

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3503 of 2016

ORDER:

The unsuccessful defendants 1 to 5 preferred this Civil Revision Petition, under Article 227 of the Constitution of India, assailing the orders, dated 25.01.2016, of the learned Presiding Officer, A.P. Wakf Tribunal (now, Telangana State Wakf Tribunal), Hyderabad, passed in I.A.No.385 of 2015 in O.S.No.100 of 2015 filed by the sole plaintiff/ 1st respondent under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, requesting to grant a temporary injunction restraining the defendants 1 to 5, revision petitioners herein, from interfering with the day-to-day management and affairs of the plaintiff in respect of the mosque, Madrasa and ten shops forming part of Sy.No.269 admeasuring Ac.2.28 guntas of Badepally village, more fully described in the schedule annexed to the plaint and petition, pending final disposal of the aforementioned suit on the file of the Wakf Tribunal.

2. I have heard the submissions of *Sri Md. Abdul Hameed*, learned counsel for the revision petitioners/ defendants 1 to 5 ('defendants 1 to 5', for brevity), and *Sri M.V.Subba Reddy*, learned counsel for the 1st respondent/plaintiff ('plaintiff', for brevity). Though notice is served, none appeared for the 6th defendant in the suit/ 2nd respondent herein, that is, the Wakf Board, and it is stated to be a proforma party to this revision.

3. To begin with it is to be noted that the plaintiff brought the suit for perpetual injunction against the defendants 1 to 5, their agents, employees or anybody claiming through them from obstructing and interfering with the day-to-day management of the plaint schedule property by the plaintiff and for costs. In the said suit, the plaintiff filed the subject application for temporary

injunction. The defendants 1 to 5 through the 2nd defendant filed a counter affidavit and resisted the said application. At the hearing, no oral and documentary evidence was adduced. However, on merits and by the order impugned in this revision, the Tribunal allowed the application of the plaintiff and granted a temporary injunction as prayed for and made absolute the temporary injunction granted on 23.11.2015.

4. Aggrieved thereby, the defendants 1 to 5 preferred this revision.

5. Before proceeding further, it is necessary to refer to the pleadings of the parties.

6. The case of the plaintiff, in brief, is this:

The plaint schedule property is an endowed property and it is a wakf. It was originally purchased by Mohd. Abdul Aziz in the name of the plaintiff-institution, Anjuman Islamia, represented by its Secretary. The original Muntaqab in Urdu with English translation filed into Court evidence the said fact. The suit schedule property was purchased for construction of mosque, Madrasa and Musafir Khana and for propagating religious education through the Anjuman Islamia for religious and financial purpose of the Muslims of Kavarampet. The property was entered in the Awqaf register as Anjuman Islamia. Thus, the name of the plaintiff is entered in the Endowment Register/ Awqaf Register. The plaintiff filed O.S.No.2 of 1969 in the Court of the learned Senior Civil Judge, Mahabubnagar, against one Vishwanath and 49 others for recovery of possession of the suit schedule property. On merits, the suit was decreed on 31.12.1971. Thereafter, possession was obtained by the plaintiff under due process of law. The certified copy of the judgment in the said suit is filed into Court. The plaintiff institution constructed the mosque, Madrasa, and eleven shops in the suit schedule property. The same are being managed by the plaintiff institution by paying salaries to the Peshimam, Mouzam and other members of staff. The plaintiff institution is paying

