

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

Writ Appeal No.1991 of 2017

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.M.P.No.46468 of 2017 in W.P.No.37412 of 2017 dated 15.11.2017.

In the order under appeal, the Learned Single Judge observed that the Supreme Court, in **Madanuri Sri Rama Chandra Murthy vs. Syed Jalal**¹, held that the subject property was not wakf property and was not included in the Gazette notification published on 28.06.1962; consequently, the Wakf Board could not have addressed any letter to the Joint Sub-Registrar claiming that the Wakf Board is the owner of the said property; any such direction would be contrary to the decision of the Supreme Court in **Madanuri Sri Rama Chandra Murthy**¹; and the only possible remedy open to the Wakf Board is to seek review of the judgment of the Supreme Court, if they so choose. The Learned Single Judge directed respondents 2 to 4 in the writ petition (appellants 2 to 4 herein) to ignore the letter of the Wakf Board dated 10.03.2016 claiming title to the subject property, to receive the document presented by the 1st respondent-writ petitioner, consider the same for the purpose of registration in accordance with the provisions of the Registration Act, 1908 and the Indian Stamp Act, 1899, register the same and release it in favour of the 1st respondent-writ petitioner within four weeks. The Learned Single Judge observed that any such registration would be subject to the decision of the Supreme Court in Special Leave Petition No.8917 of 2016 and batch wherein the correctness of the Full Bench Judgment of this Court in W.A.No.343 of 2015 dated 23.12.2015 would

¹ AIR 2017 SC 2653

be considered. Aggrieved by the said order, the State of Andhra Pradesh and its officials are in appeal before us.

Learned Government for Revenue would submit that the order under appeal was passed, at the stage of admission, without even giving the appellants herein, or the Wakf Board, an opportunity of filing their counter-affidavit; the relief sought for in the Writ Petition is for a mandamus to declare the action of the Joint Sub-Registrar in not registering the sale deed, sought to be presented for an extent of Ac.12.73 cents out of a total extent of Ac.18.88 cents, under the guise of the letter addressed by the Wakf Board dated 10.03.2016, as illegal and arbitrary; and the Learned Single Judge has, in effect, granted the 1st respondent-writ petitioner the main relief, which they would have been entitled to only if the writ petition were to be allowed later.

Sri P.Veera Reddy, learned Senior Counsel appearing on behalf of the A.P. State Wakf Board, would submit that the appellant before the Supreme Court was the plaintiff before the Wakf Tribunal; the suit before the Tribunal was filed by one Sri Syed Jalal to declare the sale deed, executed in favour of the writ petitioner, null and void; the petitioner had filed an application under Order VII Rule 11 C.P.C to reject the plaint; on the Tribunal rejecting the plaint, Sri Syed Jalal had carried the matter in revision to this Court; the revision was allowed directing the Tribunal to decide the suit on its merits; aggrieved thereby, the petitioner had carried the matter in appeal resulting in an order being passed by the Supreme Court, in **Madanuri Sri Rama Chandra Murthy**¹; the Wakf Board is not a party to any of these proceedings; the dispute before the Wakf Tribunal related to an extent of Ac.4.72 cents of land, which was alienated in favour of the writ petitioner; as the Wakf Board was not a party to any of these proceedings, it could not show that these lands have been included in

the list of wakfs; as the entire extent of land is included in the list of wakfs, and is wakf property, it is prohibited from alienation under Section 22-A of the A.P. Registration Act; these lands are wakf properties, and were rightly included in the prohibitory list with the Registration Department; the Wakf Board is taking steps to seek review of the order of the Supreme Court in **Madanuri Sri Rama Chandra Murthy¹**; and it is only after the Wakf Board is afforded an opportunity to place its case before the Learned Single Judge, by way of a counter-affidavit, could the matter have been decided on merits.

The fact that the A.P.State Wakf Board is not a party to the proceedings, which culminated in the order being passed by the Supreme Court in **Madanuri Sri Rama Chandra Murthy¹**, is not in dispute. Sri S.M.Subhan, learned counsel for the respondent-writ petitioner, would submit that the subject property is not wakf property, and has not been included in the list of wakfs. He would draw support in this regard from the observations of the Supreme Court in **Madanuri Sri Rama Chandra Murthy¹**. On the other hand Sri P.Veera Reddy, learned Senior Counsel appearing on behalf of the Wakf Board, would contend that the subject properties constitute wakf properties, and are included in the list of wakfs; and it is only because the Wakf Board was not a party to the proceedings, which culminated in an order being passed by the Supreme Court in **Madanuri Sri Rama Chandra Murthy¹**, could these facts not be placed in such proceedings.

