

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5633 of 2012

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.13.09.2012 in I.A.No.469 of 2012 in O.S.No.51 of 2012 on the file of the Andhra Pradesh State Wakf Tribunal, Hyderabad.

2. The petitioners herein are defendant nos.1 and 2 in the said suit.
3. The 1st respondent/plaintiff filed the said suit against petitioners and 2nd respondent for declaration that the suit schedule property is a Wakf property, for a direction to petitioners to deliver possession thereof to 2nd respondent-Board, and to grant a perpetual injunction restraining petitioners from claiming any right or from making any illegal constructions over the suit schedule property by changing the nature of the Wakf property.
4. The subject matter of the suit is an open land of extent 61.2 Sq.yds. situated within the premises of Jamia Masjid, Jillela Village, Gospadu Mandal, Kurnool District.
5. It is the contention of 1st respondent/plaintiff that there is a Jamia Masjid situated at Jillela Village which is a registered and notified Wakf property published in the Andhra Pradesh Gazette, Part-II dt.24.10.1963 at serial no.3504 which is also covered in the second Survey Commissioner's Report wherein the area of Masjid with open land is shown as 0.22 cents, i.e., 1070 Sq.yds. The 1st respondent alleged that he is the grandson of the

grantee viz., Mulla Abudul Jaffar Miyan, and he is maintaining and looking after the affairs of the said Masjid for more than thirty years and is one of the heirs of the grantee of the Inam land, and an interested person in the subject Wakf institution. He alleged that petitioners, who are third parties, and who have no concern with the open land of Jamia Masjid, are bent upon grabbing the said land by making a cattle pound since the previous few years; that on 22.04.2012, they tried to construct a permanent wall by occupying Wakf land permanently to the extent of 61.2 Sq.yds. out of 1070 Sq.yds; the said extent is shown in green colour in the plaint plan; 1st respondent issued a legal notice dt.23.04.2012 to the District Collector, Kurnool and to 2nd respondent and others to take necessary action; the Chief Executive Officer of 2nd respondent also wrote a letter not to interfere with the possession of 1st respondent and to defuse the tension created there; 2nd respondent also issued a letter dt.27.04.2012 to Tahsildar, Jillela Village, who then initiated proceedings under Section 145 Cr.P.C. in M.C.No.11 of 2012 dt.01.05.2012; that a certified copy of the village map No.16 of the said village in field No.607 issued by the Assistant Director of Central Survey Office, Hyderabad shows the Jamia Masjid and the appurtenant land; that petitioner nos.1 and 2 filed O.S.No.266 of 2007 before the Junior Civil Judge, Allagadda in respect of the very same property, but the plaint was returned on 12.02.2008 for presentation to the Andhra Pradesh Wakf Tribunal, Hyderabad since the property was found to be Wakf property; and therefore, the relief sought in the suit be granted.

6. Written statement was filed by 1st petitioner opposing the suit

claim. He contended that 1st respondent did not indicate any survey number or boundaries to the suit schedule property; that Sy.No.607 was not mentioned in the Gazette at serial No.3504 or in the second Commissioner's Report; that the 1st respondent has no *locus standi* to file the suit since it is not a public interest litigation; and if petitioners are really encroaching into Wakf Board property, the 2nd respondent and Revenue officials would take action according to law. He denied that petitioners are bent upon occupying Jamia Masjid's open land by making cattle pound, and claimed that they have constructed the cattle pound in village poramboke land which is not in any way connected to Jamia Masjid property. He alleged that Revenue officials should have been impleaded by 1st respondent in the suit and that the Chief Executive Officer of 2nd respondent, without application of mind and merely on the basis of the legal notice issued by plaintiff and without conducting any enquiry, addressed a letter dt.27.04.2012 to the Tahsildar, Jillela Village, Gospadu Mandal, Kurnool District; the said Tahsildar acted on the basis of the said letter and issued proceedings under Section 145 Cr.P.C. He also alleged that on 01.05.2012, the Tahsildar closed the proceedings and directed petitioners to construct a permanent cattle pound to protect the interests of panchayat. The petitioners however did not file copy of the said order dt.01.05.2012.