property tax and electricity bills in the name of the plaintiff. In the pahanies and ROR proceedings, the name of the plaintiff is reflected as pattedar and possessor. The copies of the same are filed into Court. While so, the 1st defendant filed W.P.No.8351 of 2013 against the 6th respondent, Wakf Board, to consider the representation for registration of the suit schedule property under the provisions of the Wakf Act, 1995. The said writ petition was disposed of, with a direction to consider the representation of the 1st defendant. Accordingly, the 6th defendant had appointed an Enquiry Officer and called for a report from the Inspector Auditor, Mahabubnagar District. The 1st defendant committee is self styled committee and has no legal sanctity. Thereafter, the said Enquiry Officer has submitted a report that the property has already been endowed and is entered in the Register of Endowments, way back in the year 1941 Fasli and that the question of re-registration of the suit schedule property does not arise. The copy of the order of appointment of Enquiry Officer, his report and other relevant records are filed into Court. The plaintiff institution is in peaceful possession and enjoyment of the plaintiff schedule property and managing the affairs of the wakf institution for the last 70 years, i.e., from the date of registration of the wakf in the book of endowments. While so, the defendants 1 to 5 along with their men, agents etcetera tried to interfere with the day-to-day management and affairs of the suit schedule wakf property without having any manner of right. The attempted interference by the defendants and their men in June 2015 was resisted. Thereafter, the defendants and their men continued their illegal acts of interference and even put locks on the gates of the property. The plaintiff resisted such acts of interference with the help of neighbours and its employees. The 6th defendant Wakf Board already declared that the plaintiff is only managing the affairs of the suit schedule wakf property and that the defendants 1 to 5 are no way concerned with the schedule wakf property. In

the circumstances, the suit and the subject application for temporary injunction are filed.

7. Per contra, the case of the defendants as stated in the affidavit of the 2nd defendant is as follows:

The material allegations in the plaint and the affidavit filed in support of the application for temporary injunction are false. The property was purchased by Mohd. Abdul Aziz in the name of the plaintiff institution represented by its Secretary is absolutely false. In O.S.No.2 of 1969, Abdul Aziz Ahmed (Seth) (a prosecution witness No.1) stated that he was living in Badepally till 1944 and that he had purchased the suit land for Rs.310/- from the Government for construction of a mosque, musafar khana and a school as a representative of the Muslims of Badepalli and that he was put in possession of the land by the Government and that he had executed in favour of the Government an Agreement as per Exhibit A164 in respect of the suit land and that he entrusted the suit land to Abdul Haq, the then Secretary of Anjuman Islamia, Kowrampet, at the time of leaving Badepally and that he authorized him to get the suit land recorded in the Register of Muslims Endowments and to get a mosque, a musafar khana and a school constructed on it. This Court dismissed A.S.No.162 of 1972 preferred against the judgment and decree in O.S.No.2 of 1969. In the said judgment, this Court observed as follows: "PW1 (Abdul Aziz Ahmed) was living in Jedcharla till 1944. He stated that he had purchased the suit property for Rs.310/- from the Government for constructing school, travelers home and a mosque. He stated that he entrusted the suit land to Sri Abdul Haque who was the Secretary of Respondent-Anjuman Islamia Kavarampet authorizing him to get the land recorded in the register of Muslim endowments and get school mosque and musafir khana constructed on it." In W.V.M.P.No.2414 of 1987 in W.P.No.16682 of 1987, this Court quoted with approval, the following facts: "The petitioner's Committee (Respondent-Anjuman) filed O.S.No.2 of 1969 on the file of the Subordinate Judge's

Court, Mahabubnagar, for the recovery of the vacant possession of the land after demolishing the huts and other structures. The said suit was decreed holding that Abdul Aziz who was examined as PW1 in the said suit purchased this land for the construction of mosque, Musaphirkhana and a school and entrusted the then Secretary late Abdul Haque to get the said property recorded in the register of Wakf and to manage the same by constructing mosque, Musaphirkhana and the Arabic School...". Anjuman was a party in the above proceedings. The said Anjuman made an application for construction of a mosque and a madrasa; and permission to so construct was granted in its name by virtue of the letter dated 01.02.1353 Faslī addressed by the Subedar, Medak, to the District Collector, Mahabubnagar, enclosing the sanctioned statement. The extract of the Awkaf register of the Muntaqab filed by the plaintiff is nothing but a fabricated and fake one. The plaintiff is put to strict proof of the documents filed in support of the plaintiff's case including the allegation that the property was registered in the Register of Endowments of the Muslims. The petitioner/plaintiff is an institution which has self-imposed on it, the control of the plaint schedule property. It pays salaries of the Imam and two Mouzans and also pays the property tax and electricity consumption charges from out of the rents received from the houses/ mulgies belonging to the Masjid. It was only in the year 1999, a Masjid was constructed, that too, with contributions and donations of the local Muslims; and the prominent among them was one Mr. Gafoor (late) who was the major contributor towards the expenditure involved in the construction of the Masjid. Hence, the Masjid is now called after his name as 'Masjid-e-Gafooria'. Complaining non-registration of the Wakf with the Wakf Board even after a lapse of 70 years of its creation and also about the concealment and management of the Wakf by the plaintiff herein and seeking other directions, a representation was made by the 1st defendant on 01.10.2011. The representation remained unanswered. Being aggrieved of the

