

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI
CIVIL REVISION PETITION Nos.140 and 1006 of 2012

COMMON ORDER:

The genesis of these two revisions viz., (i) C.R.P.No.1006 of 2012 filed by a third party, Shaik Khaja, and (ii) C.R.P.No.140 of 2012 filed by the 1st respondent in the 1st mentioned C.R.P./A.P.State Wakf Board, is the order dated 18th of August 2011 passed by the learned Presiding Officer of the A.P.State Wakf Tribunal, Hyderabad, in I.A.No.656 of 2010 in O.S.No.134 of 2006 filed by the plaintiff under Order XXXIX Rule 2 (a) read with Section 151 of the Code of Civil Procedure, 1908, requesting to detain the Chief Executive Officer of the A.P.State Wakf Board in civil prison for violating the *status quo* orders dated 17.11.2006 passed by the Tribunal in I.A.No.773 of 2006 in the above suit.

I have heard the submissions of Ms.K.Udayasree, learned counsel appearing for the third party revision petitioner, Sri S.Arifullah, learned Standing Counsel for the A.P. State Wakf Board, and Sri B.Parameswara Rao, appearing for S.Brahmanandam, who is the petitioner/plaintiff in the aforementioned I.A.No.656 of 2010. I have perused the material record.

The parties herein shall herein after be referred to as revision petitioner/third party, A.P. State Wakf Board and the plaintiff for convenience and clarity.

The facts which are required to be stated as a preface to this order, in brief, are as under: “The plaintiff brought the suit against the defendants viz., (i) A.P. State Wakf Board, and (ii) the State of AP seeking the

following main reliefs: “To declare that A P Gazette Notification dated 28.06.1962 insofar as it relates to the suit schedule property as Asoorkhana (Wakf property) as null and void and consequently declare that the plaintiff is the absolute owner of the plaint schedule property and further direct the defendants to deliver possession of the suit property to the plaintiff within a stipulated time and also give liberty to recover possession through process of law on failure of the defendants to do so and also to direct the defendants to pay a sum of Rs.7,00,000/- towards damages and compensation for the loss sustained by the plaintiff due to the demolition of the building and compound wall in the suit schedule property by the defendants.” The suit schedule property is described in the schedule of the suit in four items; however, the total extent covered by the suit schedule is Ac.3-74 cents in Survey No.721 of Turakapalem, Hamlet of Nallapadu village of Guntur Rural Mandal. In the said suit, the plaintiff also filed an interlocutory application in I.A.No.773 of 2006 under Order XXXIX Rules 1 and 2 of the Code for granting a temporary injunction. On 17.11.2006, the Tribunal passed an order directing the parties to maintain *status quo*. Subsequently, on 01.07.2007, the said order was extended until further orders.

While so, the plaintiff filed the aforementioned petition, I.A.No.656 of 2010, against the Wakf Board/1st defendant in the suit requesting to detain the Chief Executive Officer of the Wakf Board in civil prison for violating the said orders of *status quo*. The said application was resisted by the 1st defendant/Wakf Board.

The Tribunal having found that the Wakf Board has violated the *status quo* orders, *inter alia*, held in the impugned orders as follows:

“In the considered view of this Tribunal, the alternative action to set aside the wrong done in violation of the status quo order would be enough just and by giving specific directions to the respondent No.1 A.P.Wakf Board, failing which the C.E.O. representing the A.P.Wakf Board could be asked to face the consequence of being kept in civil prison. In that view of the matter, it could be ordered by fastening responsibility on the respondent No.1 A.P.Wakf Board for the acts done in deliberate violation of the status quo order.

(1) that it shall cancel the lease of the schedule land granted to Shaik Khaja, a third party;

(2) it shall disband the fencing raised by Shaik Khaja around the schedule land. It shall remove the partly raised construction in the schedule property as is evidenced, and apparent from the photographs taken in the month of July 2011 filed in this Tribunal.

The respondent No.1 Wakf Board shall adhere to these directions within 2 weeks from today, and file a compliance memo, failing which further penal orders would be passed.”

