

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE
STATE OF ANDHRA PRADESH

**W.P.Nos.20868, 20869, 20870, 24462, 24463, 24461 of 2006,
8410 of 2007 and 23661 of 2010**

24-03-2017

Gosula Ramulu, S/o.Boguraiah,
Aged : 52 years, Occ : Agriculture,
(Died) Per LRs and others

...Petitioners

VERSUS

A.P. Wakf Board, rep. by its Secretary,
Nampally, Hyderabad and others

...Respondents

Date of Judgment pronounced on : 24-03-2017

HON'BLE SRI JUSTICE M.S.RAMACHANDRA 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 Reporters/Journals: : Yes
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

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THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

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< GIST:

> HEAD NOTE:

! Counsel for the Petitioners : 1. Sri Vedula Venkataramana,
learned Senior Counsel, appearing
for Sri P. Sri Harsha Reddy, for
petitioners;
2. Sri S. Niranjan Reddy, learned
Senior Counsel appearing for
Sri P. Sri Harsha Reddy, for
petitioners;
3. Sri B. Vijayasen Reddy; &
4. Sri Venkat Reddy Thipparthi

^ Counsel for the Respondents : 1. Sri Namavarapu Rajeshwar Rao;
2. The Learned Advocate General
(Telangana);
3. Sri Mir Masood Khan;
4. Sri Vemuru Venkateshwar Rao;
5. Sri Gokula Rama Rao;
6. Sri Mirza Nisar Ahmed Baig; &
7. Sri Pasham Krishna Reddy, learned
Standing Counsel for GHMC.

? Cases referred:

1. Order dt.11.08.2016 in CRP.No.1679 of 2008
2. (2010) 14 SCC 588
3. (2010) 8 SCC 726

4. 1999 (3) ALT 602
5. 2000 (1) ALT 210
6. 2000 (5) ALD 743
7. 2001(4) ALD 430
8. (2014) 16 SCC 51
9. (2014) 16 SCC 38
10. Order dt.04-09-2012 in W.A.No.466 of 2012
11. 2011 (5) ALD 407
12. Order dt.25-04-2012 in W.P.No.11788 of 2012
13. Order dt.23-02-2012 in W.P.No.33738 of 2011
14. 2002 (2) ALT 534 (D.B.)
15. Order dt.29-03-2010 in W.P.No.6968 of 2010
16. AIR 2005 Madras 241
17. (1998) 8 SCC 1, at page 9
18. (2004) 12 S.C.C. 588
19. (2014) 6 A.L.D. 411
20. 2016 (6) ALD 752
21. AIR 2002 SC 402
22. W.P.No.33133 of 2014 dt.22

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

**W.P.Nos.20868, 20869, 20870, 24462, 24463, 24461 of 2006,
8410 of 2007 and 23661 of 2010**

COMMON ORDER :

The subject matter of these Writ Petitions is an extent of Acs.50.08 guntas in Survey Nos.113 to 120 of Karmanghat Village, Saroornagar Mandal, Ranga Reddy District.

2. The petitioners in the Writ Petitions contend that one Gosula Muthaiah was the cultivator in respect of Acs.25.04 gts in the above Survey numbers, and one Sama Narasimham were cultivating the balance extent of Acs.25.04 gts; that the Inamdar was one Late Mohd.Miskeen; that Mohd. Bikkan was one of his sons; was one Mohd. Bikkan; and that the rights of Gosula Muthaiah as protected tenant of the extent of Acs.25.

The Notification under the Wakf Act and challenge thereto :

4. However, on the basis of an enquiry under Section 4(4) of the Wakf Act, 1954 by the Commissioner of Wakfs resulting in an enquiry report dt.07.08.1965, the State Government published File No.S-38/R.R/2006 dt.04.07.2006 in the A.P. Gazette vide notification No.30 dt.27.07.2006 (for short, “Gazette No.30 dt.27.7.2006”) purporting to declare the above property as Wakf property. The said notification does not mention whether it is issued under the Wakf Act, 1954 or under the Wakf Act, 1995 which repealed the Wakf Act, 1954.

5. This notification is challenged by persons claiming through the Protected tenants Gosula Muthiah and Sama Narasimham in WP.Nos.20868 of 2006, 20869 of 2006 and 20870 of 2006.