delay in the disposal of his representation, the 1st respondent-Committee filed W.P.No.8351 of 2013 along with WPMP No.10432 of 2015. This Court was pleased to issue an interim direction directing the Wakf Board to dispose of the said representation of the respondent committee/ 1st defendant herein, after giving an opportunity of hearing to the parties concerned within a period of three weeks. The writ petition is still pending. The contention that the writ petition was disposed of is not correct. Till date, the Wakf Board has not disposed of the said representation. Thus, the Wakf Board committed contempt of orders of the Court in WPMP filed in the said writ petition. The endorsement dated 03.05.2015 now issued by the Collector on 03.05.2015 though refers to an intimation, dated 05.09.2014, of the Wakf Board bearing No.30/ Reg/ MBNG/ 2010/ Z-III, the same has not been enclosed to the said endorsement dated 03.05.2015. This Court issued direction to the Wakf Board, but not to the Collector. Therefore, it remained unexplained as to how the Collector comes into picture to state that the wakf is already registered and there is no need for its further registration, while in fact, the Wakf Board maintains complete silence in the matter. However, if the wakf is registered, the Collector, Mahabubnagar, ought to have furnished all the details as to whether publication of the wakf was made in the Official Gazette together with its number, date and place of issue, who the wakif is, and the purposes for which the wakf was created and who was the Mutawalli etcetera. No such details were furnished. Taking advantage of the inaction of the Wakf Board, the plaintiff institution is claiming that it is the owner and possessor of the Wakf property, i.e., the Masjid. It is common knowledge that a wakf vests in 'Allah' and no individual or an Anjuman can claim its ownership. The wakf was created in the early 1940s. The plaintiff institution was never in possession of the wakf property till its encroachers were evicted there from, pursuant to the orders in O.S.No.2 of 1969 as confirmed in A.S.No.162 of 1972, i.e., till 1986. Except making an omnibus allegation of interference against the defendants 1

to 5, no specific act or overt acts are pleaded against the defendants. At this juncture, there exists a committee called “Committee of the Mussaliyan-e-Masjid, Masjid-e-Gafooria, Badepally” duly elected by the muslims of Badepally village. Its aims and objectives are to take care of the day-to-day maintenance of electricity lines and water pipelines, repairs of the premises, wear and tear etcetera by collecting weekly and monthly contributions and donations from the local Muslims of Badepally village. The committee is taking care of such activities since decades. The 5th defendant is the President of the said Committee. He is personally undertaking construction of ‘minarets’ at the entrance of the Masjid with the aid and financial assistance of the Muslims of Badepally village. This is not palatable and acceptable to the plaintiff and the members of the plaintiff institution. In fact, the members of the plaintiff institution intimidated and threatened the labourers working on such construction and made them to run away from the spot. The 5th defendant had to make alternative arrangements. When the said construction was in progress, the plaintiff obtained an ad interim injunction order. The contentions of the plaintiff do not deserve consideration and they have no merit. Hence, the petition may be dismissed.

8. At the hearing, the learned counsel for both the sides reiterated the respective contentions of the parties, which are stated supra, in detail.

