

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.40703 OF 2014

ORDER:

The case of the petitioner is that one late Sri Shaik Gouse Moiuddin, S/o.late Sri Shaik Fariduddin was the absolute owner and possessor of an extent of Ac.10.40 cents in Survey No.253 of Ongole town; that one Sri Battina Venaiah, S/o.Battina Rattaiah purchased an extent of Ac.3.90½ cents under registered sale deed bearing document No.573 of 1950 and obtained a layout from the Director of Town and Country Planning, Hyderabad in ULP No.89 of 1981; and that the legal representatives of Shaik Gouse Moiuddin namely Moulana Baig, S/o.Khadir Baig, Yousuf Baig, S/o.Khader Baig, Yousuf Baig, S/o.Mehboob Baig laid down a private layout in Ac.3.12 cents on the eastern side of the above referred lay out in ULP 89 of 81. The said Moulana Baig, Yousuf Baig and Yousuf Baig, s/o.Mehboob Baig have sold plot Nos.12 and 13 in favour of one Sri Battula Srinivas Babu, S/o.Battula Satyanarayana and Sri Battula Ravichander, S/o.Battula Satyanarayana who were minors at that time represented by their father/guardian under registered sale deed dated 12.04.1980; that thereafter, the minors property by their father was sold in faovur of Bodapati Rama Rao, s/o.late Sri Bodapati Rama Subbaiah under a

registered document dated 25.05.1982 (Doc.No.2151/82), admeasuring 50 gadies in Plot No.13 in Survey No.253 and that Plot No.12 was purchased by Sri Jonnalagadda Ramaiah under registered sale deed dated 25.05.1982 bearing document No.2150 of 1982. After the death of Jonnalagadda Ramaiah, his widow Smt.Jonnala Ramanamma, his sons Sri J.Ramesh babu and Sri J.Srinivas Babu have executed a settlement deed dated 28.05.2011 in favourof Smt.Nilajala Rajini Kumari, w/o.Chenchu Ramaiah as she is sole daughter of late Sri Jonnalagadda Ramaiah. The said N.Rajini Kumari and Bodapati Ramana Rao have executed a registered development agreement-cum-General Power of Attorney in favour of the petitioner firm on 24.04.2014. At that time the Mandal Revenue Officer issued a certificate stating that the land in Survey No.253 is not a Wakf land as per the decision rendered by the Honourable Additional District Judge, Ongole in OS.No.10 of 1997 against the A.P.State Wakf Board and others. While so, when the petitioner firm planned to sell the remaining individual apartment, the 6th respondent has refused to register on the ground that the 4th respondent issued circular in F.No.18-PKM/Wakf/2014, dated 12.03.2008 wherein it is stated that there are about Ac.4208.87 cents of land in Prakasam District are Inam lands, which are endowed to charitable institutions under the

provisions of Wakf Act, 1957 and requested the District Registrar to issue suitable instructions to all the Sub-Registrars directing them not to entertain any sale or purchase transactions for registration of Wakf property in the name of individuals. Aggrieved by the same, present writ petition is filed.

The 2nd respondent-Wakf Board filed counter affidavit stating that the petitioner has no locus standi to question the impugned circular issued by the 4th respondent as the same is in consonance with the provisions of the Act and also in terms of the Government order issued under G.O.Ms.59, whereby the DRO of the District has also designated as District Wakf Officer. It is also stated that as per the report of the Survey Commissioner it apparently discloses that the institution is Sunni-Ashoor Khana at Ongole and that similarly, at column 12, the particulars of Wakf properties are given and that the name of the village in which the property is situated is 'Ongole' with T.D.No.1999 in Survey No.253-Extent Ac.10.40 cents along with other survey numbers. As per Section 5(2) of the Act, 1954, pursuant to such report of Survey Commissioner, in respect of Wakf Institution Ashoor Khana, Ongole with its attached properties in Survey No.253 an extent of Ac.10.40 cents and other lands situated at