6. These Writ Petitions are opposed by the persons claiming through Mohd. Miskeen, the A.P. Wakf Board, and the State of Telangana, the successor to the erstwhile composite

Revenue Divisional Officer, Ranga Reddy District. In proceedings in File No.J/4701/1987, J/4377/1995, J/4452/1995, J/4453/1995 and J/4454/1995, dt.08.05.1998 he held that they were not entitled to issuance of Occupancy Certificates under the said Act. He however observed that the classification of lands was changed from year to year without any valid orders; none of the parties have challenged the entries; legal heirs of protected tenants were in possession of the suit lands both on the date of vesting i.e., 20.07.1955 as well as the crucial date under the Act i.e., 01.11.1973 and also on the date of the enquiry by him; in view of the contradictions in the revenue records relating to the nature of the lands, the persons claiming through the protected tenants are not entitled to issue of Occupancy Certificates under the Act.

8. This was questioned by the legal heirs of the protected tenants Gosula Muthiah and Sama Narasimham before the Joint Collector – II, Ranga Reddy District under Section 24 of the said Act. The said appeals were numbered as Case No.F1/4938/1998, F1/5148/1998.

9. Before him the above Gazette Notification No.30 dt.27.07.2006 was produced by the

said Gazette Notification was challenged in WP.No.20869 of 2006, since it was not suspended by this Court. He therefore directed issuance of Occupancy Rights certificate in the name of religious institution.

10. These orders of the Joint Collector – II, Ranga Reddy District under the A.P. (Telangana Area) Abolition of Inams Act, 1955 are questioned in WP.Nos.24461 of 2006, 24462 of 2006, 24463 of 2006 and in 8410 of 2007 by the persons claiming through the protected tenants.

11. The following Advocates were heard by this Court on 21.02.2017, 22.02.2017, 07.03.2017 and 08.03.2017 :

Sri Namavarapu Rajeshwar Rao for respondent nos.4 to 12 and respondent nos.27 to 34 in WP.No.24461 of 2006; for respondent nos.23 to 30 and respondent nos.35 to 38 in WP.No.24462 of 2006; for respondent nos.23 to 30 and respondent nos.35 to 38 in WP.No.24463 of 2006; for respondent nos.5 to 15 in WP.No.208

respondent nos.5 to 15 in WP.No.20868 of 2006; Sri Vemuri Venkateshwar Rao for respondent no.16 in WP.No.20868 of 2006;

Learned Senior Counsel, Sri S. Niranjan Reddy, appearing for Sri P. Sri Harsha Reddy, counsel for petitioners in WP.No.20869 of 2006; learned Advocate General (Telangana) for respondent nos.1 to 4 in WP.No.20869 of 2006 and Sri M.A. Mujeeb, learned Standing Counsel for 1st respondent in WP.No.20869 of 2006; Sri Masood Khan for respondent nos.5 to 15; Sri Vemuru Venkateshwar Rao for respondent no.16; Sri Gokula Rama Rao for respondent nos.17 to 28; and Sri Namavarapu Rajeshwar Rao for respondent nos.29 to 32;

In WP.No.20870 of 2006 – Sri B. Vijayasen Reddy, counsel for petitioners; learned Advocate General (Telangana) for respondent nos.1 to 3 and Sri M.A. Mujeeb, learned Standing Counsel for 3rd respondent; and Sri Namavarapu Rajeshwar Rao for respondent nos.4 to 14;

In WP.No.24461 of 2

In WP.No.24462 of 2006 – learned Senior Counsel Sri S. Niranjan Reddy, appearing for Sri P. Sri Harsha Reddy, counsel for petitioners; learned Advocate General (Telangana) for respondent nos.1 to 4 and Sri M.A. Mujeeb, learned Standing Counsel for 4th respondent; Sri Mir Masood Khan for respondent nos.5 to 15; Sri Namavarapur Rajeshwar Rao for respondent nos.16 to 21; 22nd respondent died as per L.Rs. 31-34; Sri Gokula Rama Rao, learned counsel for respondent Nos.23 to 38;

In W.P.No.24463 of 2006 – Sri B.Vijaya Sen Reddy, learned counsel for petitioner; learned Advocate General (Telangana) for respondent nos.1 to 4 and Sri M.A. Mujeeb, learned Standing Counsel for 4th respondent; Sri Mir Masood Khan for respondent nos.5 to 15; Sri Namavarapu Rajeshwar Rao for respondent nos.16 to 21; 22nd respondent died as per L.Rs. 31-34; Sri Gokula Rama Rao, learned counsel for respondent Nos.23 to 38;

In W.P.No.8410 of 2007 – Sri T.Venkata Reddy, learned counsel for petitioner; learned Advocate General (Telangana) for respondent nos.1 to 3 and Sri M.A. Mujeeb,

Standing Counsel for 2nd respondent; and Sri S. Niranjan Reddy, learned Senior Counsel appearing for Sri P. Sri Harsha Reddy, counsel for respondent Nos.5 to 9.

