ab initio* and has no legal sanctity.

j) Thus, the above-mentioned illegal impugned order passed by the 2nd Respondent dated 30.05.2023 in attempting to take the management of the subject Waqf and landed property attached to it without following due process of law is highly arbitrary, illegal and is liable to be set aside. Hence this Writ Petition.

4. Counter Affidavit filed by the 2nd Respondent, in brief, is as under:

a) The subject Waqf institution was duly notified under section 5(2) of the Act which was published in the AP Gazette dated 09.02.1989 which was preceded by the Survey Commissioner report under section 4 of the Act dated 10.6.1968. A perusal of the Survey Commissioner report and the Gazette Publication would clearly show that the Mutawalli of the subject Waqf Institution was one haji Syed Meher Ali. It is denied that Syed Meher Ali died in 1975 itself.

b) The provisions of Section 42 of the 1954 Act which co-relates to section 63 of the 1995 Waqf Act has categorically conferred power and jurisdiction on the Waqf Board to appoint any person to act as Mutawalli of a Waqf. The impugned proceedings dated 30.5.2023 is based upon the factual report submitted by the Inspector Auditor and the Board has due consideration of all the circumstances including the report of the Inspector Auditor and duly considering the same, the impugned proceedings had been issued.

c) As per the Survey Commissioner's report dated 10.6.1968, it is clear that the grandfather of the petitioner was only a paid servant of the Waqf Institution. The impugned proceedings have already been implemented and the 4th Respondent has been functioning as Mutawalli ever since 30.05.2023. Hence, the Writ Petition is without merits and is liable to be dismissed.

5. PERUSED THE RECORD

a) **The order impugned vide F.No.02/RR/M/2020, dated 30.05.2023 of the Chief Executive Officer,**

Telangana State Wakf Board, Hyderabad reads as under:

"The Waqf Institution, Dargah Hat. Syed Shah Amanullah Saheb (Rh). Qutub Shahi Masjid and Graveyard with attached property in Sy No.81, 87, 88, 89, 121, 55, 56, 57, 59 and 60 total admeasuring Ac.42-39 Gts., situated at Hameedullah Nagar Village Shamshabad Mandal, Ranga Reddy District is a notified Waqf Property published in A.P. Gazette No. 6-A, dated 9th February, 1989 at Sl.No.3108.

In the reference 1"read above, Janab Mohd. Mahboob has filed application with a request to recognize his services as Muthawalli to Waqf Institution namely. Dargah Hat. Syed Shah Amanullah Saheb (Rh.), Qutub Shahi Masjid and Graveyard with attached property in Sy No.81, 87, 88, 89,121, 55, 56, 57, 59 and 60 total admeasuring Ac.42-39 Gts., situated at Hameedullah Nagar Village Shamshabad Mandal, Ranga Reddy District

In the reference 3dread above, the Inspector Auditor of Wagis, Ranga Reddy District has reported that, Late Haji Syed Meher Ali who was the notified Muthawalli of said Waqf Institution as per the enquiry revealed that, the notified Muthawalli having no Sons and having only one Daughter namely Smt. Ariza Begum, W/e. Mohd Jahangir and the said applicant Janab Mohd. Mahboob is

the Son of Smt. Aziza Begum who is the only Daughter of the notified Muthawalli and he is the Legal Heir of the Notified Muthawalli and he has rendering the services to the Dargah and conducted Annual-Urs ceremonies etc. Further, he has claimed for recognize as Muthawalli in place of his Grand-father being the Legal Heir of Notified Muthawalli and submitted the relevant records and documents.

Therefore, the Inspector Auditor Waqfs, Ranga Reddy District requested the Board to consider the application of Janab Mohd. Mahboob S/o. Late Mohd. Jahangir for his recognition as Muthawalli to the Dargah Hzt. Syed Shah Amanullah Saheb (Rh) Qutub Shahi Masjid and Graveyard with its attached properties situated at Hameedullah Nagar (V), Shamshabad Mandal, Ranga Reddy District.

Further, the matter has been placed before the Board. Accordingly, the Board have passed Resolution vide references 3rd and 4th read above, unanimously resolved to recognize the services of Janab Mohd. Mahboob, S/o. Late Mohd. Jahangi as Muthawalli Under Section - 42 of the Waqf Act, 1995.