Pernamitta Village, was published in the Official gazette No.26, dated 28.06.1962 and included in the list of Wakfs of the State at serial No.944. As per revenue records i.e. the Re-survey and resettlement of the village-Ongole also clearly shows that the subject land as Inam Land under Column No.4. It is also stated that due to typographical error instead of 253 the number has been printed as 293 in the gazette publication, though in the Survey Commissioner's report it is clearly mentioned that the land of Ashoor Khana situated in Survey No.253. Since the subject property is a Wakf, it is an obligation on the part of Respondent No.6 to refuse the registration pursuant to Section 22 A (c) of the Registration Act. It is also stated that as per Section 51 of the Wakf Act, alienation of Wakf property in any manner is void and void-ab initio without the previous sanction of the Board and this respondent has not accorded any such permission. More over by virtue of amendment Act 2013 read with section 1 A, alienation of Wakf property is totally prohibited. It is further stated that against the Judgment and decree passed in OS.No.10 of 1997, appeal is filed and the same is still pending. It is also stated that the gazette notification No.26 dated 28.06.1962 has not been challenged and the same is valid and binding on the petitioners. Such Gazette Notification is conclusive proof and in the absence of

challenge of the same, the subject land which is declared as Wakf Property as per Section 5(2) of the Wakf Act. It is also stated that the title of the subject land, being Wakf Property vests with the Almighty God under supervisory powers vest with this respondents; that it is settled law that 'once a Wakf always a Wakf' as laid down by the Hon'ble Supreme Court of India in **Syed Ali's** case reported in **AIR 1998 SC 972**; that the nature of Wakf property cannot be changed by any number of illegal and void transactions in violation of Section 51 of the Act 1995 and thus the subject land is Wakf property attached to the Ashoor Khana, Ongole but does not belong/owned by the petitioner. The alleged vendor of the petitioner without seeking declaration of his ownership rights by approaching the Wakf Tribunal has chosen to file the present writ petition.

The 4th respondent filed counter reiterating the averments made in the counter affidavit of the 2nd respondent.

Learned counsel for the petitioner submits that though the 2nd respondent filed OS.No.10 of 1997 for declaration of title and recovery of possession the same was dismissed by Judgment and Decree dated 24.11.2000 holding that the plaintiff failed to establish title to plaint schedule property. Against the same, though appeal is filed, the same is pending

but no interim orders are granted. He also submits that number of alienations took place in respect of subject land from 1950 onwards through registered sale deeds. He also contends as on today there is no notification in respect of subject land in survey No.253 of Ongole and in the absence of the same, the impugned circular is illegal and without authority of law. He also submits that the 4th respondent has no jurisdiction to issue impugned circular directing the 6th respondent not to register the lands. He also submits that as on today the Secretary, to Wakf has not issued any list regarding Wakf properties and in the absence of same the documents presented by the petitioner cannot be refused for registration.

On the other hand learned Standing Counsel for the 2nd respondent submits that in the gazette notification though Survey No.293 was typed instead of mentioning 253, the surveyor report shows that Survey No.253 was also Wakf property and the proceedings regarding rectification of the same are pending. He also submits that first appeal filed against OS.No.10/1997 is pending.

In this case it is to be seen that the Wakf Board filed OS.No.10/1997 in which the trial Court at paras 18, 26 and 27 held as follows;

“18. Item No.1 of schedule property is in Survey No.253 of Ongole Rural Panchayat. It is admitted fact that the plaintiff is not in possession of the land. The case of the defendants from the beginning is that it is not the Wakf property. One Ahammed Basheeruddin, Assistant Secretary of the plaintiff Wakf board, who was examined as PW1 in his evidence stated that suit was filed for Ac.3.12 cents in item No.1 out of Ac.14.25 cents. The schedule property was surveyed by the commissioner of Wakf and after completion of survey he submitted the report and after gazette notification, the Inspector of Wakf, Ongole, demanded the defendants to vacate the schedule property and none of them have surrendered the property. He filed Ex.A1 of A.P.Gazette, Ex.A2 is the survey commissioner's report. In the cross-examination he categorically admitted that as per Ex.A1 Gazette publication, survey number was mentioned as 293, whereas Item No.1 of plaint schedule property is in survey No.253. Though he stated that it is an error, no steps have been taken to correct the same for the last 30 years (since gazette is dated 28.06.1962). The contention of the counsel for the plaintiff that in Ex.A2 survey report, it was correctly noted and the survey number given in Ex.A1 is an error, does not hold good, since no steps were taken by the plaintiff to correct the same for so many years. Ex.A3 to A6 are show cause notices issued to Yousuf Ali Baig and proceedings of Wakf Board with regard to misappropriation of properties by them. Ex.A6 is subsequent to filing of this suit. They does not establish title of plaintiff. The plaintiff had failed to prove item No.1 of the plaint schedule property is the property of plaintiff.

