

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

PUBLIC INTEREST LITIGATION No. 124 of 2015

Dt:08.06.2015

Between:

Mohd.Abdul Raoof.

... Petitioner

And

The State of Andhra Pradesh,

Rep. by its Principal Secretary,

Municipal Administration and Urban Development,

Secretariat, Hyderabad and others.

... Respondents

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PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

This Public Interest Litigation seeks the following relief:

That this Hon'ble Court may be pleased to pass an order, direction or

a writ particularly in the nature of writ of mandamus declaring that the inaction on part of respondent Nos.1,3 and 5 and in not taking action against illegal and unauthorised construction and encroachment of Gazette notified Wakf property attached to Toli Masjid, Hyderabad on western side, to an extent of Acs.3.20 guntas, is illegal, arbitrary, amounts to dereliction of duties and in violation of GHMC Act, and judgments passed by this Hon'ble Court. Consequently, this Hon'ble Court may be pleased to direct respondent Nos.2 and 5 to remove/dismantle the illegal and unauthorised construction of function halls made by respondent Nos.7 to 9 over a Gazette notified Wakf land, attached to Toli Masjid, Karwan Road, Hyderabad on western side, to an extent of Acs.3.20 guntas, immediately and forthwith and pass any order or orders as deemed fit and proper in the circumstance of the case in the interest of justice.”

The relief sought in the petition is two-fold. Firstly, the petitioner seeks direction to respondent Nos.1, 3 and 5 to take action against illegal and unauthorised construction, and secondly, removal of encroachment on the Wakf property to the extent of Acs.3.20 guntas attached to Toli Masjid, Hyderabad on western side (for short “the Wakf Property”). The petitioner contends that respondent Nos.7 to 9 have encroached on the Wakf property and have raised illegal and unauthorised construction therein.

Learned counsel for the petitioner submits that the petitioner would be satisfied if the Greater Hyderabad Municipal Corporation (for short ‘the Corporation’) is directed to take action against respondent Nos.7 to 9, and so far as removal of encroachment is concerned, he seeks liberty to the petitioner to approach the Wakf Board for seeking action as contemplated by Section 54 of the Wakf Act, 1995 (for short ‘the Act’).

Having considered the submissions of learned counsel for the petitioner, we are satisfied that the PIL can be disposed of even without issuing notice to the respondents by the following order:

“The petitioner to make a fresh representation to the Corporation seeking action against the alleged illegal/unauthorised construction raised by respondent Nos.7 to 9 over the Wakf Property, within a period of four weeks from today. It is also open to respondent No.5-Chief Executive Officer, A.P.

State Wakf Board to make similar representation to the Corporation if he so desires and advised. If the petitioner and/or respondent No.5 make such representations to the Corporation, the Corporation shall consider the same on merits in accordance with law and if it finds that any illegal/unauthorised construction is raised on the Wakf property, it may proceed to take action against the same by following the due process of law. It is needless to mention that the Corporation shall not take any action without giving an opportunity of being heard to respondent Nos.7 to 9. The Corporation shall issue notice to respondent Nos.7 to 9 before deciding the representations that will be made by the petitioner and/or respondent No.5.

Insofar as the prayer for removal of encroachment is concerned, it is open to the petitioner to make application/file appropriate proceedings before the Wakf Board to take action against the alleged encroachers, namely respondent Nos.7 to 9, as contemplated by Section 54 of the Act. All contentions on merits are kept open. It is made clear that while passing this order, we shall not be understood to have expressed any opinion on the allegations of illegal/unauthorised encroachment or construction made by respondent Nos.7 to 9 or in respect of their possession over the Wakf Property. The Wakf Board shall take appropriate action strictly on merits in accordance with law.

With these observations, the PIL is disposed of.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

Dt:08.06.2015

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