

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17697 OF 2017

Date 19.09.2017

Between:
K.Damodar.

... Petitioner

AND

The State of Telangana, rep. by its Principal Secretary
Department of Home, Secretariat, Hyderabad and
others.

.....Respondents



HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 17697 of 2017

ORDER:

This Writ Petition is filed questioning the inaction of respondent Nos. 2 and 3 in providing protection to the petitioner, devotees of Lord Saibaba and members of the committee in Plot Nos.7 to 10 and 39 to 41, admeasuring about 2000 Sq.yards situated at M/s.Jaya Bharat Cooperative Housing Society Ltd., Tirumalagiri, Secunderabad, inspite of giving complaints against respondent No.5 in collusion with respondent No.4.

It is the case of the petitioner that he is the President of Saibaba Temple Trust at Jayabharat Cooperative Housing Society Tirumalagiri, Secunderabad. Petitioner submits that he is the owner of plot bearing Nos. 7, 8, 9 10, 39, 40 and 41 consisting of compound wall and structures thereon including shed, rooms etc., with boundaries: North: Road, South: Road, East: Road, West: Neighbours House. It is the case of the petitioner that respondent No.4 claimed several survey numbers as belonging to Wakf Board, particularly Survey Nos. 8, 10, 54, 12, 33, 36, 42, 40, 41, 37, 62, 88, 114, 115 and 17, which came to be rejected in various judicial proceedings. In spite of the fact that the petitioner's right came to be declared while rejecting the claim of respondent Nos.4 and 5, effort is being made by respondent No.5, at the instance of respondent No.4, to

encroach into and interfere with the peaceful possession and enjoyment of the petitioner. The petitioner, therefore, sought protection by approaching respondent Nos. 2 and 3 vide letter dated 15.03.2017 but, however, police are not providing protection. Hence, the Writ Petition.

Counter affidavits are filed by respondent Nos. 4 and 5 claiming that the land belongs to respondent No.4 and denying possession of petitioner. Respondent No.5 claimed possession of land by virtue of lease deed executed in his favour vide proceedings dated 12.08.2005 as also the proceedings dated 02.06.2017 would assert the same. It is further submitted that this Court, while disposing of CRP.No.4768 of 2006 and batch, had left it open to the Wakf Tribunal to decide the issue but, erroneously, the Wakf Tribunal rejected the plaint filed by him. He, therefore, resists for grant of any order.

Respondent Nos.2 and 3 filed counter affidavits stating that they cannot decide who is in possession in view of the rival claims and essentially the matter is civil in nature and, therefore, they cannot be blamed for not giving police protection as sought for by the petitioner.

It is one of the cases where an encroacher seeks to assert his right in spite of the fact that there are categorical judicial authorities from time to time. Whatever may be the position as on 07.02.2017, the findings of the Wakf Tribunal are categorical to the extent that the Wakf Board,

who had claimed title, from whom respondent No.5 claims title as a lessee itself did not have title and, thereby, question of respondent No.5 getting any right, title or possession from the Court does not arise.

The Wakf Tribunal, while disposing of the suits filed by the Wakf Board, in O.S.Nos.5 and 7 of 2016 (Old O.S.Nos.87 and 128 of 1999 respectively), had framed as many as 10 issues which read as under:

Issues:

1. Whether the plaint schedule properties are wakf properties?
2. Whether the plaintiff is entitled for perpetual injunction as prayed for?
3. To what relief?

Additional Issues:

1. Whether the suit is maintainable for perpetual injunction without seeking relief of declaration of title?
2. Whether the suit is liable to be dismissed for non-joinder of necessary parties?
3. Whether this Tribunal has jurisdiction to try the suit?
4. Whether the plaintiff is entitled to lease out the suit land and deliver the same to lessee?
5. Whether the lessee has come into actual possession of the suit land if so, whether the suit is maintainable for perpetual injunction by the plaintiff without being in actual possession of the suit land?
6. Whether the suit land is surveyed and notified u/s 4 and 5 and registered u/s 36 of the Wakf Act or any law for the time being in force?
7. Whether the suit is not maintainable in view of Section 87 of Wakf Act?

With regards issue Nos.1 and 2, the Wakf Tribunal had recorded a finding that after careful perusal of Exs.A.1 to A.13 in O.S.No.05 of 2016, they do not show that the

plaintiff was in possession and occupation of the suit land admeasuring 2000 sq. yards in Sy.No.18/1 with the following boundaries:

North: Road, South:Way and part of Sy.No.18/1, East:Way and part of Sy.No.18/1, West: Existing R.C.C. House Plot No.11 (under unauthorized occupation and part of Sy.No.18/1), except Ex.A.9 panchanama.

Likewise, while answering additional issue No.4 and dealing with the contention that defendants therein are encroachers, the Wakf Tribunal had recorded a finding that it was incumbent upon the Wakf Board to evict the encroachers as per the provisions of the Wakf Act and then the Wakf Board has to handover possession of lease land to the lessee; PW.1 in O.S.No.7 of 2016 also admitted, during cross-examination, that Wakf Board cannot lease out the property to the third party from the person who is in possession without evicting him; and, accordingly, the issue was decided against the plaintiff.

While answering additional issue No.5, the Wakf Tribunal recorded a finding that actual physical possession of the suit land was not delivered to the lessee and, accordingly, the issue was decided against the plaintiff.

In both the suits, Wakf Board is the plaintiff and lessee, referred to therein, is one Kumeer Pasha. While dealing with these issues, the Wakf Tribunal had also taken into consideration the material placed on record,

particularly, defendants therein have acquired over a vast extent of land through sale deeds.

Now the contention of respondent No.5 is that the Wakf Board had leased out the subject property in his favour in 2005. It may be noted that the suits in O.S.Nos.5 and 7 of 2016 are, in fact, Old O.S.Nos.87 and 128 of 1999. The suit in Old O.S.No.92 of 2006 corresponding to O.S.No.85 of 2016 came to be rejected by allowing I.A.No.79 of 2017 (Old I.A.No.644 of 2006) filed by the petitioner under Order 7 Rule 11 CPC, wherein the Wakf Tribunal found that the suit itself is barred in view of the decision rendered in O.S.No.87 of 1999. O.S.No.87 of 1999 became O.S.No.5 of 2016. All the judicial forums had categorically found that, at no point of time, the Wakf Board was in possession, and the question of Wakf Board leasing out the property in favour of the petitioner or anyone, does not arise. Inasmuch as the petitioner claims his right only through the lease agreement alleged to have been executed in his favour on 12.08.2005, as on 12.08.2005, the question of Wakf Board executing any lease deed would not have arisen on account of the orders of this Court, in W.A.No.1297 of 1997 dated 21.01.1998, wherein the claim made by the Wakf Board that the property belongs to them was rejected, however, liberty was given to the alleged Wakf Board to seek declaration of title and recovery of possession. In those circumstances, the

stand of respondent No.5 is totally untenable. However, learned counsel for respondent No.5 submits that, as against rejection of plaint, respondent No.5 had filed CRP(SR).No.9974 of 2017, and the same is pending. It may be noted that, as long as the findings of judicial forums are in tact, and not disturbed by a competent Court, respondent No.5 cannot claim possession of the property, admittedly, alleged to have derived title and possession only through Wakf Board, who is the original owner of the property.

The Writ Petition is, accordingly, allowed with a direction to respondent – authorities to ensure that police protection be given to the petitioner to protect his possession and enjoyment.

Miscellaneous petitions pending, if any, shall stand disposed of. No order as to costs.

CHALLA KODANDA RAM,J

Date: 19.09.2017
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