

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

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CIVIL REVISION PETITION No.2280 OF 2013

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ORDER :

This Civil Revision Petition is filed challenging the order dt.13.03.2013 in I.A.No.1113 of 2012 in O.S.No.73 of 2008 of Andhra Pradesh State Wakf Tribunal, Hyderabad.

2. The petitioners herein are defendants 6 to 9 in the said suit. The said suit had been filed by respondent No.1 herein against the petitioners and other respondents for recovery of possession of the suit schedule property consisting of Ac.6.06 gts. in Sy.Nos.277, 278 and 279 of Uppal Kalan Village, Uppal Mandal, Ranga Reddy District by evicting them and for other reliefs.
3. Pending suit, respondent No.1 filed I.A.No.1113 of 2012 under Order 39 Rules 1 and 2 C.P.C. restraining the petitioners and other respondents from implementing the Award No.3 of 2011 dt.03.11.2011 in File No.LA/363/RR/152/5 in respect of the suit schedule property.
4. In the affidavit filed by respondent No.1 in support of the said application, it is contended that the suit property is wakf property and it is admitted that the subject land was acquired by the then Hyderabad Urban Development Authority (for short 'the H.U.D.A') i.e., respondent No.10 herein and that an award has been passed on 03.11.2011 in Award No.3 of 2011 referred to

above. It is further contended that the said award is not binding on respondent No.1 and that if it is implemented, respondent No.1 would not be in a position to recover wakf property, and therefore injunction should be issued directing respondent No.10 herein not to implement it.

5. Counter-affidavit was filed to the said application by the petitioners contending that respondent No.1 had not even established his right, title and interest to the suit schedule property and he has no *locus standi* to interdict the acquisition proceedings. It is denied that the said land is a wakf property. It is contended that in the award dt.03.11.2011, it had been held that it is the petitioners, who have a claim in respect of the said land and respondent No.1 is not entitled to contend that the award cannot be implemented since respondent No.10 was performing a statutory function and no injunction can be granted by the Court against respondent No.10 restraining it from discharging its statutory duty.
6. By order dt.13.03.2013, the Tribunal allowed I.A.No.1113 of 2012 and restrained respondent No.10 herein from implementing it pending disposal of the suit.
7. Challenging the same, this revision is filed.
8. Learned counsel for the petitioners contended that the contents of the award passed by the Land Acquisition Officer-H.M.D.A. indicate categorically that it is the petitioners, who have title over the land in question; and in that view of the matter, the only option available to respondent No.1 is to seek a reference to the civil Court if he intends to claim a share in the compensation or to question the very notification acquiring the land issued under

Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') which was approved by the Collector, Ranga Reddy District on 23.08.2005 and which was published in Andhra Pradesh Gazette on the same date. Learned counsel for the petitioners would contend that without availing any of these remedies, it is not open to respondent No.1 to either file the suit or to file I.A.No.1113 of 2012 in the said suit seeking relief of recovery of possession of the property.

9. From the contents of the award placed before this Court, it is clear that the subject land had been acquired under the above notification in the year 2005 itself. The suit has been filed in the year 2008 seeking recovery of possession of the very same property claiming that it is wakf property. Once the subject land has been acquired under the provisions of the Act, a suit to recover possession thereof is not maintainable. Also such a suit filed by respondent No.1 is not maintainable when there is no challenge in the said suit to the proceedings initiated under the provisions of the Act acquiring the said land. The only remedy available to respondent No.1 is to seek a reference, if permitted by law at this point of time, invoking Section 30 of the Act. The finding of the Tribunal that the wakf property cannot be acquired under the provisions of the Act, is not correct.
10. A Constitution Bench of the Supreme Court in **Dr.M.Ismail Faruqui v. Union of India**, has declared that even wakf properties can be acquired. In para-85, the Court observed as follows:

“Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession (See Mulla's Principles of Mahomedan Law, 19th Edn. by M. Hidayatullah - [Section 217](#) and AIR 1940 PC 1.16). If that is

the position in law, there can be no reason to hold that a mosque has a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and Namaz. (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely, church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practice the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.”

Therefore, the very basis of the order of the Tribunal cannot be sustained.

11. Accordingly, the Civil Revision Petition is allowed and the order dt.13.03.2013 in I.A.No.1113 of 2012 in O.S.No.73 of 2008 of Andhra Pradesh State Wakf Tribunal, Hyderabad is dismissed. However, this does not preclude respondent No.1 from challenging the proceedings for acquisition of the subject property in an appropriate forum on appropriate grounds or to make a claim compensation award in appropriate proceedings, if permitted by law. No costs.

12. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-09-2015

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