(Reproduced verbatim)

The result portion of the said order reads as under:

“In the result, the petition is allowed with costs, directing the Respondent A.P.State Wakf Board, that it shall cancel the lease of the schedule land granted to Shaik Khaja. It shall disband the fencing raised by Shaik Khaja around the schedule land. It shall remove the partly raised construction in the schedule property as is evidenced, and apparent from the photographs taken in the month of July 2011 which was filed in this Tribunal. The respondent No.1 Wakf Board shall adhere to these directions within 2 weeks from today, and file a complete memo, failing which further penal orders would be passed”

(Reproduced verbatim)

Aggrieved thereof, the Wakf Board and the third party/Shaik Khaja filed these two revisions.

At the hearing, it is submitted that the suit is at the stage of pronouncing judgment by the Wakf Tribunal and that the pronouncement of judgment in the suit is held up as these two revisions are pending before this Court. Stating so, the learned counsel for both the sides submitted that the revisions may be disposed of appropriately to facilitate the Tribunal to pronounce the judgment in the suit.

As rightly urged by the learned counsel appearing for the third party/revision petitioner and the learned Standing Counsel appearing for the AP State Wakf Board, the order directing both parties to maintain *status quo* is obviously not clear and, on the face of it, it appears to be an ambiguous order. Admittedly the plaintiff is **not** in possession of the suit schedule property and injunction was sought to restrain the A.P. State Wakf Board and any other persons claiming through or under it and the State from making any constructions or alterations in the plaint schedule property pending disposal of the suit. As already noted, the plaint schedule property is in four items. Even in the relief claimed in the suit, damages/compensation was sought for demolition of structures. No oral and documentary evidence was adduced at the time of hearing of the subject interlocutory application and no proof is produced *prima facie* to show that the third party/revision petitioner, Shaik Khaja, was aware of the *status quo* orders. He was not put on notice before the subject application complaining violation of the *status quo* orders was disposed of by passing the impugned

orders. Even though he is not a party to the subject application, when orders affecting his interest are required to be passed and passing of such orders was in contemplation of the Tribunal, the Tribunal ought to have given an opportunity of hearing to the said third party before passing the orders directing the Wakf Board to cancel the lease of the schedule land granted to him, which are detrimental to his interests. Further, the Wakf Tribunal was directed to disband the fencing raised by the third party, Shaik Khaja, in the schedule land and also to remove the partly raised construction and file a memo reporting compliance of the said directions. Admittedly, the subject application was filed complaining violation of a *status quo* order. Even though a Commissioner was appointed to file a report after noting down the physical features of the property, his report, if any, filed before the Tribunal after making a local investigation, is not exhibited at the time of hearing of the subject interlocutory application. There are no details in the pleadings extracted in the orders of the Tribunal as to on what dates and by whom the alleged acts of violations are committed. Moreover, when a complaint in regard to violation of *status quo* order is made, the Tribunal ought to have recorded a finding as to whether the disobedience or violation is willful or deliberate; but, the Tribunal is not supposed to grant substantive reliefs as was done in the present case. Further, the Wakf Tribunal is denying the right, title and interest of the plaintiff over the plaint schedule property; and, admittedly the plaintiff is not in possession of the suit schedule property. The Chief Executive Officer who was the official of the Wakf Board and who had allegedly violated the orders of *status quo* was not made a *eo nomine* party to the subject application and no opportunity of hearing was given to any such officer of the Wakf Board so as to enable him to submit

his version in the matter and answer the charge of violation alleged in the application. Having regard to the facts and circumstances of the case, this Court finds that the contentions of the revision petitioners in both the revisions merit consideration.

On the above analysis, this Court finds that the order impugned in these revisions is unsustainable. Further, the suit is now at the stage of final adjudication and is coming for pronouncement of judgment, as per the submissions of the learned counsel for both the parties. Viewed thus, this Court finds that the revision petitions deserve to be allowed and that the order impugned is liable to be set aside.

In the result, the revision petitions are allowed and the order dated 18.08.2011, passed by the A.P. State Wakf Tribunal, Hyderabad, in I.A.No.656 of 2010 in O.S.No.134 of 2006 is hereby set aside. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M.SEETHARAMA MURTI, J

24th November 2016

ajr

Note:- Issue CC by 25/11/2016.

(b/o)

vjl