

* HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+ CIVIL REVISION PETITION No.5844 of 2011

%07-09-2016

Between:

Mohd. Ameerullah (died) per L.Fs and eight others ...petitioners

Vs.

The A.P.State Wakf Board, Hyderabad.

... Respondent

!Counsel for the petitioners : Sri Mohd.Adnan

Counsel for the Respondent: Sri Farhan Azam Khan

<Gist :

>Head Note:

? Cases referred:

¹ AIR 19650 SC 89

¹ AIR 1954 Calcutta 484

¹ 2015(3) ALD 91

¹ 2003(3) ALD 269

2001(6) ALD 811

¹ 2003(4) ALD 878

¹ 2007(4) SCC 632

² AIR 2010 SC 2897

³ 2010(14) SCC 588=(8) SCJ 827

⁴ 2012(3) ALD 411

⁵ 2010(6) ALD 2007 (DB)

⁶ 2009(2) ALT 431=(2) ALD 356 DB

⁷ 2012(2) ALT 294

⁸ 2009(12) SCC 613

⁹ 2009(12) SCC 544

10 2012(7) SCJ 487 IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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DATE OF JUDGMENT PRONOUNCED: 07.09.2016

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/ No
- 2 Whether the copies of judgment may be marked to Law Reports/ Journals Yes/ No
- 3 Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? Yes/ No

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5844 of 2011

ORDER:

This Civil Revision Petition is filed against the decree and judgment dated 07.10.2011 in O.S.No.3 of 2002 passed by the A.P.State Wakf Tribunal, Hyderabad. The petitioners herein are the unsuccessful plaintiffs in said suit.

2. The facts necessary to mention in answering the revision *lis* in nutshell are that the suit is maintained for the reliefs of declaration of the Gazette notification dated 04.01.1990 for Survey No.7991(g) at page No.396, published by the Wakf Board is illegal, arbitrary, null and void and not binding on plaintiffs, with consequential permanent prohibitory injunction restraining defendant-Wakf Board and its men and officials from interfering, to declare the proceedings dated 02.02.2001 of the Chief Executive Officer of the Wakf Board as illegal, arbitrary, null and void and not binding on plaintiffs in relying upon said notification dated 04.01.1990, consequential permanent prohibitory injunction restraining the defendant-Wakf Board, its men and subordinates from claiming through under them from enforcing said order dated 02.02.2001 and to grant prohibitory injunction from interfering with peaceful possession and enjoyment of the

land bearing Survey No.93/ 2 admeasuring Ac.11.32 guntas of Chanda Village, Adilabad Mandal and District and for costs and other reliefs. The claim was maintained in October, 2001 for plaint schedule referred supra and out of several reliefs but for permanent injunction relief not to interfere with the peaceful possession and enjoyment of the plaintiffs by defendant-Wakf Board, its men, subordinates, all other reliefs were not pressed. Thus, the suit claim is confined to the permanent prohibitory injunction relief of not to interfere with the plaintiffs possession and enjoyment of the property by the defendant and its men.

3. It is after contest by Wakf Board, vide impugned judgment dated 07.10.2011, the Wakf Tribunal dismissed the suit claim with costs holding that the property in question is Wakf property and under Section 54 of the Act, the Chief Executive Officer is entitled to initiate the proceedings after notice calling for objections and on enquiry and the records relied on show plaintiffs in possession are not entitled to the reliefs against the Wakf Board, leave about the rival claims among service holders covered by the lis in O.S.Nos.15 of 1967 and 59 of 1973, ultimately in not pressing or cause dismissed for default their respective claims undecided on merits vide Exs.A2 and A3. Ex.A2-decree and judgment in O.S.No.15 of 1967 shows suit filed by the Wakf Board against Mohd.Mastan was ended in dismissal for lack of diligence to prosecute and Ex.A3-decree and judgment in O.S.No.59 of 1973 shows suit filed by said Mohd.Mastan against

Pakhir Mohd. Khan for the reliefs declaring plaintiff as service holder of Durgah Chanda, Adilabad, which is the entity represented by the Wakf Board-defendant in question herein. It is ultimately held by the Wakf Tribunal that having withdrawn the reliefs referring to declaration impugning the notification and once it is the Wakf property with the claim as service holders, they are not entitled to the relief of perpetual injunction. Same is now impugned in the revision.

