

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.42173 OF 2015

ORDER:

The petitioner, who claims to be the Muthawali for the Wakf Institution, states he that has been granted requisite permission by the A.P.Wakf Board to take up construction on Item No.2 of the Wakf property as notified. The permission granted by the Wakf Board is marked as Ex.P-3, dated 10-10-2012. The Wakf Board granted permission subject to the following conditions:-

- “1. The Muthawalli shall take up the construction as per Municipal Bye-laws after obtaining necessary clearances from his own funds and shall not claim from the Wakf Board in future.
2. The Building shall bear the inscription ‘Wakf’ on the top at a prominent place.
3. The construction work should be completed within a period of (01) year.
4. The Muthwalli shall forthwith report the completion of construction work to incorporate the new structure in the Wakf records with municipal number.”

The petitioner states that accordingly he took up construction and raised pillars. While so, respondents 3 to 5 have obstructed and have not permitted the petitioner to take up construction. It is stated that the matter was examined by the 3rd respondent on the instructions of the 2nd respondent, who reported that the boundaries of the Wakf land, as per the Gazette Notification, are not tallying and therefore, he opined that the Chief Executive Officer of A.P.Wakf Board may be requested to depute a Surveyor from the Board's office to identify the Wakf property on ground.

It is not clear from the record as to whether what action the Wakf Board has taken, as the said authority is not a party to this writ petition.

However, the 4th respondent sent a further report, dated 10-10-2013 (Ex.P-6) to the 2nd respondent along with a copy of the letter of the Chief Executive Officer, sketch prepared by the Mandal Surveyor and TSLR extract. While no orders are passed by the 2nd respondent, the petitioner has approached this Court on the allegation that respondents 3 to 5 are not justified in merely stopping the work that too without issuing any notice to him.

Though I have heard the learned Standing Counsel for GHMC and the learned Government Pleader for Revenue, counter affidavit is filed on behalf of GHMC, wherein at paragraph'7', it is stated as follows:-

“It is further submitted that the respondent corporation has received letter from MRO requesting this office to stop the construction work in the above premises as the same is going on in the Government land. It is further submitted that whether the property is government or Wakf, irrespective of the same, the respondent officials are duty bound to stop the construction of the petitioner as the same is illegal and unauthorized without any sanction and permit from the respondent corporation.”

It is clear from the counter affidavit that at present no notice or order of any nature was served on the petitioner but his construction work is physically stopped by respondents 3 to 5.

The GHMC Act contains sufficient provisions if any objectionable construction is taken up by any person within the GHMC limits. The counter affidavit however does not speak of there being any objection to the construction taken up by the petitioner and in the light of the fact that the construction was permitted by the A.P.Wakf Board, if any action is intended to be taken by the GHMC, they must issue appropriate notice to the petitioner. Similarly, if respondents 3 and 4 have any objection against the construction being taken up by the petitioner, it is for them to issue appropriate notice to the petitioner

and only after issuance of such notice, the petitioner would be in a position to clarify his possession and submit his explanation to satisfy the doubts and queries of the respondents. In this case, however, without issuing any notice or passing any order, the construction permitted by the A.P.Wakf Board and taken up by the petitioner is physically stopped and the same cannot be approved.

Accordingly, the respondents are directed not to physically interfere with petitioner's construction, without following due process of law. If respondents 3 to 5 have any objection against the petitioner, they are at liberty to issue appropriate notice and give an opportunity of filing an explanation and thereafter, take appropriate action in accordance with law.

The writ petition is, accordingly, disposed of. No costs.

Miscellaneous Petitions, if any, pending shall stand closed.

VILAS V.AFZULPURKAR, J

08.02.2016
Prv

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