Some more facts :

12. It is not in dispute that an extent of Acs.8.13 guntas in Survey No.115 of Karmanghat Village was requisitioned under Section 3 of the Requisitioning and Acquisition of Immoveable Property Act, 1952 for utilization by the Defence Metallurgical Research Labs, Hyderabad Vide Gazette No.202 dt.03-03-1987.

13. Since there were conflicting claims for compensation being made for the said land, the State Government issued G.O.Ms.No.1117 Revenue Department dt.13.08.1982 appointing Sri V. Neeladri Rao (who was then Presiding Officer, Labour Court, Hyderabad and who later became a Judge of this Court) as an Arbitrator to adjudicate the claims. The said case was numbered as Arbitration Case No.2/1982.

14. There were three sets of claims before him :

(b) Mohd. Miskeen claiming to be *Muthawali* of Dargah Hazrath Shah Inayat stating that the land was *Mushrut-ul-Khidmat* (Service Inam) and therefore constituted Wakf land. The Wakf Board also appeared and made a claim before the Arbitrator that the land is Wakf land and it is entitled to compensation;

(c) Mohd.Miskeen, Inamdar and later his legal representatives also made a claim for compensation;

15. On 25.03.1985, the Arbitrator Sri V. Neeladri Rao rendered the Award in Arbitration Case No.2/1982. He held that the lands of extent Ac.50.08 gts in Survey No.113 to 120 are not Wakf properties attached to the Dargah Hazrath Shah Inayat, that the report of the Commissioner of Wakfs relied upon by the A.P. Wakf Board is not conclusive and final in the absence of Notification issued under the Wakf Act, 1954 and the lands are not service inam lands. He directed payment of compensation for the requisitioned land for the first five faslis at Rs.950/- per acre per annum, with solatium at 15% and interest on the un-deposited recurring compensation at 6% p.a. from the date of the Award and mentioned the ratio in which various other claimants before him were entitled to compensation.

tenants filed cross-objections. The said Appeal was allowed on 06.07.1999 holding that the property in Survey Nos.113 to 120 of Karmanghat Village is Wakf property attached to the Dargah Hazrath Shah Inayat. The cross-objections were dismissed.

18. This judgment and decree were questioned in L.P.A.Nos.76 and 78 of 2000 by the legal representatives of the protected tenants Gosula Ramulu and Sama Yadi Reddy and others. These Letters Patent Appeals were heard with WP.Nos.5653, 6090, 7557, 13782 of 2000 and WP.no.3635 and 11695 of 2003 where entries in the Record of Rights as well as Revenue Records in respect of the land in question were assailed.

19. By judgment and decree dt.24.10.2005, the L.P.A.Nos.76 and 78 of 2000 were allowed and the Writ Petitions were dismissed.

20. Mohd. Miskeen's legal representatives (respondent nos.2 to 11 in L.P.A.No.76 of 2000 / respondent nos.1 to 11 in L.P.A.No.78 of 2000) again raised a contention that

Miskeen, *Muthawali* were not recognized as his successors by any competent authority and muchless by the Wakf Board, and they have no *locus* to claim any compensation; that the land is not service inam land; in the absence of a notification under the Wakf Act, 1954 notifying the subject land as Wakf land, it cannot also be treated as Wakf property since the report of the Commissioner of Wakfs is not final and conclusive and it is only a preliminary report.

23. The Bench also noted that in WP.No.4684 of 1987, the notification under the Requisition and Acquisition of Immoveable Property Act, 1952 was set aside on 10.07.1987 directing issuance of notification under the Land Acquisition Act, 1894 for the Acs.8.13 guntas in Survey No.115; that a notification under the Land Acquisition Act, 1894 was issued and an Award was also passed under the said Act on 19.05.1994, but a reference under Section 30 of the said Act was pending in O.P.No.69 of 1995 before the I Additional Senior Civil Judge, Ranga Reddy District.

24. It however held that its order shall cause no prejudice to any of the claims of any of the claimants in O.P.No.69 of 1995 and that it should be disposed of on its merits.