26. Under Section 25 of Wakf Act, 1954, every Wakf whether created before or after commencement of the Act shall be registered with the Wakf's Commissioner giving the description of wakf properties for identification, wakf deed and other particulars. Under Sec.26 of the Act, the wakf in respect of each wakf with the copies of wakf deeds and the particulars of the properties title deeds, documents relating

thereto and other details. The plaintiff did not produce the Register of wakf to show source of their title and other particulars. The plaintiff is ignorant of the extent of land in possession of each of the defendants. Procedure prescribed under Sec.36(b) of the wakf Act, 1954 for recovery of the wakf property transferred in contravention of Sec.36(1) of the act i.e., alienation of wakf property without sanction of the board was not followed by the plaintiff. No notice was issued to the defendants alleging that the plaint schedule property is the wakf property and that they have to surrender the plaint schedule property. No scrap of paper is filed to show any such notice was issued to the defendants. It is the case of the defendants that they did not receive any notice.

27. The above material on record shows that the plaintiff failed to establish title to the plaint schedule property. Hence, the suit filed by the plaintiff without prayer for declaration of title is not maintainable and the plaintiff is not entitled for recovery of possession of plaint schedule property. Issues 2 and 3 are settled accordingly against the plaintiff and in favour of the defendants.

Though appeal is filed against the same, no order is brought to the notice of this Court passed by the appellate court injuncting the respondents from entertaining the documents for registration. A perusal of the Notification No.26 dated 28.06.1962 shows that it does not contain survey No.253, though it is stated that Commissioners report contains that Survey No.253. But as on today no notification rectifying the same is issued even after long lapse of time. The fact that Registrations are being entertained in regard of subject land from the year 1953 onwards is also not disputed. In

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in para 25.3.1 it was held that;

“Insofar as lists of properties covered by clause(c) are concerned, it must be forwarded by Commissioner, Endowments insofar as Charitable and Hindu Religious Institutions and Endowments are concerned and by secretary of the Wakf Board in case of the properties owned by Wakf to the registering officers having jurisdiction over such property and also District Registrar, Deputy Inspector General (R&S) concerned and so also to the Commissioner and Inspector General of Registration and Stamps in the proforma appended in Annexure III to the guidelines. Unless the lists are forwarded in the manner stated above and/or as provided in paragraph 3 of the guidelines, it cannot be and should not be acted upon by the registering offices having jurisdiction over such property. Similarly, in case of properties covered by clause (d), list of lands declared as surplus under the provisions of the acts mentioned in paragraph 4 of the guidelines by the revenue authorities (not below the rank of Revenue Divisional Officer) and the Special Officer and competent authority under the ULC Act concerned, they are expected to furnish lists of lands so declared as surplus lands under the Ceiling Acts to the registering officer having jurisdiction over such property and also to the District Registrar, Deputy Inspector General and Commissioner and Inspector General of Registration and Stamps in the proforma appended in Annexure IV.”

In the present case the impugned circular dated 12.03.2008 is issued by respondents 4 and 5 which cannot be acted upon as per ratio laid down by the Full Bench.

¹ 2016(1) ALT 550

Moreso, Wakf Board lost the suit and no interim order is granted in appeal filed by the Wakf Board. The decision cited by the learned Standing counsel has also no application to the facts of the present case.

In view of the above facts and circumstances, the impugned circular dated 12.03.2008 issued by the 4th respondent is set aside and the writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

31.10.2016
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A.RAJASHEKER REDDY, J

