

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4969 of 2013

ORDER:

This Civil Revision Petition is filed challenging the order dt.26.08.2013 in I.A.No.1146 of 2013 in O.S.No.111 of 2013 of the A.P. State Wakf Tribunal, Hyderabad (for short 'the Tribunal'), whereby the Tribunal dismissed the application filed under Order 7 Rule 11(d) of CPC, which was filed by the petitioner, who is the 1st defendant therein, to reject the plaint on the ground that the said suit is barred under Sections 87 and 89 of the Wakf Act, 1995 and Section 685 of Greater Hyderabad Municipal Corporation Act, 1955 (for short 'GHMC Act').

2. The 1st respondent herein filed the above suit claiming to be "a person interested in the Wakf" within the meaning of Section 3(k) of the Wakf Act, 1995 alleging that respondents 2 and 3 have not taken any action when the petitioner/1st defendant is willfully damaging the property and trying to change its nature. He alleged that he had addressed a letter dt.12.08.2013 to the 2nd respondent setting out the details of the illegal and unauthorized construction being carried out by the petitioner but the 2nd respondent has not done anything to stop the said activity. It is also alleged that the 3rd respondent is not discharging its statutory duty to prevent illegal and unauthorized constructions, and so the 1st respondent had to file the suit.

3. On receipt of summons, the petitioner herein filed I.A.No.1146 of 2013 to reject the plaint on the following grounds:

- i) The subject Wakf Institution is not a registered one and Section 87 of the Wakf Act bars a suit for the enforcement of right on behalf of an unregistered Wakf.
- ii) Section 89 of the Wakf Act mandates no suit shall be instituted against the Wakf Board, without serving a prior notice to it.
- iii) Section 685 of the HMC Act mandates that no suit could be

instituted against the GHMC without serving a notice to it.

4. This application was opposed by the 1st respondent stating that this application is filed only with malafide intention of protracting the matter in a futile attempt to ensure that illegal constructions being carried out by the petitioner can go on. He further contended that no relief has been sought either against the 2nd respondent-Wakf Board or the 3rd respondent-GHMC, as wrongly assumed by the petitioner. It was also contended that the suit is essentially filed against the petitioner, who is an unscrupulous tenant, found resorting to illegal construction on the suit schedule property to the detriment of the Wakf, for an unlawful gain. He further contended that the suit filed by him is not barred either under Sections 87 and 89 of the Wakf Act or Section 685 of the GHMC Act.

5. By order dt.26.08.2013, the Court below dismissed the I.A.No.1146 of 2013 and refused to reject the plaint. It held that after the suit was filed along with an interim injunction petition, an urgent notice was ordered to the petitioner in the temporary injunction petition, since there was a caveat; that summons in the suit are yet to be served on the petitioner and respondents 2 and 3; and instead of getting on with the hearing of the interim injunction petition, the petitioner has filed this application under Order 7 Rule 11(d) CPC to reject the plaint.

6. As regards the contention of the petitioner that the Wakf in question is an unregistered Wakf, the Court below held that it is for the 2nd respondent to appear in the suit and state, whether the Wakf Institution in question is a registered one or not and produce the record relating to it, which is admittedly in its custody.

7. As regards the contention that the suit is barred for want of mandatory notice to the Wakf Board under Section 89 of the Wakf Act

is concerned, it held that “the persons interested” in Wakfs coming within the definition of Section 3(k) of the Wakf Act file suit in the Tribunal claiming to protect the matters relating to Wakf or its property showing the Wakf Board as a proforma party and they can adhere to Section 90 of the Wakf Act, 1995 (which states that in every suit or proceedings relating to a title or possession of a Wakf property or the right of a Mutwalli or beneficiary, the Court shall issue notice to the Wakf Board at the cost of the party, instituting such suit or proceeding). In that regard the Court below held that 1st respondent/plaintiff had paid process and notice under Section 90 was issued to the 2nd respondent/Wakf Board in the suit, which the Board has to receive and make appearance. It further held that since no relief is sought against the Wakf Board, the non service of notice under Section 89 is not a ground to reject the plaint.

8. Coming to the allegation about non service of notice under Section 685 of the GHMC Act, 1955 the Court below held that issuance of prior notice is for the protection of the Officials of the Board acting under the said Act against filing of suits behind their back on the acts they have committed or allegedly omitted under the provisions of the GHMC Act; but the present case is one where the suit was instituted pleading that the petitioner herein was making construction in a Wakf property even though he is only a tenant, without obtaining any permission from GHMC for making such constructions; and without meeting the said allegations, the petitioner has filed this application. It is the contention of the 1st respondent that the 3rd respondent-GHMC has been kept in dark by the petitioner, who is resorting to permanent construction. Therefore, prior notice under Section 685 of GHMC Act, 1955 to the 3rd respondent is not essential.

9. Challenging the same, this Civil Revision Petition is filed.

10. Counsel for the petitioner reiterated the contentions raised before the Court below and in addition he also raised contention that the 1st respondent was previously Mutwalli, against whom certain proceedings have been taken for removal and, therefore, he cannot claim to be a “person interested in the Wakf”. This last contention was not canvassed before the Court below. Therefore, it is not open to the petitioner to raise this contention for the first time in the revision before this Court.

11. As regards the contention raised by the petitioner with regard to the bar contained in Section 87 of the Wakf Act, the 1st respondent has specifically raised a contention that the subject property is a Wakf property and it also filed a Munthakahab dt.30.12.1999 issued by the A.P. State Wakf Board.

12. Be that as it may, after summons are served in the suit, it is for the Wakf Board to come forward with such a notification and establish whether, institution in question is a registered Wakf or not. Therefore, the plaint cannot be rejected on this ground, even before the 2nd respondent-Wakf Board was served summons in the suit.

13. No doubt, Section 89 of the Wakf Act provides for the issuance of notice to the Wakf Board in respect of any act purporting to be done under the provisions of the Act, before filing of the suit, but in the circumstances, where the 1st respondent alleges that Wakf Board has not acted as per the provisions of the Wakf Act to protect the Wakf properties, and no relief is sought against the Wakf Board, I am of the opinion that non issuance of notice by the 1st respondent to the Wakf Board would not come in the way of filing of the suit and the suit cannot be dismissed on the said ground.

14. As regards the contention of the petitioner with regard to non

issuance of notice under Section 685 of GHMC Act is concerned, no relief in the suit is sought against the GHMC by the 1st respondent and also the GHMC is alleged to have not prevented the 1st respondent from going on with the illegal constructions made without obtaining a sanction plan under the provisions of GHMC Act. Therefore, it is for the GHMC to raise the contention that non service of notice under Section 685 of GHMC Act has caused it any prejudice. It is settled law that requirements, such as issuance of notice, can also be waived by a party. Since admittedly GHMC has not taken any such stand in the suit as on date, it would amount to prejudging the issue if any opinion is expressed on the said matter by this Court. Therefore, I am of the opinion that the Tribunal was right in rejecting the I.A.No.1146 of 2013 in O.S.No.111 of 2013 by impugned order.

15. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

26th June, 2015.

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