

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.31342 of 2015

ORDER :

Case of the petitioner is that he is the absolute owner and possessor of the land to an extent of Acs.4.99 cents in Sy.No.381, situated at Gangannapalli Village, Chittoor Taluk and District, and an extent of Ac.1.08 cents in Sy.No.446/1, situated within the Municipal area of Chittoor Town, which lands were under litigation for the last 48 years and finally ended in his favour, by order dated 13.04.2015 in ASMP.No.536 of 2015 in A.S.No.612 of 1997, and the same became final.

2. Pursuant to the request made by the 3rd respondent – A.P. State Wakf Board, to the 1st respondent – District Collector, Chittoor District, vide letter dated 12.10.2012, for inclusion of the lands claimed as Wakf properties in the prohibitory list prepared under Section 22-A of the Registration Act, the said lands were directed to be included in the prohibitory list on 23.11.2012. As the said lands were subject matter of litigation in A.S.No.612 of 1997 before this Court, the petitioner has not taken any steps to get these lands deleted from the prohibitory list. However, after disposal of the above appeal on 13.04.2015, he made a representation dated 13.07.2015 to the 1st respondent –

District Collector requesting to delete these lands from the prohibitory list. In spite of receipt of the said representation, since the 1st respondent had not taken any action to delete these lands from the prohibitory list, the petitioner has filed the present writ petition seeking to direct the 1st respondent to consider his representation dated 13.07.2015 for deletion of the aforesaid lands from the prohibitory list prepared under Section 22-A of the Registration Act, to enable him to enjoy the same.

3. The 3rd respondent – Wakf Board has filed a counter affidavit stating that the Wakf Board filed a suit in O.S.No.164 of 1967 on the file of the Subordinate Judge, Chittoor, for recovery of Inam lands attached to Abdul Majeed Shaheed Dargah and during the pendency of the suit, as the committee, which had filed the said suit, had become defunct over the period of time, the said suit was dismissed by judgment dated 24.04.1974 and the same became final, as no appeal has been preferred against the said judgment. It is further stated that O.S.No.83 of 1984 on the file of Subordinate Judge, Chittoor, came to be filed by the Itehadul Mussali Committee and as the said Committee is only for a fixed period of time and elected the Body, the judgment in O.S.No.83 of 1984 is not binding on respondent No.3. The 3rd respondent also states that the entire lands attached were

notified under Section 5(2) of the Waqf Act, 1954 and the notification to be read as compliance of the requirement under Section 22-A of the Registration Act, 1908 and as such there is no necessity to further notify the land under Section 22-A of the Registration Act. It is further stated that the said notification was neither struck down nor modified by the competent Court under the Statute and the same is final and binding under Section 6(4) of the Waqf Act, 1995. It is further stated that at para-10 of its judgment in BOARD OF WAQF, WEST BENGAL Vs. ANIS FATIMA BEGUM¹, the Apex Court held that under Section 83 of the Waqf Act, 1955 jurisdiction is conferred only on the Waqf Tribunal.

4. Heard learned counsel for the parties and perused the material available on record.

5. The 3rd respondent – Wakf Board filed ASMP.No.536 of 2015 in A.S.No.612 of 1997 seeking to transpose the A.P. Wakf Board as appellant in A.S.No.612 of 1997 filed by the Ithahadul Muslimeen Committee, Chittoor, so as to defend the interest of the religious institution. The said application was dismissed by order dated 13.04.2015, holding that the Wakf Board had already filed O.S.No.164 of 1967 against the very same property and lost the suit. It is not disputed that the order dated 13.04.2015 in ASMP.No.536 of 2015 in

¹ 2011 (1) ALD 61 SC

A.S.No.612 of 1997 has become final. It is also not disputed that the judgment and decree dated 27.04.1973 in O.S.No.164 of 1967 has become final and the same operates as *resjudicata* against the Wakf Board.

6. Though the learned Standing Counsel for 3rd respondent – Wakf Board relied on the judgment of the Hon'ble Supreme Court in ANIS FATIMA BEGUM's case (*supra*), it is to be noted that the Wakf Board lost the litigation in the suit, followed by order dated 13.04.2015 in ASMP.No.536 of 2015 in A.S.No.612 of 1997, dismissing the application filed by the Wakf Board against the very same property by holding that the subject property is not a wakf property.

7. In view of the above, the 1st respondent – District Collector, Chittoor District, is directed to consider the representation dated 13.07.2015 of the petitioner and take appropriate action in accordance with law. The said exercise shall be done within a period of eight (8) weeks from the date of receipt of a copy of this order.

8. Subject to the above direction, this writ petition is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A. RAJASHEKER REDDY, J

31.10.2016.
Msr

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