

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.12209 of 2013

ORDER:

Heard Mr.Jagan Mohan Reddy for petitioner and Mr. M.A.Mujeeb for sole respondent.

The petitioner prays for mandamus declaring the action of respondent in seeking to dispossess/evict the petitioner from the land in an extent of Ac.20.00 covered by Sy.Nos.80 and 81 of Fathenagar, Balanagar Mandal, Ranga Reddy District on the ground that part of land belongs to the Wakf Board, without issuing notice or proceeding whatsoever as arbitrary, illegal and in violation of Article 300-A of Constitution of India.

On 23.04.2013, this Court granted the following interim order:

“Pending further orders, there shall be a direction to the respondent not to interfere with the possession and enjoyment of the petitioner over the subject land except in accordance with the due procedure laid down by law.”

The respondent filed WVMP.No.4189 of 2016 seeking vacation of the interim order dated 23.04.2013.

With the assistance of learned counsel appearing for the parties, I have perused the affidavit as well as the counter affidavit. For the nature of disposal I intend to give to the writ petition, I am not

referring to the merits either of assertion or denial in the counter affidavit, but it is sufficient to excerpt paragraphs 7 and 8 of the counter affidavit filed by respondent, which read thus:

“In reply to para 7 it is submitted that the crux of the matter on this date is to the extent of passage which was in use since time immemorial and which has now been closed by constructing the compound wall affecting the right of Muslims to approach the Graveyard for the burial of Muslim dead bodies and also to perform Fateha as per the customs. The answering respondent is unaware about the pendency of appeal No.9/2008 and Writ petitions as alleged.

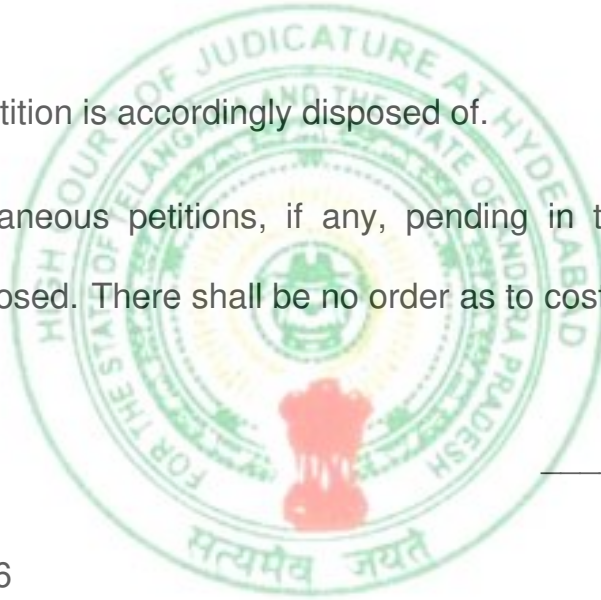
In reply to Para 8 it is submitted that the crux of the matter is only to the extent of passage that was exists since time immemorial and used by the Muslims to approach the Graveyard and which has been classified as Wakf by user under Central Wakf Act 1995. The petitioner has no right in any manner to stop the passage by raising boundary wall thereby stopping the entrance for the graveyard. The act of the petitioner's Company is against the constitutional right guarantee to the Minorities.”

From the above, it is clear the respondent claims easementary right of ingress and egress through the land of petitioner and admittedly at the instance of affected persons/Managing Committee a case in O.S.No.27 of 2014 on the file of Wakf Tribunal, Hyderabad is pending. This Court is of the view that the right now claimed by

respondent through petitioner's land is subjudice in O.S.No.27 of 2014. At this juncture, the interference with petitioner's right and claiming rasta is not tenable. The respondent has not denied in the counter affidavit that it is in fact not interfering with the right claimed by the petitioner. After perusing the material available on record and the stand of respondent, I am satisfied the interim order is made final order in the writ petition. It is made clear that the right claimed by the petitioner or the easementary right claimed by the Committee shall be decided by the Wakf Tribunal and subject to outcome of suit.

Writ petition is accordingly disposed of.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.



S.V.BHATT,J

Dt:22.12.2016
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