9. Now, the short question for consideration is:

Whether the plaintiff made out valid and sufficient ground and established the necessary ingredients for grant of a temporary injunction as prayed for? And, if so, whether the order of the Tribunal can be sustained under facts and in law?

10. I have carefully perused the material record including the pleadings of the parties. Both the learned counsel stated that though necessary documents are not marked, there is no dispute about the proceedings in the previous suit of the year 1969. In fact, both the parties also filed certain material

documents in support of their respective contentions and placed reliance on such documents and requested this Court to look into those documents while disposing of the revision petition.

11. Now, I shall take up the contentions of the defendants 1 to 5/ revision petitioners herein in seriatim.

12. The first set of contentions is that the Tribunal has no jurisdiction to entertain the suit and grant any order much less a temporary injunction order, which is impugned in this revision.

The specific case of the defendants 1 to 5 is that the dispute involved in this case is not a dispute required to be adjudicated under the provisions of the Wakf Act and that the dispute is in regard to the nature of the property as to whether or not it is a wakf property and whether or not it is a registered wakf property and that therefore, the dispute is only a civil dispute, which can be adjudicated by a civil Court but not a Wakf Tribunal and that a suit for injunction against the defendants relating to unregistered wakf property is exclusively triable by a Civil Court and as such, the subject matter of the dispute covered by the suit is not governed by the provisions of the Wakf Act, particularly, Sections 6 and 7 of the Wakf Act and that therefore, the Tribunal constituted under Section 83 of the Wakf Act has no jurisdiction to entertain the suit and grant any relief to the plaintiff and that since the civil Court only has jurisdiction and the Tribunal lacked jurisdiction, the order impugned is liable to be vacated. The further contention on this aspect is that W.P.No.8351 of 2015 with regard to registration of the wakf is filed against the Wakf Board and is pending before this Court and as this Court is seized of the matter, the Tribunal has no jurisdiction.

12.1 *Per contra*, the case of the plaintiff is that the property is registered as a wakf property long time back and that the subject wakf land is already registered, and, therefore, there is no need for further registration and that

the said fact is evident from the endorsement of the District Collector dated 30.05.2015 and that the subject matter of the dispute is 'obstruction and interference of the defendants 1 to 5 with the plaintiff's control and management of the affairs of the subject wakf property' and that therefore, the Wakf Tribunal alone is having jurisdiction and not a Civil Court and hence, the contentions of the defendants are devoid of merit.

12.2 Dealing with this aspect, it is to be first noted that the sole plaintiff institution filed the suit for perpetual injunction restraining the defendants 1 to 5 from interfering with the day-to-day management and affairs of the plaintiff in respect of the mosque, Madrasa and ten shops, that is, the plaint schedule property. The suit schedule property is described in the schedule annexed to the plaint as a mosque, Madrasa and Musafir Khana. The plaintiff specifically contends that the suit schedule property is already registered in the Register of Wakfs/ Register of Endowments and therefore, it is a registered wakf property. The defendants 1 to 5 *inter alia* contend that it is not a notified/ registered wakf property. The learned counsel for the defendants 1 to 5 would further contend that under the scheme of the Wakf Act, every wakf institution is required to be notified in the State Gazette after survey is conducted, as contemplated under the Act, and that the Act further provides that a property identified as wakf institution is required to be registered and that the registration of the property as a wakf property and its notification in the Official Gazette in terms of the provisions of the Act are, therefore, essential and that only on the compliance of the said requirements, the wakf institution can approach the Tribunal for any reliefs. He would further submit that in the case on hand, the wakf is not a registered wakf and hence, the plaintiff cannot approach the Tribunal for the reliefs claimed in the suit.

