

APHC010375452016



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3483]

WRIT APPEAL NO: 845/2016

Between:

K.Md.Sadiq And 10 Others and Others

...APPELLANT(S)

AND

Chief Executive Officer Wakf And 3 Others and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.SITA RAM CHAPARLA

Counsel for the Respondent(S):

1.SHAIK KHAJA BASHA

**CORAM: THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE RAVI CHEEMALAPATI**

DATE : 27.05.2025

JUDGMENT (Per Sri Justice Ravi Cheemalapati)

Assailing the orders dated 18.08.2016 passed in Writ Petition No.16683 of 2016 by a learned single Judge, the petitioners therein preferred this intra court appeal under clause 15 of Letters Patent.

2. For expediency, the parties hereinafter will be referred to with their status in the writ petition.

3. The averments of the writ affidavit, in brief, are that the petitioners are members as well as persons interested in the management and affairs of Shahji Jamia Mosque located at Adoni. That the District Court, at Bellary, vide judgment dated 21.3.1921 passed in O.S.No.16 of 1920 framed a scheme for

the management of the said mosque including elections to the Board of Trustees. That thereafter in another suit vide O.S.No.4 of 1951 filed for removal of trustees and for appointment of new trustees, a compromise decree was passed with regard to mode of elections to the Board of Trustees and powers exercisable by them and accordingly elections were conducted. That after expiry of the term of Board of Trustees, as respondents 1 and 2 tried to take steps for conducting elections to the Board of Trustees of the said Mosque, a writ petition vide W.P.No.336 of 2014 was filed and the said writ petition was disposed of on 03.01.2014. Thereafter, the writ petitioners therein made representation to respondent nos.1 and 2 for holding the elections as per the scheme. But, without disposing of the said representation election was conducted on 04.05.2015, which was later cancelled and election notification came to be issued proposing to conduct elections as per the scheme laid down.

It is the further case of the petitioners that without conducting elections as per the scheme and in utter contravention of the directions of this Court issued in Writ Petitions vide W.P.Nos. 336 of 2014, 10457 of 2016 and W.P.No.13150 of 2016 and also the scheme laid down by the District Court, Bellary dated 26.09.1953, the respondent no.1 issued the impugned proceedings dated 17.05.2016 exercising powers under Section 65(5) of the

Waqf Act, 1995. Contending that respondent nos. 1 to 3 have no jurisdiction or authority to interfere with the affairs of the mosque in light of the orders passed by this Court and so also the orders passed by District Court, Bellary in O.S.No.16 of 1920, the petitioners filed this writ petition. Whereas assailing the very same proceedings, some others filed another Writ Petition vide W.P.No.16758 of 2016.

4. The respondents filed counter affidavit denying the material averments made in the affidavit and further contending that the scheme framed by District Court, Bellary in the year 1921 is not available on record and moreover the said scheme was in pursuance of a compromise arrived at between the parties to that suit, which was never followed thereafter. However, soon after the Waqf Act, 1995 came into being, by virtue of Section 108-A of Waqf Act, 1995, the provisions of the Act shall have overriding effect notwithstanding anything inconsistent therewith. Further, in view of Waqf Managing Committee Regulations, 2009 issued by State of Andhra Pradesh, the functioning, constitution and elections of the waqf shall be done as per those Regulations. That criminal cases were registered against Board of Trustees for mismanagement of the mosque, wherein charge sheets were also filed and having regard to the allegations made against the Board of Trustees in the criminal cases, the proceedings impugned in these writ

petitions came to be passed. That the impugned proceeding is only with regard to taking over the management in exercising the powers under Section 65(5) of the Act and the same has nothing to do with the elections to be conducted. That the petitioners can participate in the elections whenever they are conducted, but they cannot have any grievance with regard to management of the institution by the Board. The writ petitions being meritless are liable to be dismissed.

5. In response to the averments made in the counter affidavit, the petitioners filed reply contending that since the orders passed in W.P.No.336 of 2014 have become final, the respondents are estopped from passing impugned orders and further having conducted elections on 04.05.2015, the respondents cannot say that there is no existence of a committee to the mosque. That no notice was given and no statement of any of the Musalli was recorded while holding enquiry and further no prior approval of the Board was obtained for holding such enquiry. That the officers are not authorised to pass revised orders that too on the same day and moreover without any reasons. Therefore, impugned orders are liable to be quashed.

6. Upon considering the material available on record and upon considering the submissions made by learned counsel for the parties, the learned single Judge vide common orders dismissed the writ petitions, holding

that there is no illegality in passing the impugned orders for taking over the management of the mosque by the Board.