4. Heard both sides at length and perused the material on record.

5. Incidentally a question is raised as to the Wakf Act, 1995 (for short 'the Act') amended by Act of 1913 w.e.f. 01.11.2013 and the subsequent repealing legislations notification in which it is also covered. In fact, it is purely an academic question not germane to determine seriously for not within the scope of the lis, but for raised referring to one of the expressions placed reliance of the procedure contemplated as per the above amended Act to Section 54 of the Act that required to be followed for the Wakf Board to maintain any claim for eviction. What the Single Judge expression of this Court placed reliance supra is that pursuant to the amended Act 27 of 2013 to the Wakf Act, 1995, particularly in Section 54 by Sub-section (3), it is the duty of the Chief Executive Officer of the Wakf Board before making application to the Wakf Tribunal for securing any eviction of any encroacher from the alleged Wakf property in question, he

has to issue notice calling for objections, receive the objections submitted if any within the time stipulated in the notice and after conducting such enquiry as prescribed and in such a manner, once he is satisfied that the property in question is the Wakf property and that there is an encroachment by the other persons over the Wakf property, then only to make an application to the Wakf Tribunal to evict such persons. In fact the present suit is not maintained by the Wakf Board invoking Section 54 of the Act. In fact a repealing Act will not take away the enforceability of the amended provisions which came into force already as also can be seen from the wording of Section 8 of the General Clauses Act and as laid down by the Apex Court in *Jethanand Betab v. the State of Delhi*¹, referring to the earlier expressions particularly of the Calcutta High Court in *Khauda Bux v. Manager, Caledonian Press*² and *A.Naga Prasad Rao v. State of Andhra Pradesh*³. The other decision placed reliance in *Gajjala Venkateswarlu v. A.P.State Wakf Tribunal, Hyderabad*⁴, deals with the scope of Sections 54 and 89 of the Wakf Act, 1995 (proviso to the amendment in 2013). In this case the plaintiff issued notice under Section 89 and the Wakf Board acknowledged the same covered by Ex.A5 undisputedly before maintaining the suit and thereby this decision is no way of much relevance to the lis. Coming to the other decision placed reliance

¹ AIR 19650 SC 89

² AIR 1954 Calcutta 484

³ 2015(3) ALD 91

⁴ 2003(3) ALD 269

is Managing Committee, Nade Ali Masque, Bodhan, Nizamabad v. A.P.State Wakf Board⁵, what it speaks is the Wakf Tribunal even not specifically provided by the provisions of the Act, 1995 is entitled to pass any interlocutory or interim order. Even that is also not much in dispute for such a question is not the lis involved in the revision otherwise to discuss further on the scope. The other decision placed reliance is Syed Ameenuddin Hussain v. Joint collector, Medak District at Sanga Reddy⁶, which is in relation to granting of succession certificate to the service holders or occupants under the A.P.(T.A) Tenancy and Agricultural Lands Act, 1950, in relation to cultivation of the properties of Durgah. This decision is also of no help to the facts in question of the lis, but for to say service inam holders of Durgah are not entitled to claim ownership rights even they are the occupants with possession and enjoyment, for any occupancy certificate, entitled is by the Wakf Board only and not by the service holders. The other decision placed reliance is Chhedi Lal Misra (Dead) through LRs v. Civil Judge, Lucknow⁷. What is laid down therein is of creation and continuation of Wakf in saying from the well settled principles that once Wakf Board or Endowment is created, the Wakf stands divested his/ her title to the properties, which after the creation of the Wakf vests in the almighty as once a Wakf is created, it continues to retain and it cannot be extinguished by any act of the Mutwalli or anyone

⁵ 2001(6) ALD 811

⁶ 2003(4) ALD 878

⁷ 2007(4) SCC 632

claiming through, or those managing the properties and any of them even cause mutated in revenue records as if it is a secular property.

6. Now coming to the jurisdiction of the Tribunal raised from the decision placed reliance of Ramesh Gobindram (Deceased by LRs) v. Sugra Humayun MirzaWakf⁸, there jurisdiction of the Wakf Tribunal under Section 83 of Wakf Act 43 of 1995 vis-à-vis is that of the civil Court under Section 9 of the Code of Civil Procedure, in a suit of civil nature came for consideration. The Apex Court referring to several expressions in that expression in relation to eviction of a tenant observed that Wakf Tribunal has no jurisdiction under Section 83 of the Act but for Civil Court. In fact, particularly by amendment in the year, 2013 to the Wakf Act, 1995 particularly to Section 83 of the Act brought in and impact of decision is virtually taken away in specifically conferring jurisdiction on all aspects. In fact in the subsequent expression of the Apex Court in Board of Wakf, West Bengal v. Anis Fatma Begum⁹ it was held specifically while referring to the expression in Ramesh Gobindram (supra) that said expression is confined only to the claims in relation to eviction of tenant to approach a civil Court and in all other respects the Ramesh Gobindram (supra) has no application as the Wakf Tribunal got exclusive jurisdiction to decide any question, dispute or other matters referring to Wakf or Wakf Board. Relying upon Anis