12.3 However, as rightly pointed out by the learned counsel for the plaintiff the creation of a wakf may be under different categories, as is evident from

the definition of 'Wakf' under the Act. The definition includes a wakf by user even if there is dedication, more so, when there is permanent dedication. The main mosque over the suit schedule property was in existence since decades and the suit schedule property is admittedly a wakf by user. The claim made in the plaintiff is that the plaintiff is the Muttawali and that management of the affairs of the subject wakf property is being interfered with by the defendants.

12.4. In this background setting, it is necessary to refer to the relevant provisions of the Waqf Act, which are as under:

Section 83

83. Constitution of Tribunals, etc.—

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.

(2) Any mutawalli person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf.

(3) Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application

has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

(4) Every Tribunal shall consist of —

- (a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;
- (b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;
- (c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think

Section 85: Bar of jurisdiction of civil Courts, revenue Court and any other authority:

‘No suit or other legal proceedings shall lie in any civil Courts, revenue Court and any other authority in respect of any dispute, question or other matter relating to any Waqf, Waqf property or other matter which is required by or under this Act to be determined by a Tribunal.’

The word "Waqf" is defined under Section 3(r) of the Act as under:

3(r) "waqf" means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

- (i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;
- (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
- (iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
- (iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law, and "waqif" means any person making such dedication;'

6. Disputes regarding Auqaf.-

(1) If any question arises whether a particular property specified as wakf property in the list of Auqaf is waqf property or not or whether a waqf specified in such list is a Shia Waqf or sunni waqf, the Board or the mutawalli of the Waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final.

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of Auqaf.

Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second

or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.

(2) Notwithstanding anything contained in Sub-section (1), no proceeding under this Act in respect of any Waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under Sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of Auqaf shall, unless it is modified in pursuance of a decision or the Tribunal under Sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in Sub-section (1).

7. Power of Tribunal to determine disputes regarding Auqaf-

(1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as Waqf property in a list of Waqf is Waqf property or not, or whether a Waqf specified in such list is a Shia Waqf or a Sunni Waqf, the Board or the mutawalli of the Waqf, or any person aggrieved by the publication of the list of auqaf under section 5, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that-

(a) in the case of the list of Auqaf relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of Auqaf.

(b) in the case of the list of Auqaf relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provision of Sub-section (5), no proceeding under this Section in respect of any Waqf shall be stayed by any court, Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under Sub-section (1).

(4) The list of Waqf and where any such list is modified in pursuance of a decision of the Tribunal under Sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject matter of any suit or proceeding instituted or commenced in a civil court under Sub-section (9) of Section 6, before the commencement of this Act or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

(6) The Tribunal shall have the powers of assessment of damages by unauthorized occupation of waqf property and to penalize such unauthorized occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.

12.5 The definition of Waqf, which is extracted above, would show that a Waqf is created either by dedication or by user and Deed of Waqf is not essential to create a Waqf. Further, a Waqf, as contemplated under the definition above, once created continues to be a Waqf for all times to come. Section 2 of the Act provides that this Act would apply to all the Auqaf and an exception expressly is made only with respect to Dargah Khawaja Saheb, Ajmer to which the Dargah Khawaja Saheb Act, 1955 applies.

12.6 The plaintiff contends that the Waqf is a registered Waqf and it is also a Waqf by user. The plaintiff claims control and right of management of the Waqf and the complaint is about interference with management of the affairs of the Waqf property by the defendants 1 to 5 and their men. The question whether a property is a Waqf property or not, has to be decided in a suit instituted in Wakf Tribunal (Section 6 of the Act). Sections 85 and 88 bar a suit or other legal proceedings in respect of (i) dispute, (ii) question, (iii) other matter relating to a Waqf or Waqf property, or (iv) other Waqf matter which is required to be determined. Such matters are to be adjudicated by the Wakf Tribunal which shall be deemed to be a civil Court and shall have all powers exercisable by a civil Court under it while trying the suit. The decision of the Wakf Tribunal is final.

