

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.30916 of 2014

Date: 20.02.2015

Between:

Smt. B.Rupalatha W/o. G.Gandhi, Aged about 33 years,
Govt.Service, R/o.H.no.6-160, S.T. Colony, Oldpet,
Palamaner, Chittoor District and others.

.. Petitioners

AND

State of Andhra Pradesh, rep.by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad and
others.

.. Respondents

The Court made the following:

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ORDER:

There are four petitioners in the writ petition. Petitioners claim that they have purchased house properties and constructed houses/purchased constructed house in Sy.No.327 of Palamaner Village of Chittoor District bearing municipal house Nos.6-160, 6-160/1A and 6-160/3 of S.T.Colony, Oldpet, Palamaner town, Chittoor District. Petitioners trace the history of flow of title. According to the petitioners, one Smt. Fathima Bee and Syed Khader Saheb are the original owners of the land to an extent of Ac.2.04 cents in Sy.No.327/T.D.No.1979 of Palamaner Village. They sold the said property in favour of Syed Hyder Saheb through a registered sale deed dated 10.10.1946. In the year, 1982, Government acquired Ac.0.92 cents out of Ac.2.04 cents. After the said acquisition, Ac.1.12 cents remained in the above survey number. The owner of the property prepared a layout and converted the land into house site plots and sold to various individuals. First petitioner purchased the property bearing house no.6-160 to an extent of 84 square yards through a registered sale deed vide document No.1178/2005 from Smt. V.Hasina, wife of Noor Basha. After the said purchase, first petitioner constructed a house by obtaining permission from Palamaner Municipality. The vendor of the first petitioner purchased the same property vide registered sale deed dated 05.02.2001 from the children of Syed Hyder Saheb.

2. It is further case of the petitioners that petitioners 2 and 3 jointly purchased the house plot bearing No.13 admeasuring 115.83 square yards in Sy.No.327 through registered sale deed vide document No.1601/2012 and constructed a house bearing municipal No.6-160/1A. Fourth petitioner purchased the built house bearing municipal No.60160/3 constructed on 84 square yards vide registered document no.4980/2011. Petitioners claim that they have been paying property tax to the municipality and all houses were constructed after obtaining due permissions from the Municipality.

3. Petitioners intend to dispose of the said property and approached the 5th respondent to elicit information with regard to market value, stamp duty and registration charges. The 5th respondent refused to furnish information and to that extent, he has communicated the endorsement Nos.56/2014 dated 22.09.2014, 57/2014 dated 23.09.2014 and 59/2014 dated 26.09.2014. The Sub-Registrar referred to correspondence by way of letter of Wakf Board dated 12.10.2012 which was addressed to the District Collector, who had forwarded it to the District Registrar, who in turn forwarded the same to the Sub-Registrar. Aggrieved thereby, this writ petition is instituted.

4. Heard Sri N.Subba Rao, counsel for the petitioners, learned Government Pleader for Revenue for respondents 1 to 5 and Sri Habhibul Rahaman, counsel for respondent no.6.

5. Learned counsel for the petitioners contended that the communication dated 12.10.2012 sent by Wakf Board is *ex facie* illegal without jurisdiction and competence and action of the registering authority in refusing to furnish information sought by the petitioners by referring to the said communication is also illegal and amounts to arbitrary exercise of power and authority.

6. Learned counsel further contended that property in question is not a vacant land and houses were constructed after obtaining due permission from the Municipality. The petitioners are paying property tax and, therefore, describing the property as open land and holding that it is a Wakf property is illegal. Learned counsel further contended that property in issue is private property. The history of flow of title would show that vendors of vendors purchased the property by way of registered sale deed dated 10.10.1946. By the time the said registration took place, Wakf Act was not in existence and the transactions which took place on 10.10.1946 were not affected by provisions of the Wakfs Act, 1954. He further contended that for more than 68 years, the property is in possession and enjoyment of the private individuals and changed hands on several occasions. It is, therefore, contended that the title has validly passed on to the vendors of petitioners and, therefore, treating the property as belonging to Wakf Board is not valid. The revenue records also reflect the land as private property and to that extent revenue authorities has issued certificate as early as on 20.02.2007. Houses were constructed after obtaining due permission from the then Grampanchayat (present Municipality). Municipal house taxes are being paid regularly. At no point of time, objection was raised on the status of the land.

