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Court : Andhra Pradesh

Decided On : Feb-20-2007

Reported in : 2007(4)ALD31

Judge : L. Narasimha Reddy, J.

Acts : [Wakf Act, 1995](#) - Sections 18 and 67; [Constitution of India](#) - Article 226

Appeal No. : WP No. 27852 of 2005

Appellant : Janab Gori Sultan and ors.

Respondent : A.P. State Wakf Board and ors.

Advocate for Def. : K. Ramakanth Reddy, SC for Respondent No. 1, ;M. Subba Reddy, Adv. for Respondent No. 2, ;Syed Shareef Ahmed, Adv. for Respondent Nos. 3 to 14 and ;M. Ravindranath Reddy, Adv. for Respondent No. 15

Advocate for Pet/Ap. : C. Krishna Reddy, Adv.

Disposition : Petition allowed

Judgement :

L. Narasimha Reddy, J.

1. There is a Wakf, by name, Sultan Shaheed Dargah-cum-Idgah at Atmakur Mandal In Nellore District. For the management of the affairs of the Wakf, the 1st

respondent constituted a Committee with the 1st petitioner as President; petitioners 2 to 5 as office bearers, and petitioners 6 to 11 as members, through its order dated 30-8-2005, for a period of two years. However, shortly thereafter, the 1st respondent issued order dated 22-11-2005, reconstituting the Committee by replacing the petitioners with respondents 2 to 14. The petitioners challenge the said order, mainly on the grounds that it is violative of principles of natural justice, and that it came to be passed at the instance of the Minister of State, Health and Family Welfare, Government of India, and a local M.L.A.

2. On behalf of the 1st respondent, a counter-affidavit is filed, denying the allegations of the writ petitioners. It is stated that the 1st respondent has ample power to constitute and re-constitute the Managing Committees of the Wakf. The 1st respondent contends that on receiving the information, that the petitioners were not properly administering, or managing the affairs of the Wakf, the Committee was re-constituted, and that no illegality has taken place.

3. There is no representation for respondents 2 to 14. In his affidavit, the 15th respondent had stated that the administration of the Wakf is suffering on account of the disputes between the various groups, including those of the petitioners, on the one hand, and respondents 2 to 14, on the other hand. He contends that the continuation of the petitioners on the Managing Committee is not at all in the interests of the Wakf.

4. Sri Ch. C. Krishna Reddy, learned Counsel for the petitioners submits that once the Managing Committee is constituted with his clients, there is absolutely no basis for the 1st respondent in terminating the Committee in the name of re-constitution. He points out that, if the 1st respondent is of the view that any acts and omissions have taken place in the hands of the petitioners detrimental to the interests of the Wakf, an inquiry under the relevant provisions of the Wakf Act ought to have been conducted, and the unilateral action, through the impugned order, cannot be sustained, either on facts, or in law.

5. Learned Standing Counsel for the 1st respondent, and Sri M. Ravinder Reddy, Counsel for the 15th respondent, on the other hand, submit that the replacement of the petitioners with respondents-2 to 14 became necessary to protect the

interests of the Wakf. They contend that even if it is assumed that the impugned order suffers from any illegality, it cannot be set aside, since the same would result in revival of an illegality. According to the learned Counsel, the writ petitioners have resorted to several illegalities, and this Court cannot exercise its discretionary power, which would result in revival of such a Committee.

6. The 1st respondent initiated steps under Section 18 of the Wakf Act 1995, for constitution of a Managing Committee of the Wakf in question. Applications were received and the matter was inquired through the concerned Wakf Inspector. On receipt of the report dated 24-8-2005, submitted by the Inspector, the 1st respondent issued order dated 30-8-2005, constituting the Managing Committee with the petitioners, for a period of two years. In the normal course, the petitioners were entitled to continue in office till 29-8-2007.

