



IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY

WRIT APPEAL No.85 of 2022

(Through virtual mode)

The A.P. State Waqf Board,
Rep. by its Chief Executive Officer,
4th & 5th Floors, Imdad Ghar,
Opp: Kaleswara Rao Market,
Vijayawada, Krishna District.

..Appellant

Versus

Shaik Ismail, S/o Abdul Raheman,
Aged about 33 years, Occ: Hereditary
Mutawalli, Dargah Hazarath Syed Baji
Shaheed Aulia, Pedakakani Village &
Mandal, Guntur District and others.

...Respondents

Counsel for the appellant : Mr. P. Veera Reddy, Sr. counsel
For Mr. K. Asad Ahamed

Counsel for respondent No.1 : Mr. D.S.N.V. Prasad Babu
For Mr. Md. Saleem Pasha

Counsel for respondent Nos.2 to 5 : GP for Social Welfare

JUDGMENT (ORAL)

Dt:24.01.2022

(per Prashant Kumar Mishra, CJ)

This writ appeal has been preferred by the appellant-A.P. State Wakf Board against the order dated 07.12.2021 passed by learned single Judge in W.P.No.5669 of 2021.

2. On the strength of the order dated 17.12.2020 passed by the Andhra Pradesh State Minorities Commission, Mangalgiri, in Case No.95 of 2019, the 1st respondent/writ petitioner approached this Court by preferring W.P.No.5669 of 2021, in which a direction has been issued to



the official respondents to appoint the writ petitioner as Muthawalli of the Dargah Hazarath Syed Baji Shaheed Aulia at Pedakakani village, in terms of the order dated 17.12.2020 passed by Andhra Pradesh State Minorities Commission, Mangalgi, within a period of two months from the date of receipt of the copy of the order.

3. Mr. P. Veera Reddy, learned senior counsel appearing for the appellant-Wakf Board, draws our attention to the order passed by the learned single Judge of the composite High Court of Andhra Pradesh, on 26.08.2013 in W.P.No.9268 of 2013, which was earlier filed by the writ petitioner for similar relief, directing the A.P. State Wakf Board to pass appropriate orders on the writ petitioner's application dated 29.07.2010 in accordance with law duly taking into consideration the enquiry report relied upon by the writ petitioner. He would submit that pursuant to the order in W.P.No.9268 of 2013, the A.P. State Wakf Board passed orders on 20.06.2014 rejecting the writ petitioner's application on the ground that the Competent Civil Court and the Wakf Tribunal will have to give findings that the writ petitioner is the lineal descendant of earlier Muthawalli, and thereafter, instead of approaching the Civil Court or Wakf Tribunal or filing a fresh writ petition before the High Court, the writ petitioner waited for five long years and filed the Case No.95 of 2019 before the Andhra Pradesh State Minorities Commission, Mangalgi, which has passed orders on 17.12.2020 issuing directions to appoint the writ petitioner as Muthawalli and thereafter, when the said order of the Minorities Commission was not implemented, the writ petitioner filed W.P.No.5669 of 2021, wherein the impugned order has been passed.



4. In the course of arguments before us, learned counsel for the parties have taken us to the legal provisions, particularly Sections 3(i), 63, 65 and 66 of the Waqf Act, 1995.

5. Considering the nature of power available and conferred on the Minorities Commission and in the light of the judgment passed by the Hon'ble Supreme Court in **Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Others** reported in **AIR 1958 SC 538**, holding that the commission has only recommendatory powers, we are of the view that the Commission ought not to have passed orders directing the official respondents to appoint the writ petitioner as Muthawalli. The approach of the writ petitioner by way of filing the writ petition on the basis of such order is not sustainable.

6. At this stage, Mr. D.S.N.V. Prasad Babu, learned counsel appearing for respondent No.1/writ petitioner fairly submits that the writ petitioner intends to take recourse of law as available to him in terms of the order dated 20.06.2014 passed by the A.P. State Wakf Board. He would submit that the order passed by the learned single Judge may be modified permitting the writ petitioner to avail such remedy.

7. Mr. P. Veera Reddy, learned senior counsel appearing for the appellant and Mr. T.N.M. Ranga Rao, learned Government Pleader for Social Welfare appearing for respondent Nos.2 to 5, have expressed no objection to the prayer made by the learned counsel for the 1st respondent/writ petitioner.

8. In the facts and circumstances of the case and considering the fact that the issue as to the entitlement of the writ petitioner to be appointed as Muthawalli has to be decided by the Civil Court/Tribunal having



jurisdiction, we deem it appropriate to dispose of the appeal leaving it open to the writ petitioner to avail the remedy before the competent civil Court or Wakf Tribunal, as the case may be, to establish that he is the lineal descendant of earlier Muthawalli and is entitled to be appointed as Muthawalli of Dargah Hazarath Syed Baji Shaheed Aulia at Pedakakani village. If the petitioner approaches the competent authority/civil Court/Tribunal, within one month from the date of receipt of a copy of the order, it is expected that the competent authority/Civil Court/Tribunal shall decide the issue at the earliest, in accordance with law.

9. Accordingly, the writ appeal is disposed of modifying the order passed by the learned single Judge in W.P.No.5669 of 2021 to the above extent. No costs. All pending miscellaneous applications shall stand closed.

PRASHANT KUMAR MISHRA, CJ

M. SATYANARAYANA MURTHY, J

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