7. The property in issue is a private property and there is no trace of dedication of this property to Wakf. Therefore, the provisions of Section 22-A of the Registration Act are not attracted; that if the Wakf Board claims that the property is Wakf property, it has to work out civil remedies, but it cannot, by way of a letter, impose restraint on the registering authority to reject registrations on the said property. Learned counsel further contended that impugned communication is illegal, arbitrary, unconstitutional and violative of the right vested in the petitioners under Article 300-A of the Constitution of India. Learned counsel therefore submitted that action of the registering authority being illegal, the orders impugned herein are liable to be set aside and the registering authority has to provide information sought by the petitioners and to receive the deeds of conveyance on the above property as and when presented before him. Learned counsel further contended that challenging the very same proceedings, but concern the land in Sy.No.963/3, affected persons invoked jurisdiction of this Court in W.P.Nos.12412 and 12875 of 2013. This Court by order dated 18.07.2013 allowed the above writ petitions. Following the said judgment, W.P.No.997 of 2014 is allowed by judgment dated

23.1.2014. Following the above judgments, interim orders are granted in W.P.No.6898 of 2014 on 10.03.2014. Learned counsel therefore submitted that in view of the earlier decision of this Court, the writ petition deserves to be allowed.

8. Learned standing counsel for Wakf Board contended that land in Sy.No.327 of Palamaner Town is Inam Pundi granted under title no.1979 to an extent of Ac.2.04 cents. It was granted under towliath of Syed Hyder Saheb. It was meant for service of Ashurkhana. The inam was granted for maintenance of Tombs and Peerla Makan. Peerla Makan is a place where holy relics alams are kept. As seen from the ground position, the tombs were very well maintained though Peerla Makan is in dilapidated condition. Syed Hyder Saheb was only Manager of the property and had no right to alienate the wakf property. Learned standing counsel further contended that once a wakf is granted, it is always a wakf property. Section 51 of the Wakf Act, 1995 (for short, 'the Act 1995') prohibits transactions. Thus any transactions carried against provision of the statute are null and void. The Manager had no authority to sell the property belonging to Wakf and, therefore, the claim of the petitioners that the title was validly passed on to them is not correct. Petitioners are not entitled to alienate the said property as valid title was not passed on to them.

9. Learned standing counsel further contended that even assuming that petitioners have a claim on the property, since the property is classified as belonging to Wakf, statutory remedies are available to the petitioners under Wakf Act and, therefore, no civil litigation nor a writ under Article 226 is maintainable. Learned standing counsel further contended that the communication given by the Wakf Board is in valid exercise of power. It only intimated the District Collector that the lands mentioned therein are Wakf lands and illegal transactions are being made and deeds of conveyance are entertained and intend to protect the Wakf properties. The survey report of the Assistant Commissioner of the year 1954 would clearly disclose that this particular piece of land is Wakf property granted for celebration of Moharrum. Gazette notification was issued on 28.06.1962 notifying several extents of properties as belonging to Wakf. At Sl.No.2939 of this gazette publication, at page nos.218 and 219 of the publication, the land in Sy.No.327 to an extent of Ac.2.04 cents is shown as Wakf land.

10. Standing counsel relied upon the following decisions:

i) **Chhedilal Misra (dead) through Lrs. V. Civil Judge, Lucknow and others** ^[1]

ii) **Board of Wakf, West Bengal and another v. Anis Fatma Begum and another** ^[2]

11. In this writ petition, petitioners challenge the endorsements given to them by the Sub-Registrar, Palamaner informing them that in view of the communication sent by the

Wakf Board dated 12.10.2012 to the District Collector, the deed of conveyance for alienation of the property for registration cannot be accepted and no details as sought by them can be furnished.

