

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI

Writ Appeal No. 1605 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the 5th respondent in W.P. No. 17697 of 2017. The 1st respondent herein filed W.P. No. 17697 of 2017 seeking a mandamus to declare the inaction of the Commissioner of Police and the Station House Officer, Tirumalagerry Police Station, in providing police protection to the temple trust over an extent of 2000 square yards of land situated at M/s. Jaya Bharat Cooperative Housing Society Ltd., Tirumalagerry, Secunderabad, as arbitrary and illegal.

In the order under appeal, the learned Single Judge observed that the contention of the appellant that the Wakf Board had leased the subject property in his favour in 2005 was not tenable; O.S. Nos. 87 and 128 of 1999 were re-numbered as O.S. Nos. 5 and 7 of 2016; 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 wherein the Suit itself was held to be barred; all judicial forums had categorically found that, at no point of time, the Wakf Board was in possession; the question of leasing out the property in favour of the 1st respondent-writ petitioner, or any one else, did not therefore arise; the appellant traced his right over the subject property, through the lease agreement alleged to have been executed in his favour by the wakf board on 12.8.2005; the question of the Wakf Board executing a lease deed would not arise in view of the orders of the Division Bench in W.A. No. 1297 of 1997 dated 21.1.1998 wherein the claim, that the property belonged to the Wakf Board, was rejected, granting liberty to the Wakf Board to seek declaration of title and recovery of possession; the stand of the appellant was therefore wholly untenable; and as the appellant had filed C.R.P. No. 3085 of 2017 which

was pending, and as the findings of the judicial forum is intact, the appellant could not claim possession of the property. The Writ Petition was allowed directing the respondent-authorities to give police protection to the 1st respondent-writ petitioner to protect his possession and enjoyment over the subject property.

Sri S.M. Subhani, learned counsel for the appellant, would submit that, as no competent Court has held that the 1st respondent-writ petitioner was in possession of the subject property, no police aid could have been granted; the pre-requisite for grant of police aid is that a competent Court has recorded a finding that the person, seeking such aid, is in possession of the property; police aid is given to ensure compliance with orders of the Court; and, in as much as there is no order of a competent Court holding that the 1st respondent-writ petitioner is in possession of the subject property, the learned Single Judge had erred in directing police officials to grant him police protection. Reliance is placed, on behalf of the appellant, on a Division Bench Judgment of this Court in **Kotak Mahindra Bank Ltd. vs. Station House Officer**¹ and **Pothina Suri Babu vs. Sindhu Sai Raju and Others**².

O.S. No. 87 of 1999 and O.S. No. 128 of 1999 were filed before the Wakf Tribunal by the Wakf Board. While O.S. No. 87 of 1999 was filed to restrain the 1st respondent-writ petitioner from interfering with the possession of the Wakf Board with respect to the subject property, O.S. No. 128 of 1999 related to other extents of lands which are not the subject matter of the present proceedings. The appellant herein filed O.S. No. 92 of 2006, (on the strength of a lease deed executed in his favour by the Wakf Board), seeking grant of injunction restraining the 1st respondent-writ petitioner from interfering with his possession over the subject property. Against the order passed by the Wakf Tribunal, both

¹ 2016(1) ALD 696 (DB)

² 2011 (2) ALT 29

the Wakf Board and the appellant had filed C.R.P. Nos. 4768 and 5235 of 2006 and C.R.P. No. 4385 of 2007. All the three CRPs were allowed by a common order dated 21.1.2014, and the matter was remanded to the Tribunal for its decision afresh. O.S. No. 87 of 1999 filed by the Wakf board was, thereafter, re-numbered as O.S. No. 5 of 2016, and O.S. No. 92 of 2006 was re-numbered as O.S. No. 85 of 2016.