The question whether the subject property is included in the list of wakfs or not can only be examined on counter-affidavit being filed, by the Wakf Board, in the Writ Petition. The fact, however, remains that the order under appeal was passed, at the admission stage, even without the appellants and the A.P.State Wakf Board being given an opportunity of filing their counter-affidavit. The relief granted at the

interlocutory stage is, in effect, the main relief which can be granted in the writ petition and, ordinarily, such an order could only have been passed after the respondents in the writ petition are given an opportunity to file their counter-affidavit.

Under Section 22-A(1)(c) of the Registration Act, the documents relating to transfer of property owned by wakfs, falling under the Wakfs Act, 1995, are prohibited from registration. A Full Bench of this Court in **Vinjamuri Rajagopala Chary vs. State of Andhra Pradesh**² observed that it was open to the parties to a document, if the relevant property/land finds place in the list of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, to apply for its deletion from the list or modification thereof, to the concerned authorities as provided for in the guidelines; the concerned authorities are obliged to consider the request in proper perspective, and pass an appropriate order within six weeks from the date of receipt of the application, and make its copy available to the concerned party.

While it is no doubt true that the order of the Full Bench has been subjected to challenge in appeal, and the Supreme Court has passed an interim order therein, the order of the Full Bench, nonetheless, binds us unless, and until, it is finally set aside by the Supreme Court. In **Government of Andhra Pradesh vs. N. Rami Reddy**³, a Division Bench of this Court observed that, when a Court of appeal stays the operation of the judgment, it stays the further implementation as between the parties, of the operative portion thereof, and thereby the ratio of the said decision cannot be said to be wiped off. The observations of the Division Bench of this Court, in this regard, are as under:

² 2016(1) ALT 550 (F.B)

³ 2001(1) ALD 443(DB)

“..... It is now a well settled principle of law that the ratio of a judgment is the reason assigned in support thereof. While a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof, and thereby the ratio of the decision cannot be said to be wiped off.

.....This aspect of the matter is no longer res integra in view of the decision of a Three-Judge Bench of the Apex Court in **M/s. Sree Chamundi Mopeds Ltd. v. Church of SIT Association** (AIR 1992 SC 1439), wherein the Apex Court has laid down the law in the following terms:

"The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. **While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.** This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending....." (emphasis supplied)

Again in **Government of Andhra Pradesh vs. P. Gautam Kumar**⁴ a Division Bench of this Court observed:

⁴ 2012 (6) ALD 458 (DB)

“ The other aspect of the contention, ie., that on account of “stay of operation of the judgment”, the Prakash Singh’s case (supra), directive is itself not binding, is a contention that is wholly misconceived. Acceptance of this contention would lead to utter chaos and a de-construction of the principle of stare decisis, an essential integer of our system of law.

To illustrate, if a judgment of the Supreme Court is referred to and relied upon for conclusions or grant of relief in a judgment by a High Court; and the High Court judgment is appealed against and a stay granted by the Supreme Court, according to the learned Advocate-General the binding authority of the earlier judgment of the Supreme Court is rendered inoperative and the earlier Supreme Court judgment ceases to have a precedential value, during currency of the order of stay. Such a proposition is productive of universal and unmitigated mischief and therefore does not merit acceptance.

From the guidance derived from the precedents referred to, we are of the view that the stay of operation of the Yadav’s case (supra), judgment only disables execution of the consequences of the judgment to the parties thereto. Grant of stay does not extinguish the norm(s) predicated in the judgment ” (emphasis supplied).

Viewed from any angle, the Learned Single Judge ought to have granted the appellants, and the A.P.State Wakf Board, an opportunity of filing their counter-affidavit before passing the order under appeal, which has the effect of allowing the writ petition itself. Both the learned Government Pleader for Revenue and Sri P.Veera Reddy, learned Senior Counsel appearing on behalf of the A.P.State Wakf Board, would submit that they would file their respective counter-affidavits within two weeks from today.

The order under appeal is set aside, and the WPMP is restored to file. It is open to the 1st respondent-writ petitioner to request the Learned Single Judge to take up the WPMP any day after two weeks from today. Needless to state that while deciding the WPMP afresh, after the appellants and the A.P. State Wakf Board have filed their

counter-affidavits, the Learned Single Judge shall decide the claim of the 1st respondent-writ petitioner on its merits without being influenced by any observations made in this order.

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

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

27th December, 2017
JSU



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
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Date: 27.12.2017

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