7. The 1st respondent filed I.A.No.469 of 2012 in the suit for temporary injunction restraining petitioners from doing any construction in the land which is part of Jamia Masjid situated in Jillela Village, reiterating the pleas taken by him in the plaint.

8. Counter-affidavit was filed by petitioners reiterating their stand in the written statement.
9. Before the Wakf Tribunal, the 1st respondent marked Exs.P.1 to P.12. While the petitioners marked Exs.R.1 to R.3.
10. By order dt.13.09.2012, the Wakf Tribunal allowed I.A.No.469 of 2012. It referred to the contention of petitioner that no survey number was mentioned in Ex.P.1 Gazette and Ex.P.2 Survey Commissioner's Report, and held that even if they did not specifically mention the Sy.No.607 it cannot be said that the area around the Masjid is not Wakf property. It referred to Ex.P.7, Field Map issued by the Assistant Director of Survey, Central Survey Office, Hyderabad and held that the said Map indicates existence of Mosque and its compound and it is an official record, and the dimensions given, if calculated, comes to 0.22 cents; that Mosque and the site around it are not mentioned specifically while publishing the Gazette on the ground that it is in the village, but since its very existence was admitted from the year 1956 as per Ex.P.2 Survey Report, coupled with the fact that the Mosque has been registered and gazetted along with Ex.P.7, *prima facie*, the Mosque and the land around it is a Wakf property. It also noted that there is no dispute that the subject site is in possession of petitioners, and cattle shed was existing since a long time but held that petitioners cannot construct a permanent cattle shed in a village site which is part of the Wakf property. It therefore granted temporary injunction restraining petitioners from constructing a permanent structure in the place of the old cattle shed.
11. Heard Sri C. Siva Sankar, counsel for petitioner; and Sri P. Veera

Reddy, Senior Counsel appearing for Sri K. Murali Krishna, counsel for 1st respondent.

12. The order passed by the Court below was stayed by this Court on 14.11.2012 in CRP.MP.No.7450 of 2012 only for a period of three (03) weeks. Subsequently, the stay has not been extended. Therefore, the injunction granted by the Court below has been in subsistence from 13.09.2012 till date, except for the period of three weeks for which stay was granted by this Court.
13. The counsel for petitioners contended that the land where the cattle shed has been constructed is different from the Wakf property and that the very location of the Wakf property in Sy.No.607 was not established by 1st respondent, and that 1st respondent has no *locus standi* to file the suit.
14. I am of the opinion that Ex.P.7 Sketch as well as Ex.P.6 copy of the order dt.01.05.2012 indicate that, *prima facie*, the Mosque and vacant site are in Sy.No.607 even though in the plaint and in the schedule in I.A.No.469 of 2012, the survey number was not mentioned.
15. As regards *locus* of 1st respondent to file the suit, as a “person interested” in the Wakf he has filed the suit claiming to be a Mutawalli of the Wakf and a descendant of Mulla Abudul Jaffar Miyan, who is said to be a grantee.
16. However, the questions whether 1st respondent is a “person interested” in the Wakf and whether the suit schedule property is located in Sy.No.607 or not have to be considered in the trial after both parties lead evidence thereon, and therefore, this

Court is not expressing any opinion either way on the said issue.

17. Having regard to the fact that there is an injunction in favour of 1st respondent from 05.06.2012 in I.A.No.469 of 2012 till date, except for the period of three weeks for which there has been a stay from this Court from 14.11.2012, I deem it expedient to direct the Andhra Pradesh Wakf Tribunal, Hyderabad to decide the suit preferably within a period of six months from the date of receipt of a copy of this order; and till the disposal of the suit, the injunction granted in I.A.No.469 of 2012 shall continue.
18. It is made clear that this Court has not expressed any opinion on the rival contentions of both parties, and the Court below shall decide the suit uninfluenced by any observations made in the order dt.13.09.2012 in I.A.No.469 of 2012 in O.S.No.51 of 2012 on the file of the Andhra Pradesh State Wakf Tribunal, Hyderabad, or by this Court in this Revision.
19. Accordingly, the Civil Revision Petition is disposed of with the above directions. No order as to costs.
20. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22.09.2015

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