7. In less than three months from the date on which it constituted the Managing Committee, the 1st respondent passed order dated 22-11-2005, reconstituting the Committee. In a way, the word 'reconstitution' is a misnomer. The reason is that, all the members of the Managing Committee, constituted through the order dated 30-8-2005, i.e., the petitioners herein, were replaced by respondents 2 to 14. The effect is that the Committee constituted dated 30-8-2005 was superseded, and in its place a new Committee, with respondents 2 to 14, was constituted.

8. The 1st respondent does have the power to supersede, or replace a committee constituted by it, before the term, for which it appointed, had expired. Such an exercise, however, must precede an enquiry into the allegation of misconduct. The necessary procedure is prescribed under Section 67 of the Act. It clearly mandates that before a Committee is superseded, notice setting forth the reasons must be issued to the effected parties. A show-cause notice of not less than one month is mandatory. By calling it as reconstitution, the 1st respondent cannot supersede the committee appointed by it, in contravention of Section 67 of the Act. On this ground alone, the impugned order dated 22-11-2005 is liable to be set aside.

9. The allegation of the petitioners that the so-called reconstitution was undertaken at the instance of the Minister of State, Health and Family Welfare, Government of India, and a local M.L.A., receives support from the impugned order itself. The

very basis for the impugned order is mentioned as the letter dated 20-10-2005, from the M.L.A., and 9-11-2005, from the said Minister, which are mentioned as references 2 and 3 in the impugned order. It is significant to note that no other factor is referred to.

10. It is strongly urged on behalf of the respondent No. 15 that setting aside the impugned order would result in revival of the order dated 30-8-2005, under which the petitioners were appointed, and that in turn, would enable the persons facing serious allegations of mismanagement and corruption, to assume office once again. Reliance is placed upon the judgment of the Supreme Court in Venkataeswara Rao v. Government of A.P. : [1966]2SCR172 . In short, it is urged that annulment of one illegality must not result in revival of another illegality.

11. It is settled principle of law that the exercise of extraordinary jurisdiction under Article 226 of the [Constitution of India](#) in setting aside an order or proceedings, must not lead to a situation, where, an otherwise illegal situation is brought into existence. Take for instance, a licence is granted in favour of 'A', by an authority, which is admittedly not vested with the power. 'B' an aggrieved party, files appeal before the appellate authority. The appeal is allowed without hearing 'A'. Writ petition filed by 'A', assailing the order of the appellate authority, is bound to be allowed, on the sole ground that the order in his favour was set aside without hearing him. However, the result of such an order by the High Court would be that the licence, which admittedly was issued by authority, which is not vested with the power, would revive.

12. In the judgment referred to above, and several other matters, the Supreme Court held that the High Court must refuse to exercise its jurisdiction under Article 226 of the [Constitution of India](#), if it leads to revival of an otherwise illegal order. However, to apply this principle, the illegality of the order, which is to revive, must be evident beyond any doubt. The mere fact that such an order is liable to be assailed in a different forum, or some illegality is capable of being established after undertaking an enquiry, or exercise; cannot constitute the basis to invoke the said principle. The illegality must be so clear and manifest, that it must not require any further exercise, to discern it.

13. In the instant case, the order dated 30-8-2005, through which the writ petitioners were appointed in the Committee; was not challenged before any forum. It was passed by the 1st respondent, which is very much vested with the statutory power. Nothing is pointed out to suggest that the said order is ex facie illegal. Under these circumstances, it is difficult to apply the principle laid down by the Supreme Court in Venkateswara Rao v. Government of A.P. (supra), in the present case.

14. For the foregoing reasons, the writ petition is allowed, and the impugned order is set aside. Consequently, the order dated 30-8-2005 would revive, and the Committee comprising of the petitioners herein would be entitled to remain in the office till the expiry of the term, unless the said proceedings are set at naught, by any Court, or authority, in a properly constituted proceedings, in accordance with law.

15. There shall be no order as to costs.