

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.9991 of 2017

ORDER:

Heard Sri S.Chandrasekhar, learned counsel for the petitioner and Sri Farhan Adam Khan, learned Standing Counsel for 2nd respondent-Wakf Board and perused the material available on record.

2. A notice bearing Rc.No.B/854/2016 dated 17.3.2017 issued by the 4th respondent-Tahsildar, Adilabad Mandal (Rural), pursuant to the letter addressed by the Chief Executive Officer, State Wakf Board proposing to conduct auction of Eksala cultivation for agricultural season 2017-18 in respect of the land in Sy.No.90 admeasuring Ac.19.00 situated at Chanda T village, Adilabad district is under challenge in the present Writ Petition.

3. The petitioner herein claims to be the owner of the subject property. Earlier, petitioner herein filed W.P.No.4247 of 2001 before this Court questioning the order passed by the State Wakf Board under the provisions of Section 54(3) of the Wakf Act, 1995. This Court, by way of an order dated 13.3.2001 allowed the said writ petition, granting liberty to the petitioner herein to file objections to the show cause notice dated 1.11.2000 with a further direction to the Respondents to consider the said objections and to pass appropriate orders in accordance with law.

4. Subsequently, the Wakf Board on 6.2.2009 passed an order under Section 54(3) of the Act and the petitioner herein filed a suit, O.S.No.34 of 2009, on the file of State Wakf Board, Hyderabad and the said suit is admittedly pending. Now by virtue of the impugned notice dated 17.3.2017 issued basing on a letter of the State Wakf Board, the authorities have proposed to conduct auction of Eksala cultivation for agricultural season 2017-18 in respect of the subject property. According to the learned counsel for the petitioner, when the suit is pending before the Wakf Tribunal, it is not open for the Respondents to hold auction in respect of the same subject

property. It is also the submission of the learned counsel for the petitioner that the order 6.2.2009 passed by the State Wakf Board under the provisions of Section 54(3) of the Act is unsustainable and not tenable. It is also submitted that the subject property is the private property of the petitioner's family and the State Wakf Board has nothing to do with the same.

5. Admittedly, the suit is pending before the Wakf Tribunal, wherein the validity of the order passed by the Wakf Board dated 6.2.2009 is under challenge. There is no material on record to show that any orders have been passed by the Tribunal in the said suit though the suit was instituted as long back as on 19.3.2009. In view of the pendency of suit, this Court is of the considered opinion that the petitioner herein can seek appropriate relief from the Tribunal and the present Writ Petition under Article 226 of the Constitution of India cannot be entertained. It is open for the petitioner to move before the State Wakf Tribunal by way of filing Interlocutory Application in the pending suit, if he is advised to do so. It is also made clear that the proposed auction would be subject to the outcome of the said I.A. if it is filed. This order cannot be construed as the order granting stay of the impugned notice.

6. With the above observations, the Writ Petition stands disposed of. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 24.3.2017
DA

A.V.SESHA SAI, J

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24.3.2017