12.7 Learned counsel for the defendants, in support of the contention that the Civil Court is alone having jurisdiction, had placed reliance on decisions of the Supreme Court in Ramesh Gobindram v. Sugra Humayun Mirza Wakf¹; Faseela M. v. Munnerul Islam Madrasa Committee and Another²; and a decision of this Court in K.Suvaramma v. A.P. Wakf Board, rep. by its Chief Executive officer³. In the recent decision in Bhanwar Lal and Another v.

¹ (2010) 8 Supreme Court Cases 726

² (2014) 16 Supreme Court Cases 38

³ 2008(1) ALT 12

Rajasthan Board of Muslim Wakf and Others⁴ though the dispute related to cancellation of sale deeds, the Supreme Court, while considering the issue of jurisdiction of the Wakf Tribunal, on a conjoint reading of Section 7 and Section 85 summed up the legal position as under:

(i) In respect of the questions/disputes mentioned in Sub-section (1) of Section 7, exclusive jurisdiction vests with the tribunal, having jurisdiction in relation to such property.

(ii) Decision of the tribunal thereon is made final.

(iii) The jurisdiction of the Civil Court is barred in respect of any dispute/question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal,

(iv) There is however an exception made Under Section 7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is covered under Sub-section (1) of Section 6, the jurisdiction of Civil Court would continue and the tribunal shall have no jurisdiction to determine those matters.

12.8 It is now necessary to refer to the decision of the Supreme Court in Board of Wakf, West Bengal and Another v. Anis Fatima Begum and Another⁵, wherein it was held thus:

In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995, and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.

Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf

⁴ AIR2014SC758

⁵ (2010) 14 SCC 588

property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

In the above cited decision, the legal position is pithily laid down. From the facts of the case on hand and cited decisions, it follows that the Wakf Tribunal is having jurisdiction and that the contentions of the defendants 1 to 5 are devoid of merit.

13. Coming to the merits of the matter and the plaintiff's entitlement to the temporary injunction, the following are the undisputed and admitted facts: "O.S.No.2 of 1969 was instituted by Anjuman-e-Islamia, Kavarampet, for recovery of vacant possession of the present Wakf Property from the encroachers and the said suit was decreed and the appeal preferred against the decree and judgment in the said suit was dismissed and later, the property was recovered by the plaintiff therein. The Inspector Auditor of the Wakf sought the Special Officer of the Wakf Board to conduct an enquiry pursuant to the direction given by this Court in W.P.M.P.No.10432 of 2013 in W.P.No.8531 of 2013. The Enquiry Officer appointed submitted a report to the Special Officer of the Wakf Board stating that the wakf property is registered in the Register of Endowments, Mahabubnagar. He enclosed a copy of the relevant document to his report." The Collector's endorsement also discloses that the wakf property was registered even as per the averments in the counter of the defendants 1 to 5. In the counter and in the pleadings in the writ petition, the defendants 1 to 5 categorically stated that the plaintiff is in control of the Masjid though it is stated that plaintiff's control is self imposed control. It is also stated that the plaintiff is paying salaries of the Imam and two Mouzans and is also paying the property tax and electricity consumption charges from out of the rents received from the houses/ mulgies belonging to the Masjid. The Tribunal having noted that the plaintiff is admittedly having control of the petition schedule wakf property and that since the defendants 1 to 5 without the consent and

permission of the plaintiff tried to construct minarets at the entrance of the Masjid with the financial assistance of the Muslims of Badepally village and interfered with the control of the plaintiff over the wakf property and its management and affairs, held that the plaintiff is entitled to a temporary injunction as prayed for. The admitted and established facts are sufficient to safely hold that the plaintiff has a *prima facie* case and that the plaintiff satisfied the necessary ingredients and made out valid and sufficient grounds for sustaining the injunction order granted by the Tribunal.

14. On the above analysis, this Court finds that the *prima facie* case and the balance of convenience are in favour of the plaintiff and that if no injunction is granted, the plaintiff suffers serious and irreparable loss and that therefore, the Tribunal is justified in passing the orders impugned in this revision.

15. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

18th January, 2016
RAR