After careful examination of the matter, keeping in view of the Board's Resolutions in the reference 3&4 read above, the services of Janab Mohd. Mahboob S/o. Late Mohd. Jahangir is hereby recognized as Muthawalli to Dargah Hzt. Syed Shah Amanullah Saheb (Rh.), Qutub Shahi Masjid and Graveyard with attached

property in Sy.No.81, 87, 88, 89,121, 55, 56, 57, 59 and 60 total admeasuring Ac.42-39 Gts., situated at Hameedullah Nagar Village Shamshabad Mandal, Ranga Reddy District Under Section 42 of Waqf Act, 1995, subject to the following terms & conditions: -

i) The Muthawalli shall manage the affairs and protect/safeguard the subject Waqf Institution with attached Waqf Property.

ii) He shall submit the budget as required Under Section, 44 of the Waqf Act, 1995 and also submit the Financial Statement i.e., Income & Expenditure Statement in the light of Under Section, 46 of the Waqf Act, 1995, from time to time as provided. The Muthawalli is directed to remit the 7 % of Waqf Fund per annum.

iv) He should follow the instructions/guidelines issued by the Board from time to time as per Section, 50 of the Waqf Act, 1995, and also abide the Act, Rules, and Regulations of Waqf, particularly as laid down in Section, 44, 46, 50 & 72 read with Waqf Rules, 2022, from time to time without fail.

v) The Muthawalli is deemed to be a Public Servant as per the Section, 101 of the Waqf Act, 1995, as such, it devolves on his part to perform the legitimate duties diligently and scrupulously.

vi) The proceeds from rental income if any, shall be utilized for implementing the Object of Waqf (Mansha-e-Waqf);

- vii) Muthawalli have not a right to alienate/sell of the Waqf Institution without prior permission of the Board.
- viii) The Property shall bear the inscription "WAKF" on top at a prominent place.

The Telangana State Waki Board, Hyderabad will have the right to Modify/Cancel/Alter/ Withhold the orders issued at any time, if the conditions mentioned above are infringed/violated by the Muthawalli.

b) The relevant portion of the report dated 05.08.2021 of the Inspector Auditor Wakfs Ranga Reddy District addressed to the Chief Executive Officer Telangana State Wakf Board, Hyderabad is as under:

"As per my enquiry the notified Mutawall Late Haji Syed Meher All as Mutawall having no male issues and having only one daughter namely Smt. Aziza Begum, W/o. Mohammed Jahangir and the said other claimant Mohd Mahboob is the son of Smt. Aziza Begum who is daughter of the notified Mutawall and Sri Mohd. Mahboob is the legal heir of the notified Mutawali which is evident from the marriage certificate, issued by the Wakf Board SL No. 008064/24681 dt 06-10-2018, PAN Card, Aadhar card, Passport etc., of Smt. Aziza Begum who is the mother of Sr. Mohd. Mahboob and also the Passport copies, Aadhar Card & Pan Card of Mohd. Mahboob S/o Late Mohd.. Jahangir. The death certificate

of Late Mohd. Jahangir father of Mohd. Mahboob is enclosed herewith.

Further Sri. Mohd. Mahboob has rendering the services to the Dargah and conducted Annual Urs and Monthly Fateha by distributing Tabarruk (Food) to the poor persons and devotees. The said photographs are enclosed herewith for kind perusal.

On encroachment of said attached waqf lands of subject wakf by various persons, Sri, Mohammed Mahboob has filed WP. NO 26732/2019 to conduct the Joint Survey demonstrating and foup the boundaries of the entire Sy. Nos of subject waqf institution. The Hon'ble High Court directed to Waqf and Revenue Officials to conduct the survey of the said land for protection. Thus, the Waqf and Revenue officials done the survey, and the said report is awaited and he has paid the wakf fund up to the year 2020-2021. The receipt is enclosed herewith.

DISCUSSION AND CONCLUSIOIN

DISCUSSION

6. It is the specific case of the petitioner that there is a wakf institution by name Dargah Hzt. Amanullah Saheb, Qutub Shahi Mosque etc. and the inam lands attached to it at Hameedullah Nagar, Shamshabad, Ranga Reddy District since time immemorial and that the petitioner ancestors were

hereditary mutawalli and inamdar and its attached properties since time immemorial. The subject wakf institution and its attached properties were managed and looked after by the petitioner's ancestors and thereafter the petitioner had been looking after the same and that after the death of petitioner's father, the petitioner became Mutawalli and Inamdar and is rendering services of Khitabat (priest) and Innamat since last 40 years un-interruptedly and thus, the petitioner submitted various representations to the 2nd respondent board to incorporate the petitioner's name as hereditary mutawalli in the wakf record under Section 42 of the Wakf Act, 1995 and that the petitioner had filed 20 documents to establish his right as mutawalli and filed several representations dated 27.11.2020, 14.02.2021, 25.02.2021, 16.06.2022, 27.11.2022, 03.11.2022, and 31.10.2022 to incorporate the petitioner's name as hereditary mutawalli under Section 42 of the Wakf Act in the Wakf board and the petitioner even on an earlier occasion filed W.P.No.5878 of 2021 for his appointment as mutawalli with the subject mosque with attached land in Survey Nos.87 and 89 admeasuring Ac.19.04 gts at Hameedullah Nagar,Shamsabad, Ranga Reddy District

and that the Court directed the 2nd respondent to consider the petitioner's representation dated 27.11.2020 and pass appropriate orders. It is the further case of the petitioner that the petitioner was shocked to note that the impugned proceedings dated 30.05.2023 in F.No.02/RR/M/2020 had been issued by the 2nd respondent appointing the 4th respondent under Section 42 of the Wakf Act, 1995 as against claim of the petitioner and aggrieved by the same the petitioner approached this Court by filing the present writ petition.

