

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.23275 of 2014

ORDER:

Heard the learned counsel for the petitioner, and the learned Standing Counsel for the respondents 1 to 4, the learned counsel for the fifth respondent, and the learned Standing Counsel for the sixth respondent.

The petitioner claims that his great grandfather Pathan Imam Khan was the absolute owner of land to an extent of 440 square yards in Survey No.132/5 situated at 8th ward Mosque street, Narsipatnam Municipality. During his lifetime he constructed a mosque in the said survey number and also constructed 12 shops. It is alleged that he executed a Will dated 7-5-1925 in respect of the above property clearly stating that his elder son would act as Muthawalli and in each generation the eldest son should act as Muthawalli. The petitioner claims that his father acted as Muthawalli being the eldest son of the family. Thereafter, the petitioner states that he became Muthawalli and was maintaining the property. When the fifth respondent was President of the Committee, instead of developing the Mosque was interfering with the shops, which is the ancestral property of the petitioner. In those circumstances, the petitioner filed a suit in O.S. No.30 of 2012 before the Junior Civil Judge Court, Narsipatnam, for permanent injunction against the fifth respondent and also filed a representation on 15.07.2014 before the electricity authorities claiming that the property belongs to him and no service connection should be given to the fifth respondent. When the respondents 1 to 4 issued a letter on 24.07.2014 issuing service connection by Memo dated 01.07.2014, the present writ petition was filed.

This Court while ordering notice on 13.08.2014 directed *status quo* to be maintained. The respondents 1 to 4 as well as the fifth

respondent filed separate vacate petitions with counter affidavits. At the time of taking up the vacate petitions, this Court got a doubt and *suo motu* impleaded the sixth respondent A.P. Wakf Board.

As per the averments in the counter affidavit and supporting documents, it has become clear that the property was notified as Wakf institution and was published in the A.P. Gazette No.47, Part-II dated 30.11.1961 at Sl. No.70 & 71. A Committee was elected by Jamath and the same was approved by the A.P. State Wakf Board. The existing President of the Committee and past President were paying municipal taxes and wakf contribution continuously. When the Committee wanted to demolish the old shop and start the reconstruction work, the petitioner herein filed an objection petition to stop the work. The petitioner also filed a suit in O.S. No.242/2012 on the file of the Court of Junior Civil Judge, Narsipatnam, but he was incompetent to try the suit as the suit land is a Wakf land. When W.P. Nos.12129/2012, 18470/2012, 13221/2012 and 22089/2012 were filed by one P.Khaleel Khan, this Court disposed of the said writ petitions and passed a common order setting aside the order of the Commissioner, Narsipatnam Municipality, and the Municipal Commissioner, Narsipatnam was directed to consider the application submitted by the petitioners on 17.02.2012 and pass appropriate orders thereon in accordance with law, after notice and giving a reasonable opportunity of hearing to the petitioners and Pathan Khaleel Khan, who was arrayed as second respondent in W.P.No.18470/2012 and who is the petitioner herein.

As per the report of the Inspector Auditor Wakf, Visakhapatnam, the successors of the Mosque and Peerla Panja did not approach the Wakf Board at any time for appointment of Muthawalli and in the absence of Muthawalli the Board appointed Committees from time to time, and accordingly, he submitted a report for rejecting the application of the petitioner herein and also to

approve the plan submitted by the Secretary, Mosque Committee to develop the Wakf property. It also appears that there are several disputes between the petitioner and the fifth respondent. Since the present dispute relates to giving of electricity connection to the fifth respondent, who is claiming to be the President of the Mosque Committee, the claims made in the pending suits need not be adjudicated herein. The learned Standing Counsel appearing for the sixth respondent supports the case of the fifth respondent and states that the Committee is being appointed from time to time to manage the affairs of the Mosque and the petitioner was never appointed during the last fifty years. In the circumstances, the impugned order passed by the respondents 1 to 4, dated 01.07.2014, cannot be held to be bad in law, and the Writ Petition is liable to be dismissed.

In the result, this Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

A.RAMALINGESWARA RAO, J

16.09.2015
MVA

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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Date: 16.09.2015

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