

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION NO.4222 of 2011**

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**ORDER:**

Heard learned counsel for the petitioner and learned counsel for the respondents.

This Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 21.09.2010 passed in I.A.No.692 of 2010 in O.S.No.528 of 2009 by the XI Junior Civil Judge, City Civil Court, Secunderabad.

The petitioner, which is 3<sup>rd</sup> party to the suit, is a Wakf Board, represented by its Chief Executive Officer. The petitioner filed the present I.A under Order 1 Rule 10 r/w Section 151 CPC seeking to implead the Wakf Board as defendant No.3 in the suit on the ground that the plaint schedule property is part and parcel of the Wakf property and that out of the said property the 1<sup>st</sup> respondent/plaintiff encroached some extent. The petitioner also issued a show cause notice to the 1<sup>st</sup> respondent/plaintiff under the Wakf Act 1995. Therefore the petitioner is necessary party to the suit.

The 1<sup>st</sup> respondent/plaintiff filed counter admitting receiving of notice from the Wakf Board. It is stated that as the Wakf Board did not interfere with his work, he did not file the suit against the Wakf Board and hence prayed to dismiss the application.

The Court below dismissed the I.A holding that except the petition averments no evidence has been produced by the petitioner. The petitioner has not explained as to why no action is taken against the 1<sup>st</sup> respondent/plaintiff in furtherance of show cause notice issued to him. If really the 1<sup>st</sup> respondent encroached upon the Wakf property nothing prevented the petitioner to keep quite all these days though it was found in inspector auditor report.

Learned counsel for the petitioner submitted that as per the Gazette notification the property belongs to Wakf and to protect its interest the petitioner Wakf Board decided to join as a party to the suit and filed the application to implead it as party defendant. The Court below erroneously dismissed the application without appreciating the provisions under Section 85 of the Wakf Act 1995, which prohibits the Civil Courts to entertain any proceedings against or in relation to the Wakf properties.

As can be seen from the order passed by the learned XI Junior Civil Judge, the application came to be dismissed on the ground that except the petition averments no evidence as such was placed by the petitioner, prima facie, to show that the property in question belongs to Wakf Board. Having issued notice, the petitioner did not initiate any positive action to protect the interests of the Wakf property, thereby the very application lacks bona fides. Though reliance was placed by the petitioner on the report of the Inspector Auditor, the said Inspector Auditor's report also not placed on record. In other words, there was no material placed before the Court below to establish that the subject suit land belongs to Wakf Board. In those circumstances, dismissal of I.A by the Court below cannot be found fault with.

One another aspect, which needs to be mentioned herein is that in the counter filed by the 1<sup>st</sup> respondent/plaintiff at paragraph 4 a specific plea has been taken that the plaint schedule property is Wakf property and therefore, the Court has no jurisdiction to entertain the petition, but the Wakf Tribunal at Hyderabad alone has jurisdiction to entertain the matter.

Though a plea has been taken by the 1<sup>st</sup> respondent with regard to jurisdiction of the Court to entertain the petition under Section 85 of the Wakf Act, in the process of adjudicating the claim of the petitioner vis-à-vis the defendants, the plea of the petitioner with respect to the ownership of the property can be examined, and in the event the Court coming to a conclusion, necessary orders would be

passed.

In that view of the matter, the order passed by the Court below does not suffer from any irregularity warranting interference of this Court under Article 227 of the Constitution of India. However, the observations made by the Court below or in the present revision petition, do not preclude the petitioner to initiate proceedings independently to protect its property in any manner.

Accordingly the Civil Revision Petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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**CHALLA KODANDA RAM, J.**

1<sup>st</sup> February, 2016  
Js.