12. In the letter dated 12.10.2012, the Chief Executive Officer of State Wakf Board informs the District Collector that several Wakf properties are being alienated by illegal means contrary to the mandate of Section 51 of the Act, 1995 and requests to issue directions to the registering authority not to entertain the documents on properties classified as wakf properties without proper consent or no objection by the Wakf Board. The same was in turn communicated to the registering authorities.

13. Counter affidavit filed on behalf of Wakf Board was not eliciting the details of property and on field status. It was specific assertion of the petitioners that several buildings have come up and that there is no open land left; the property claimed by the Wakf Board is not a Wakf property; and though the extract of gazette publication disclose the grant of Wakf for celebration of Moharram, no Moharram is celebrated.

Having regard to the said assertions, which were not specifically denied, directions were issued to conduct proper enquiry and to submit additional counter affidavit. The Law Officer of the Wakf Board, assisted by the District Inspector and Auditor of Wakf and photographer visited the place and submitted his report including his impression of the ground position and enclosed photographs taken from the place.

14. An additional counter is filed enclosing the report and photographs. The photographs disclose the fact of existence of open plots. Even though some constructions have come up and pucca houses are built, photographs also disclose the existence of peerla makhan though in dilapidated condition and well maintained tombs. Report also suggests of availability of open space amidst constructed buildings. The report admits of the fact that Moharram is not celebrated in the place. However, no reasons are forthcoming as to why Moharram is not celebrated.

15. The report of the Survey Commissioner would disclose that land to an extent of Ac.2.04 cents in Sy.No.327 was endowed by T.D.No.1979 for the purpose of celebration of Moharram and Syed Hyder Saheb was appointed as Mutawalli. It was recorded that this particular land is in the midst of dwelling houses and is not cultivable and was not generating revenue. The Gazette notification disclose the purpose of wakf and the extent. It also indicates the name of Syed Hyder Saheb as Manager.

16. The provisions of Wakf Act, 1995 to the extent relevant read as under:

3. Definition.- In this Act, unless the context otherwise requires.-

(a) to (q) x x x x x

(r) "Wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes –

(i) a Wakf by user but such Wakf shall not cease to be a Wakf by reason only of the user having ceased irrespective of the period of such cesser;

4. Preliminary survey of Wakfs.-

(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional or Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of Wakfs existing in the State at the date of the commencement of this Act.

(2) All Additional and Assistant Survey Commissioner of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of Wakfs existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:-

(a) the number of Wakfs in the State showing the Shia Wakfs and Sunni Wakfs separately;

(b) the nature and objects of each Wakf;

(c) the gross income of the property comprised in each Wakf;

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each Wakf;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each Wakf;

(f) such other particulars relating to each Wakf as may be prescribed.

X X X X X

51. Alienation of Wakf property without sanction of Board to be void.-

(1) Notwithstanding anything contained in the Wakf deed, any gift, sale, exchange or mortgage of any immovable property which is Wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board:

Provided that no Mosque, Dargah or Khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.

17. Section 51 was further amended by the Wakf (Amendment) Act, 2013 (Act 27 of 2013). After the amendment, relevant provision of Section 51 reads as under:

51 (1) : Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the board:

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Pubjub, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.

(1A): Any sale, gift, exchange, mortgage or transfer of waqf property shall be void ab initio:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

18. The principle of law is well settled on the scope of power available to the Wakf Board under the Wakf Act. In two decisions relied upon by the learned standing counsel for Wakf Board, Supreme Court has emphasized the status of Wakf lands and power of Wakf Board is made amply clear and need no reiteration.

19. The entries made in the gazette notification and report of the Survey Commissioner prepared prior to such gazette notification are not under challenge in this writ petition. The specific averments of the respondents in their counter-affidavit and additional counter-affidavit are not controverted. It is the assertion of the respondent-Wakf Board that the property in issue is Wakf property and there is a clear bar against alienation of the said property.

20. Learned counsel for the petitioners placed heavy reliance on the decision of this Court in W.P.Nos.12412 and 12875 of 2013 dated 18.07.2013 in support of his contention that very same correspondence was held to be bad by this Court and, therefore, the registering authority cannot rely upon the same correspondence to reject the claim of the petitioners.

