

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.19611 of 2012

ORDER:

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This writ petition is filed to declare the notification published in the supplement to part II of the A.P.Gazette No.40 A dated 03-10-2002 so far as notifying the land in Sy.No.199 to the extent of Ac.01-03 guntas of Douthiyal Tarfa of Bodhan Taluk, Nizamabad District as Wakf property as illegal, arbitrary and violative of principles of natural justice, without jurisdiction, issued under the repealed Wakf Act of 1954 (Act of 1954) and contrary to the judgment and decree in CMA.No.24 of 1973 dated 02-08-1975 passed by the District Judge, Nizamabad and consequently direct the 3rd respondent to consider the case of the petitioners for grant of Occupancy Right Certificate over the lands in Sy.No.199 to the extent of Ac.01-03 guntas of Douthiyal Tarfa of Bodhan Taluk, Nizamabad District.

Learned counsel for the petitioners states that impugned notification is issued under Repealed Act of 1954, which was repealed by Section 112 of the Wakf Act, 1995 (Act of 1995). As such, the same is void. He also submits that eviction proceedings were initiated against the petitioners by the District Collector, Nizamabad and against it, CMA.No.24 of 1973 was filed by the petitioners. The said CMA was allowed by the District Judge, Nizamabad by judgment and decree dated 02-08-1975. Subsequently, W.P.No.5688 of 1975 was filed against the said order by Wakf Board and the same was also dismissed on 18-04-1977. In view of the said order become final, the respondents cannot issue the impugned notification.

On the other hand, learned Counsel for 1st respondent-Wakf Board submits that the petitioners have to approach Wakf Tribunal constituted under Section 83 by virtue of Sections 6 and 7 and also Sections 39 and 40 of the Wakf Act, 1995 and as such, this Court shall not entertain the writ petition.

This Court considered the similar issue in W.P.No.25076 of 2004 relied on by the learned counsel for the petitioners and wherein, this Court quashed the notification under Act of 1954 on the ground that Wakf Act, 1954 is repealed by Section 112(1) of the Wakf Act, 1995 and notification published in the Gazettee does not stand to scrutiny in the eye of law, as it is a notification issued under a repealed enactment. In this case also, admittedly the impugned notification issued also issued under Act of 1954 is repealed by the present Act. Since the order in the said writ petition has become final and Wakf Board is a party to it, the present

issue is squarely covered by the judgment of W.P.No.25074 of 2004 and in the counter filed by Wakf Board there is no mention about issuing notice to the petitioners before issuing the impugned notification.

In view of the same, since the impugned notification is issued under a repealed enactment and it is liable to be quashed.

Accordingly, the Writ petition is disposed of. The impugned notification is quashed. However, it is open for the competent authority to issue fresh notification under new enactment, if law permits. As far as grant of Occupancy Certificate is concerned, it is for the 3rd respondent to decide the same after issuing notice to the Wakf Board.

As a sequel to the disposal of this writ petition, miscellaneous petitions, if any, pending shall stand closed.

22-03-2016
Nvl

A.RAJASHEKER REDDY,J

