

THE HON'BLE SRI JUSTICE S. V. BHATT

WRIT PETITION No.39356 of 2016

ORDER:

The petitioners challenge show-cause notice dated 13-10-2016 as illegal and arbitrary.

To illustrate the grievance of petitioners, the show-cause notice is extracted herein, which would suffice the common grievance of all the petitioners.

ANDHRA PRADESH STATE WAQF BOARD : VIJAYAWADA
(TRANSIT OFFICE AT Haj House Building, Nampally, Hyderabad)

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Dated : 13-10-2016

F.No.43/ DM/ Rent/ KNL/ Dhone/ Enh.rents/ 2016

SHOW CAUSE NOTICE

Sub : Waqf – D.M. & Rent Sec. – Kurnool District., - done (V & M) – Dhone Muslim Eidgah & Eidgah Mosque Committee – Proposal of M/c. For enhancement of rents 47shops of existing rents – Show Cause Notice issued – Reg.

- Ref: 1) Representation dated 01.02.2016 received from the President, Managing Committee, Dhone Muslim Eidgah and Eidgah Mosque, Dhone.
- 2) Report of Inspector Auditor Waqfs, Kurnool Dist., dated 25-08-2016.
- 3) Orders of the Competent Authority, APSWB, dated 28-09-2016.

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1. Whereas the Waqf Institution, namely, Eidgah and Mosque, situated at Dhone Mandal & Town, Kurnool District along with its Shopping Complex consisting (47) shops, is a registered and notified Waqf published in A.P.Gazette dated 02.05.1963, at S.No.1960.

2. Whereas as per the reports vide ref.1st and 2nd cited, you are in occupation Waqf shop bearing No.10 admeasuring 170 sq. fts. and carrying on business. The said shop belongs to subject institution. As per above reports you are in occupation of the same without having any valid lease agreement, which is illegal and it attracts penal action.

3. In this regard, the following provisions of Waqf Act, 1995 as amended attracts in your case:

Sec.3 (ee): “encroacher” means any person or institution, public or private, occupying Waqf property, in whole or part, without

the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by Mutawalli or the Board.

Sec.52(A).(1) Whoever alienates or purchases or takes possession of, in manner, whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years.

4. In view of the above facts and provision of law, why action as per the above provisions shall not be taken against you. However, before initiating the action, an opportunity is hereby provided to you to settle the issue and is directed to appear before the undersigned during office hours in support of your occupation, within a period of (15) days from the date of receipt of this Notice, failing which action as per law will be initiated against you.”

The prayer of the petitioners is as follows :-

“... to issue a writ of mandamus or any other appropriate writ or direction the action of the respondents No.1 to 3 in interfering with the possession of the petitioners in pursuance of the show cause notice issued in F.No.43/DW/Rent/KNL/Dhone/ENH.Rents/2016 dated 13.10.2016 without following the procedure contemplated under the provisions of the Wakf Act, 1995 as illegal, arbitrary and one without jurisdiction and consequently direct the respondents No.1 to 3 to follow the provisions of the Wakf Act, 1995 ...” (emphasis added)

At the hearing, Mr.Arifullah and Mr.Ramakanth Reddy appearing for respondents oppose the maintainability of writ petition on several factual and legal objections. They have also placed a few reports basing on which the instant show-cause notice has been issued.

Learned counsel for respondents submit that a notice is issued to the occupiers, the Wakf Board will Act in accordance with law and pass orders as are warranted in the fact situation of the case.

The statement is placed on record.

The writ petition is disposed of by directing the respondents not to disturb the possession of occupants of shops except in accordance with law. It is made clear that this Court has not considered the merits canvassed by parties. It is for the competent authority to examine each one of the circumstances and record findings in this behalf. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 15-11-2016
Prv



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