26. Thus, the findings of the Arbitrator in Arbitration Case No.2 of 1982 dt.25.03.1985 that the property of Acs.50.08 gts in Survey Nos.113 to 120 of Karmanghat Village, Saroornagar Mandal, Ranga Reddy District is not service inam land, that it is not Wakf land attached to the Dargah Hazrath Shah Inayat became final. Be it noted that the A.P. Wakf Board was a party to the decision in L.P.A.No.76 and 78 of 2000 and its contentions that the said land is Wakf land attached to the said Dargah were rejected and it had not questioned the same in the Supreme Court.

Contentions of the counsel for Writ Petitioners:

27. The counsel for the petitioners contended that the impugned Gazette notification No.30 dt.27.07.2006 notifying the subject land of Acs.50.08 guntas in Survey Nos.113 to 120 of Karmanghat Village is Wakf property vide File No.S-38/R.R./2006 on the basis of report dt.07.08.1965 of the Commissioner of Wakfs in File No.547/CW-III/63 is illegal, arbitrary and unconstitutional; for the said Gazette to be valid there must be a survey report prepared after the coming into

cannot confer any right on the Wakf Board. They therefore contended that the notification No.30 dt.27.07.2006 notifying the subject land as Wakf property be struck down and the order dt.07.11.2006 of the Joint Collector – II, Ranga Reddy District denying Occupancy Right certificates to the petitioners on the ground that the property is Wakf property, be set aside and the matter be remitted back for considering the rival claims of the protected tenants’ and Inamdar’s legal representatives.

The contentions of the A.P. State Wakf Board and the legal heirs of Mohd. Miskeen, Muthawali.

28. The Special Government Pleader, attached to the Office of the Advocate General, appearing for the A.P. Wakf Board, contended that though the impugned notification did not indicate under which Act it was issued, it was obviously issued under the Wakf Act, 1995 on the basis of enquiry report dt.07.08.1965 of the Commissioner of Wakfs conducted under Section 4(4) of the Wakf Act, 1954 in F.No.547/CW-III/63; that the said enquiry report, being a *thing done / action taken* under the Wakf Act, 1954 will continue to be valid since it is saved by Sub Section (2) of Section 112 of the Wakf Act, 1995.

30. He also contended that the notification issued on 21.01.1982 under the Requisitioning and Acquisition of Immoveable Property Act, 1952 was set aside in W.P.No.4684 of 1987, that the said order was also confirmed on 10.11.1988 in W.A.No.1768 of 1987, and therefore the Award dt.25.03.1985 of the Arbitrator in Arbitration Case No.2 / 1982, which was subject matter of the L.P.A.Nos.76 and 78 of 2000 were set at naught; and any finding therein cannot operate as *res judicata*.

31. He also contended that in L.P.A.Nos.76 and 78 of 2000, the appellants themselves had not pressed the appeals against the Wakf Board and on this ground also the judgment therein does not bind the Wakf Board.

32. He contended that the Wakf Board is entitled to take benefit of the judgment in A.S.No.1603 of 1985 dt.06.07.1999 even though the said judgment was set aside in the L.P.A.Nos.76 and 78 of 2000.

33. According

Court is without jurisdiction since the lands are service inam lands and patta can only be given in the name of *Muthawali* for the Wakf Institution under the A.P. (Telangana Area) Abolition of Inams Act, 1955 and the Civil Court has no jurisdiction to decide this.

35. He contended that though under the Wakf Act, 1954, jurisdiction was conferred on the Civil Court to decide whether the property is Wakf property or not, under the Wakf Act, 1995, only the Wakf Tribunal constituted under Section 83 of the said Act can decide it and its decision is final and binding. In view of this, he contended that jurisdiction under Article 226 of the Constitution of India to entertain a Writ Petition regarding the question whether the property is Wakf property or not, is ousted.

36. According to him, since Section 112 of the Wakf Act, 1995 in Sub Section (2) uses the words “anything done or any action taken” and since the word “or” is disjunctive, survey done during the pendency of the Wakf Act, 1954 would be valid even though no Gazette publication is made during the period the said Act was in force. He contended that if instead of the word “or”, the word “and” had been used between the words “anything done” and “any action taken”, only in that case, the survey would not be valid.

Petition would lie. He contended that a Gazette is only a public notice and it can only be challenged in the Wakf Tribunal and cannot be challenged under Article 226 of the Constitution of India.

38. Relying on a Division Bench order of this Court in **K. Chandra Sekhara Rao and others v. District Collector, Hyderabad and others**¹, he contended that the order dt.07.11.2006 passed by the Joint Collector – II, Ranga Reddy District under Section 24 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 can be questioned only in a Revision filed under Section 28 of the Act and since this is an effective remedy, the Writ Petition Nos.24461, 24462 and 24463 of 2006 should be dismissed.