⁸ AIR 2010 SC 2897

⁹ 2010(14) SCC 588=(8) SCJ 827

Fatma Begum (supra), in a decision of this Court in Srinivas Rao v. State of A.P.¹⁰ it was held that even the revenue authorities under the A.P(TA) Tenanct Act, 1950 to grant ownership rights or protected tenancy rights or under the A.P(TA) Abolition of Inams Act, 1955 to grant occupancy rights certificates and to decide nature of lands, have no jurisdiction, once the lands are notified as Wakf lands, but for the dispute to decide by the Wakf Tribunal under Sections 83 and 85 of the Wakf Act, 1995. It is thus clearly laid down that, Wakf Tribunal alone got jurisdiction to decide any dispute, any question, any matter in relation to such Wakf Board for Wakf property, leave about the subsequent amendment in 2013 to the Wakf Act, 1995 to Section 83 that expressly confers jurisdiction exclusively to the Wakf Tribunal to decide any dispute or question or the matters. It is no doubt true as pointed out from the newly incorporated Section 162(i) of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 as amended by Act 33 of 2007 w.e.f. 03.01.2008, same wording of any dispute, any question, any matter used therein and like therein of the Endowments Tribunal, the Wakf Tribunal got exclusive jurisdiction from the expression of Anis Fatma Begum (supra). So far as the Endowments Act, 1987 supra concerned, even in the case of E.O., SBMS Temple Beeramguda v. Sai Krupa Homes¹¹ it was held that the claim since by a private person for declaration of title showing the property is a

¹⁰ 2012(3) ALD 411

¹¹ 2010(6) ALD 2007 (DB)

private property and not of the temple civil suit for declaration of title is not barred by Section 151 of the Endowments Act; the expressions in *Sanjeeva Anjaneya Swamy Devastanam, Rajahmundry, rep. by Archaka-cum-Trustee v. Thakkula Dasaradha Ramaiah*¹² and in *Jampani Trilokeswari v. Dharmadoyatopu, rep. by its fit person*¹³ held that, no civil Court but endowments Tribunal (Deputy Commissioner) got exclusive jurisdiction referring also to Sections 151 and 162(1) of the Act and same is also clear from the G.O.Ms.No.837, Revenue (Endowment-1) Department, dated 13.08.2009 r/w G.O.Ms.No.180 dated 28.02.2011. In fact the Apex Court in *Omprakash Singh v. M.Lingamaiah*¹⁴ and by the Constitution Bench expression in *V.Lakshmi Narasamma v. A.Yadaiah*¹⁵ and in *State of Gujarat v. Gujarat Revenue Tribunal Bar Association*¹⁶ categorically held that the tribunals as per legal fiction be deemed as civil Courts and got jurisdiction to go into and decide any title disputes even and can decide all attributes of a civil litigation subject to disclosure of jurisdictional facts. Thus, the lis in question of the property in question belongs to the Wakf property under the possession of service holders is sustainable before to decide the Wakf Tribunal only and not in a civil Court, including to maintain against the Wakf Board by the plaintiffs, who are the revision petitioners herein.

¹² 2009(2) ALT 431=(2) ALD 356 DB

¹³ 2012(2) ALT 294

¹⁴ 2009(12) SCC 613

¹⁵ 2009(12) SCC 544

¹⁶ 2012(7) SCJ 487

7. From this, now coming to the relief confined to the permanent prohibitory injunction and its entitlement, once it is a Wakf property and it is shown from Ex.A3 document of the plaintiffs' predecessor i.e. father of the plaintiffs is a service holder of the Wakf in question and the record shows they are in possession continuously but for the right of the Wakf Board to proceed under Section 54 of the Act after following the due procedure contemplated by law to evict if any; in the mean time once Wakf Board is not entitled to evict them (from their settled possession by rendering service) by taking law into its hands, when once such is the averment in the plaint and also the evidence on record, the Tribunal while disposing of the suit should have been held that without prejudice to such right of the defendant-Wakf Board if any to proceed against the plaintiffs under Section 54 of the Act by following the due procedure and to comply by the Chief Executive Officer of the Wakf to approach the Wakf Tribunal through due process of law; meanwhile, they cannot be dispossessed. But for that against the impugned judgment of the Tribunal by sitting in revision, there is nothing more to interfere.

8. Accordingly and in the result, the Civil Revision Petition is allowed in part with the observation that the property in question is a Wakf property and the record shows that the plaintiffs since predecessors in question under Ex.A3 are service holders of the Wakf in question and they are in possession and

enjoyment as such subject to the right of the Wakf Board if any to proceed against them to evict under Sections 54 and 55 by maintaining a claim before the Wakf Tribunal by following the due procedure, if not already followed as the case may be, meantime, the Wakf Board is not entitled to evict them forcibly by taking law into its hands. No order as to costs.

9. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B.SIVA SANKARA RAO, J

Date:07-09-2016
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L.R. Copy to be marked –yes