7. Feeling aggrieved by the said common order, the petitioners in Writ Petition No.16683 of 2016 preferred this Writ Appeal.

8. Heard Sri *Sitaram Chaparla*, learned counsel for the appellants and Sri *Shaik Khaja Basha*, learned Standing counsel for respondent nos.1 and 2.

9. Sri *Sitaram Chaparla*, learned counsel, would contend that the learned single Judge erred in reading Section 108-A of the Act in isolation instead in conjunction with section 32 of the Act, which saves the scheme made by any Court of law and thus arrived at an incorrect conclusion that provisions of the Act overrides anything inconsistent therewith. He would further contend that no reason or necessity was explained as to why a revised order was passed on 17.05.2016 itself, when an order taking over the management of the mosque was already there. He would further contend that the observation of the learned single Judge that copy of the scheme is not placed on record is in utter ignorance of the fact that copy of the same was filed along with writ affidavit. He would further contend that in ***Thajuddin vs. Mohideen and others*** reported in **2011(2) MadLJ 105**, it was held that if the waqf board is not satisfied with the functioning of the sangham, it

is open to it to take proceedings in this behalf for the purpose of either modifying the scheme or settling a new scheme, but it cannot claim to itself the power or authority to set aside or supersede an existing decree of court settling a scheme. He would further contend that mere registration of criminal cases regarding misappropriation of funds cannot take place of its proof and therefore the Board is not justified in resorting to exercise powers under sub-Section 5 of Section 65 of the Act, in the absence of any proof regarding mismanagement of funds. However, the learned single Judge failed to appreciate the same in proper perspective and came to an incorrect conclusion in dismissing the writ petition. Accordingly, prayed to allow the writ appeal.

10. Sri *Shaik Khaja Basha*, learned Standing counsel, justifying the impugned proceedings as also the orders of the learned single Judge, would contend that in pursuance of Waqf Act, 1995, the scheme of the Court had become otiose and the provisions of the Act prevail over the scheme of the Court which was made in between private parties wherein the plaintiffs alleged misappropriation of funds by the defendants and that too without making Waqf Board as a party. He would further contend that consequent to registration of criminal cases and considering nature of the allegations made in those criminal cases regarding mismanagement of the waqf properties, the

Board, after making enquiry into the matter, had rightly exercised the power available to it under section 65(5) of the Act. Further, the issue involved in this writ petition has nothing to do with elections and it is only concerned with taking over management of the affairs of the mosque in the light of serious allegations made regarding large scale misappropriation of its property. He would further contend that whenever elections are conducted the petitioners will have right to participate in the elections, however, they cannot have any grievance with the direct management of the institution by the Board. Therefore, the learned single Judge had appreciated the facts in proper perspective and came to a right conclusion in dismissing the writ petition. There is nothing to interfere with the orders impugned in this writ appeal. The writ appeal being devoid of merit is liable to be dismissed. Accordingly, prayed to dismiss the writ appeal.

11. Perused the material available on record and considered the submissions made by the learned counsel for the parties.

12. The material would indicate that this writ petition is preceded by voluminous number of writ petitions, however, in relation to elections to be conducted to the institution. The learned single Judge had discussed in detail the relief sought and the ultimate result of those writ petitions and therefore it is needless to delve into much on that aspect since serve no purpose.

13. The impugned order passed by respondent no.1 on 17.05.2016 as well as the averments made in the writ affidavit would go to show that disputes between Members of the mosque led to filing of a suit vide O.S.No.16 of 1920, which was concluded in framing a scheme by District Court, Bellary on 21.03.1921 regarding management of the Masjid, Adoni and attached properties. The said scheme was later modified by judgment dated 26.09.1953 passed by District Court, Bellary in O.S.No.4 of 1951.

14. Earlier, when the Waqf Board proposed to hold elections, W.P.No.336 of 2014 came to be filed assailing the said action. The said writ petition was disposed of on 03.01.2014, observing that elections cannot be conducted contrary to the scheme in force and accordingly the petitioners therein were directed to make representation and the authorities were directed to consider the same and take appropriate decision. In case, the authorities do not agree with the claim of the petitioners that the scheme shall be followed, they shall pass order giving reasons for rejecting the claim of the petitioners. Thereafter, elections were conducted on 3.5.2015, without disposing of the representation made by the petitioners, however, the said election was cancelled pursuant to filing of a Contempt Case.