7. Para 7 of the counter affidavit filed by the 2nd respondent reads as under:

"7. I state that the above provisions of law has categorically conferred power and jurisdiction on the Waqf Board to appoint any person to act as Mutawalli of a Waqf. I state that the impugned proceedings dated 30.5.2023 is based upon the factual report submitted by the Inspector Auditor and the Board has his due consideration of all the circumstances including the report of the Inspector Auditor has issued the impugned proceedings. If at all the petitioner is aggrieved by the said proceedings dated 30.5.2023, his remedy may lie before the Waqf Tribunal and the present Writ Petition is

totally misconceived and not maintainable either on facts or in law. I state that there are absolutely no merits in the claim of the petitioner that his ancestors were Mutawallis of the subject Waqt Institution and he is a hereditary Mutawalli. **In fact as per the Survey Commissioners report dated 10.6.1968 has clearly narrated the factual aspects that the grandfather of the petitioner was only a paid servant of the Waqf Institution. Hence the claim of the petitioner i.e. a hereditary Mutawalli is totally baseless and it is not justifiable in writ jurisdiction.** I state that there are absolutely no merits in the present WP. I state that the impugned proceedings has already been implemented and the 4th respondent has been functioning as Mutawalli ever since 30.3.2023 and hence disturbing him from continuance as Mutawalli pending the writ petition, does not arise since there is no prima facie case or balance of convenience in favour of the petitioner."

8. Learned senior counsel appearing on behalf of the 2nd respondent Wakf Board contends as follows:

a) The impugned proceedings dated 30.05.2023 is based on the factual report submitted by the Inspector Auditor and the Board.

b) If the petitioner is aggrieved by the said proceedings 30.05.2023, the petitioner has to approach the Wakf Tribunal and the present writ petition is not maintainable.

c) There is a very clear observation in the report dated 05.08.2021 of the Inspector Auditor Wakf, Ranga Reddy that the petitioner's grand father was the pesh Inam and servants of late Haji Syed Meher Ali, who is the notified mutawali of the said Mosque and dargah.

d) The writ petition is misconceived since the petitioner is not at all a hereditary mutawalli as claimed by the petitioner in view of the fact that the 4th respondent had been functioning as mutawalli even since 30.05.2023 any interference by this Court is totally unwarranted and uncalled for.

CONCLUSION:

9. A bare perusal of the detailed report dated 05.08.2021 of the Inspector Auditor Wakf, Ranga Reddy District addressed to the Chief Executive Officer, Telangana State Wakf Board, Hyderabad clearly indicates that the 4th respondent was recognized and appointed as mutawalli of the subject wakf institution under Section 42 of the Wakf Act, 1954 which co-

relates to Section 63 of the Wakf Act, 1995, and the same is extracted hereunder:

“When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

10. The order impugned dated 30.05.2023 in file No.02/RR/M/2020 is an order passed under Section 63 of the Wakf Act, 1995 which co-relates to Section 42 of the Wakf Act, 1954. A bare perusal of the impugned proceedings clearly indicates that a detailed enquiry was conducted with regard to both the claims of the petitioner and also the 4th respondent herein and a very clear finding recorded in favour of the 4th respondent and against the petitioner that the petitioner's grandfather was rendering the services of the mosque in the capacity of servant of late Haji Syed Meher Ali, who is the notified mutawalli of the said masque and Darga and that the 4th respondent is the son of Smt Aziza Begum, who is the daughter of the notified mutawalli and further that the 4th respondent had rendered service to the said darga and

conducting annual urs and monthly fateha by distributing food to the poor persons and devotees.

11. It is borne on record that the board also passed resolution, vide resolution No.1284, dated 13.09.2021 and resolution No.157, dated 06.04.2023 and unanimously resolved to recognize the services of the 4th respondent herein as mutawalli under Section 42 of the Wakf Act, 1954.

12. In view of the above facts and circumstances of the case duly considering all the factual aspects as per record and duly considering the factual report submitted by the Inspector Auditor Wakf, Ranga Reddy District dated 05.08.2021, this Court opines that there is no illegality in the order impugned dated 30.05.2023 in file No.02/RR/M/2020 of the Chief Executive Officer, Telangana State Wakf Board, Hyderabad, and hence, the writ petition is dismissed in *limini* since the same is devoid of merits. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 16.08.2023

**Note: L.R.Copy to be marked.
b/o kvrm**