21. In the above two writ petitions, the subject property was in Sy.No.963 of Palamaner Town. The Wakf Board placed reliance on the gazette notification dated 28.06.1962 in support of their claim similar to what is contended herein. Though, Court was in agreement with the stand of the Wakf Board about power vested in Section 51 of the Wakf Act, the stand of the respondent-Board on status of land in issue in those writ petitions was rejected on detailed consideration of the facts of the cases. This Court noticed that against gazette entry no.2936, particulars of survey number and extents were not reflected though the Survey Commissioner's Report indicated the extent in Sy.No.963 as Ac.19.02 cents. This Court noticed that several columns were left blank. In the Survey Commissioner's Report, it was clearly recorded that all the lands endowed for the up-keep of the Idgah have been sold away by the inamdars. Only the Idgah remained and all the inam lands stood alienated more than 30 years ago. The Commissioner also stated that steps should be taken to recover the alienated lands. Such report was dated 03.12.1955. This Court also noticed that dedication must be permanent, but not a temporary dedication and in the said case, the relevant entries disclosed that it was not a permanent dedication.

22. This Court further noticed that as per the provisions contained in Wakf Act, 1995, before conducting preliminary survey, the Survey Commissioner ought to have given notice to the persons likely to be affected, having regard to the fact that earlier Commissioner's report disclosed that properties stood alienated long ago, the persons who were stated to be in possession were entitled to notice and no such notice was given. Having regard to these facts, this Court did not accept the stand of the respondent board that the property in issue was a wakf property and Wakf Board has validly exercised power and power was traceable to Section 51 of Wakf Act, 1995.

23. Section 51 of the Act, 1995 prohibits transaction relating to wakf property. No transaction is valid unless prior sanction is granted by the Board to undertake such sale

on behalf of the Board. The letter addressed by the Wakf Board to the District Collector, dated 12.10.2012 is traceable to this provision. In the judgment of this Court dated 18.07.2013 relied on by counsel for petitioners, this Court held that as prohibition operates with regard to registration of documents relating to Wakf properties under Section 51(1) of the Act, 1995, unless prior sanction of the Board is obtained, the Board would be justified in asking the registering authorities to enforce the said provision in respect of the notified Wakf properties. This Court also held that such prohibition would operate under Section 22-A(1)(a) of the Registration Act, 1908. As held by this Court in the judgment dated 18.07.2013, such power is traceable to Section 51 of the Wakf Act. However, valid exercise of such power can be tested in a given case and it cannot be generalized. In the facts of that case, this Court has not agreed with the stand of the respondent Board that the property in Sy.No.963 of Palamaner as Wakf property since the material on record placed before this Court was not sufficient to justify the said property to be classified as wakf property.

24. In the case on hand, the gazette notification reflect the extent of land and purpose of grant of wakf i.e., celebration of Moharram which is an annual feature. Thus, it is a permanent dedication of the property. All the relevant details are available in gazette notification. The Survey report also clearly indicates the purpose of dedication, the extent and survey number of the land. The report also assigned the reasons for not generating income. These entries are not disputed.

25. The relevant entries in the gazette notification and report of the Commissioner and the additional counter affidavit along with material papers enclosed to the additional affidavit disclose *prima facie* that the property in issue is wakf property and, therefore, power is validly exercised by the Wakf Board in seeking to bar registration of deeds of conveyance in the land in Sy.No.327 of Palamaner town. Thus, consequential decision of the registering authority in refusing to furnish information sought by the petitioners cannot be said as illegal or made in arbitrary exercise of power and authority. Hence, this writ petition deserves no consideration and liable to be dismissed. However, it is made clear that the discussion regarding the status of the land and observations made are only with reference to the decisions challenged in this writ petition and on the issue of prohibiting registration of deeds of conveyance on properties in Sy.No.327 of Palamaner town and these observations do not come in the way of petitioners claim to assert their title by due process of law.

26. Accordingly, the writ petition is dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.

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[\[1\]](#) (2007) 4 SCC 632

[\[2\]](#) (2010) 14 SCC 588