

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4020 and 1450 of 2012

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COMMON ORDER:

Both these revision petitions arise out of the common order dated 18.08.2011 passed in I.A. No.547 of 2010 and I.A. No.83 of 2011 in O.S. No.84 of 2010 by the learned Andhra Pradesh State Wakf Tribunal, Hyderabad. O.S. No.84 of 2010 filed for the relief of declaration of the property as wakf property and the sale deed executed by the 1st defendant in favour of 3rd defendant on 18.08.1993 and the sale deed in turn executed by 3rd defendant in favour of defendants 2, 4 and 5 are unsustainable. Pending suit, I.A. No.547 of 2000 is filed by the 4th respondent herein and the plaintiff in the main suit, for a temporary injunction restraining all the defendants and their men from making any constructions in the plaint schedule property pending disposal of the suit. The defendants 4 and 5—revision petitioners herein filed I.A. No.83 of 2011 to grant interim injunction restraining the plaintiff and his men from interfering with their on going construction work. By the impugned common order dated 18.08.2011, the trial Court allowed I.A. No.547 of 2010 and dismissed I.A. No.83 of 2011. It is impugning the same, the defendants 4 & 5 filed these two revision petitions.

2) The Tribunal held that it is a wakf by user as it is the Wakf property for the purpose of prayers as Mosque in use since long time and there is an observation that though it is not recorded in the book of Wakf much less in any Munthakab at column No.17 of Ex.P1—survey report, there is a mention of the same as Kithab-ul-Awakf.

3) A perusal of the said survey report of the Government with 20 columns running in four pages, particularly at column No.17, which

referred in the order of the lower Court, it is categorically mentioned as not incorporated in Kithab-ul-Awakf. It is, prima facie, what is observed by the lower Court as if entry is made not correct from its perusal, but for left open to refer from the original record, if at all, for further clarification by the trial Court in this regard.

4) No doubt, if the defendants are allowed to make further constructions pending disposal of the suit as a private property as claimed by the defendants, contra to as wakf property as claimed by the plaintiffs further complications may arise. Attention of the Court drawn to the recitals of the sale deed dated 18.08.1993, shows the property referred as belongs to the President of Masjid-station, Mahabubnagar and the vendors in possession and enjoyment and it is in the interest and for the purpose of Mosque (extension of mulgies), the same is selling by the said Mosque committee.

5) Here, the controversy to be resolved by conducting full dressed trial is whether it is a wakf property and even if so, whether the alienation for the benefit of Wakf can be validated, leave about if not a wakf property and if it is a private property, the alienation can automatically validated for plaintiff cannot question and leave further about the constructions so far made and the right of the parties to that if at all also to adjudicate; more particularly, from what is drawn attention of the Court by the defendants, from the letter in support of sale deed and authorization to make constructions also.

6) In fact, there are several contentions raised including on the jurisdiction aspect and non-joinder of the Wakf Board as a necessary party to the suit on maintainability there from etc., which are also to be resolved by framing, if necessary, or by recasting specific issues as part of the trial process for final adjudication. When such controversies are raised, granting the injunction by the lower Court is unsustainable but for to direct both parties to maintain existing status-quo, more particularly, from the factum after granting the temporary

injunction, the status-quo from that date till date undisputedly, in existence, so that to give a direction to the lower Court as the suit is of the year 2010 to give preferential disposal.

7) Accordingly, both the revision petitions are disposed of, directing the wakf Tribunal to dispose of the suit by giving preference in disposal and meantime directing both parties to maintain the existing status-quo. No order as to costs.

8) As a sequel, miscellaneous petitions if any pending in these revision petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.03.08.2016

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