39. He further contended that since the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 does not apply to service inam lands in view of Section 102 (c) and (d) thereof, there cannot be any protected tenancy certificate given to Gosula Muthaiah or Sama Narasimham, that such certificates are null and void; and so the Writ Petitioners in WP.Nos.20868, 20869 and 20870 of 2006 cannot be granted any relief.

41. According to him, to establish a plea of *res judicata*, pleadings in the earlier case have to be filed and since that has not been done by the Writ Petitioners, by filing the pleadings in the claim petition before the Arbitrator in the Arbitration Case No.2 of 1982, the Writ Petitioners cannot say that the finding in L.P.A.Nos.76 and 78 of 2000 is *res judicata*. He stated that arbitrator cannot decide whether property is Wakf property or not and any finding given by him, even if it is confirmed in LPA.nos.76 and 78 of 2000 is without jurisdiction.

42. Both the Special Government Pleader and Sri Masood Khan contended that all the Writ Petitions deserve to be dismissed.

43. Several judgments were cited by the Special Government Pleader as well as Sri Masood Khan in support of the above submissions and to the extent they are relevant, they will be discussed.

Reply submissions of Writ Petitioners :

44. The counsel for

publish it; and that such a Gazette would be valid only if there is a survey report submitted after the Wakf Act, 1995 came into operation. They contended that since such survey report prepared after the Wakf Act, 1995 does not exist, the very issuance of the A.P. Gazette No.30 dt.27.07.2006 notifying the subject land as Wakf property, is without jurisdiction; and such actions without jurisdiction can be question under Article 226 of the Constitution of India. They contended that judicial review cannot be excluded merely on the ground that there is a domestic tribunal under the Wakf Act, 1995 because judicial review forms the Basic Structure / Feature of the Constitution.

45. According to them, the Wakf Act, 1995 would apply only if the character of the property is Wakf i.e., after publication under Section 5 (2) of the Wakf Act, 1995 and so the Tribunal constituted under the said Act cannot decide the validity of the notification.

46. They contended that the Wakf Commissioner's report dt.07.08.1965 after enquiry under Section 4 (4) of the Wakf Act, 1954 cannot be termed as "anything done" or "any action taken" since prior to the repeal of the said Act, there was no Gazette notification issued /published under the said Act; such inchoate actions do not survive the repeal of the Wakf Act, 1954 by the Wakf Act, 1995 and

47. They contended that the Division Bench which decided LPA.nos.76 and 78 of 2000 was aware that the notification issued under the Requisitioning and Acquisition of Immovable Property Act, 1952 was set aside by the High Court in WP.No.4864 of 1987, but still the Division Bench went into the question whether the property was Wakf property or not, notwithstanding that the appellants therein did not press the appeals against the Wakf Board; therefore the findings therein operate as *res judicata* and bind the A.P. State Wakf Board and the legal heirs of Mohd. Miskeen.

48. They contended that the decision in the LPA.Nos.76 and 78 of 2000 by this Court cannot be overridden by merely issuing impugned Gazette notification under the Wakf Act, 1995 on the basis of the Wakf Commissioner's enquiry report dt.07.08.1965 and it would amount to overriding of a judicial verdict by an Executive act, which violates the doctrine of separation of powers, and is impermissible in law. They relied upon judgment dt.22.09.2016 in WP.No.33133 of 2014 rendered by this Court.

49. Counsel for the petitioners also cited several decisions which will be discussed as per their relevancy.

(a) *Whether the petitioners have locus to file the present Writ Petitions ?*

(b) *Whether the Writ Petition Nos.20868, 20869 and 20870 of 2006 challenging the Gazette notification No.30 dt.27.07.2006 are maintainable ?*

(c) *Whether the Wakf Commissioner's enquiry report dt.07.08.1965 prepared under Section 4(4) of the Wakf Act, 1954 in F.No.547 / CW-III / 63 can be the basis for the Gazette Notification No.30 dt.27.07.2006 vide F.No.S-38/R.R./2006 notifying Acs.50.08 guntas in Survey No.113 to 120 of Karmanghat Village as Wakf properties and whether the said Gazette notification is valid?*

(d) *Whether the common judgment in LPA.Nos.76 and 78 of 2000 of this Court operates as res judicata and binds the A.P. Wakf Board and the legal heirs of Mohd. Miskeen / Mohd. Bikkan ?*