15. The decision relied on by the petitioners in ***Thajuddin vs. Mohideen and others***, the High Court of Madras, upon analysing the width

and ambit of various provisions of the Waqf Act, held that unless the scheme decree has been abrogated or annulled in accordance with law, it is appropriate for the Waqf Board to act in accordance with the Scheme Decree framed by this Court.

16. The learned single Judge observed that the District Court scheme which was sought to be relied upon is not placed on record. May it be true, however, the impugned order dated 17.05.2016 and the orders passed in Writ Petition No.336 of 2014 in unambiguous terms state about existence of such a scheme.

17. Regarding overriding effect of the provisions of the Waqf Act by virtue of Section 108A, as rightly contended by the learned counsel for the petitioners, the same shall be read in conjunction with Section 32 of the Act. Upon such, the end result would be that the Board will have general superintendence so as to ensure that waqf properties are properly maintained, controlled and administered and income thereof is duly applied to the objects and for the purposes for which such waqf was created, however, such a superintendence, shall be subject to any scheme made by any Court of law, whether before or after the commencement of the Act.

18. As rightly held by learned counsel for the petitioners, impugned proceedings and revised proceedings were issued on the same day. Through the impugned proceedings the management of the institution as well as its attached properties was taken under direct management under Section 65(5) of the Wakf Act, 1995. Whereas, under the revised proceedings of the even date, the representation made by the petitioners in Writ Petition No.336 of 2014 for conducting elections as per the scheme made by District Court, Bellary, was rejected. It is referred to in the order now under appeal, that no challenge was laid against the revised orders dated 17.05.2016 whereby the request to conduct elections as per scheme of the Court, was rejected.

19. Therefore, the challenge in this matter is only confined to the competence of the Board to take over management under section 65(5) of the Act, disregard to the scheme of the Court.

20. According to the petitioners, the Board, instead of taking recourse to section 65(5) of the Act ought to have initiated proceedings either for the purpose of modifying the scheme or settling a new scheme.

21. Section 65(5) of the Waqf Act, 1995, allows the waqf board to take over the administration of a waqf if the board has evidence that the waqf's management has violated the Act. This provision supersedes the general rules

outlined in subsection (1). In essence, it provides a mechanism for the Board to step in and directly manage a waqf if its existing management is deemed to be in violation of the law.

22. The impugned order issued by respondent no.1 shows that there are allegations of mismanagement to a tune of Rs.150 crores worth property and contravention of provisions of Waqf Act, 1995. The same also refers to non-submission of annual accounts of income and budget proposals and expenditure for every year for assessment of Waqf Fund and further, though asked by the Inspector Auditor Waqfs, the earlier management had not submitted any records.

23. The material available on record would indicate registration of crimes and laying of charge sheets against the trustee by name P.Rahmatullah and others. It is not at all the contention of the petitioners herein and also the petitioners in another writ petition, who challenged the proceedings of respondent no.1 taking over management, that annual accounts of income and budget proposals and expenditure for every year are being submitted to the waqf board as mandated under the provisions of the Act.

24. Mere registration of crime does not per se amount to proof of the allegations regarding mismanagement of properties of the institution as rightly contended by the learned counsel for the petitioner. However, non-submissions of accounts coupled with registration of crimes for the allegations of mismanagement of property of the institution must be a strong circumstance for the Board to exercise powers under Section 65(5) of the Waqf Act to protect the waqf properties. Relevant here to note that scheme framed by District Court is not made available. The portions of the scheme recited in the impugned proceedings, reply affidavit of petitioners and operative portion of orders in W.P.No.336 of 2014 extracted in the order under appeal, is only with regard to elections to be conducted to the institution but not with regard to the procedure to be adopted whenever any mismanagement of the property of the institution was found.

25. It would be beyond anybody's comprehension that any Court would frame or settle a scheme so as to make immune the members from malfeasance and misfeasance. Thus, the Waqf Board in order to protect the properties from being dissipated or misappropriated, might have exercised the powers conferred on it by the Act under Section 65(5) of the Act.

26. Therefore, the action of the Waqf Board in taking over the management of the institution by exercising powers under section 65(5) of the Waqf Act, 1995 needs no interference of this Court.

27. The learned single Judge, except to the extent mentioned supra, had analysed the material on record in proper perspective and the order impugned in this writ appeal does not warrant interference of this Court. The writ appeal being devoid of merit is liable to be dismissed.

28. Accordingly, the Writ Appeal is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

DHIRAJ SINGH THAKUR,CJ

RAVI CHEEMALAPATI,J
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