By its order dated 7.2.2017, the Wakf Tribunal dismissed O.S. No. 5 of 2016 holding that the Wakf Board had not filed sufficient material/documents to enable the Tribunal to declare that the subject properties were wakf properties and, consequently, it had no jurisdiction to entertain and adjudicate the Suit. In so far as O.S. No. 85 of 2016 filed by the appellant is concerned, the Tribunal, by its order in I.A. No. 79 of 2017 in O.S. No. 85 of 2016 dated 7.2.2017, rejected the plaint filed in O.S. No. 85 of 2016 holding that the Wakf Board had failed to prove its title and possession over the suit land as on the date of filing of the suit; and, as the Wakf Board could not have leased out the property to a third party, the relief claimed in the suit was barred in view of the decision rendered in O.S. No. 85 of 2016 dated 7.2.2017 filed by the Wakf Board. While the appellant herein filed C.R.P. No. 3085 of 2017, against the aforesaid order rejecting the plaint, it is not in dispute that no orders have been passed therein till date.

While it is no doubt true that the question, whether or not the appellant was in possession of the subject property, was not examined in O.S. No. 92 of 2006, and the plaint was rejected on the ground that the Wakf Board had failed to prove its possession over the subject land, it is necessary to note that, before O.S. No. 85 of 2016 was re-numbered (and when it was pending on the file of the Wakf Tribunal as O.S. No. 92 of 2006), I.A. No. 462 of 2006 was filed in O.S. No.92 of 2006, by the appellant herein, seeking ad-interim injunction restraining the 1st respondent-writ petitioner from interfering with his possession. The said I.A. was dismissed by the Wakf Tribunal on 22.7.2006. The 1st

respondent-writ petitioner filed W.P. No. 16734 of 2006 before this Court seeking a mandamus directing the A.P. State Wakf Board, and its Chief Executive Officer, not to interfere with the petitioner's possession and enjoyment over the subject property. The appellant herein was arrayed as the 2nd respondent in the said writ petition. W.P. No. 16734 of 2006 was disposed of by a learned Single Judge of this Court, by his order dated 25.9.2006, holding that the 1st respondent-writ petitioner was justified in contending that, unless and until the Wakf Board takes action in accordance with law, sought declaration of title, and obtained appropriate orders in the CRP filed by it, the 1st respondent-writ petitioner could not be dispossessed.

While CRP No. 4385 of 2007, filed against the order passed by the Tribunal in O.S. No. 92 of 2006, was allowed, the order in O.S. No.922 of 2006 was set aside, and the matter was remanded to the Wakf Tribunal for its consideration afresh, even after the said Suit was re-numbered as O.S. No. 85 of 2016, the plaint came to be rejected in view of the order passed in O.S. No. 5 of 2016, (filed by the A.P. State Wakf Board) dated 7.2.2017 holding that the Wakf Board was unable to establish their title. The order of this Court, in W.P. No. 16734 of 2006 dated 25.9.2006, (which shows that the 1st respondent-writ petitioner was in possession of the subject property), is to the effect that, until the Wakf Board obtained orders and took appropriate action, the 1st respondent-writ petitioner could not be dispossessed. As this order, in W.P. No.16734 of 2006 dated 25.09.2006, confers a right on him to retain possession of the subject property, unless dispossessed in accordance with law, the first respondent-writ petitioner was entitled to invoke the jurisdiction of this Court seeking police aid.

While reference is made, on behalf of the appellant, to the application filed by the appellant for restitution in the year 2009, to contend that the first respondent-writ petitioner has admitted to have been dispossessed, the fact remains that the plaint in O.S. No.92 of 2006

(re-numbered as O.S. No. 85 of 2016) was itself rejected and, consequently, no reliance can be placed on an Interlocutory application filed therein. We find no error in the order of the learned Single Judge directing police aid to be granted to the first respondent-writ petitioner, as we are satisfied that he was entitled to seek police aid, for protection of his possession, in the light of the order passed by a learned Single Judge of this Court in W.P. No. 16734 of 2006 dated 25.9.2006. Even otherwise, interference in an intra-Court appeal, under Clause 15 of the Letters Patent, is limited and, save patent illegality in the order under appeal, no interference is called for. We find no such infirmity in the order under appeal.

The above-referred judgments, relied on behalf of the appellant, are of no avail as the 1st respondent-writ petitioner is entitled to seek police aid in the light of the order passed by the learned Single Judge in W.P. No. 16734 of 2006 dated 25.9.2006. Suffice it to make it clear that CRP No. 3085 of 2017, filed by the appellant herein, shall be examined on its own merits uninfluenced by the observations made either in the order under appeal or in the order now passed by us.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI, J)

8th November, 2017

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Date: 8.11.2017

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