

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

WRIT APPEAL No.1898 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.44054 of 2017 in W.P. No.35471 of 2017 dated 30.10.2007. The respondents in the Writ Petition are in appeal before us aggrieved by the order of the Learned Single Judge directing them to consider registering the partition deed within four weeks, after suspending the endorsement dated 09.10.2017. The Learned Single Judge relied on the judgment in O.S. No.38 of 1988 dated 31.12.1998, dismissing the claim of the 4th respondent over the subject land, to grant the interim relief sought for.

Learned Government Pleader for Revenue would submit that the subject property is included in the list of wakfs; such properties are prohibited from registration; the Supreme Court, in **Board of Waqf, West Bengal v. Anis Fatma Begum**¹, held that any disputes, questions or other matters relating to a wakf would be required to be decided by the Wakf Tribunal; once the subject property is found to be wakf property, as defined in Section 3(r) of the Wakf Act, any dispute, relating to it, can only be agitated before the Wakf Tribunal; the order passed by the Additional Senior Civil Judge, Kurnool, in O.S. No.38 of 1988 dated 31.12.1998, is without jurisdiction and is a nullity; and the Learned Single Judge should, therefore, have refrained from passing the interim order under appeal, which has the effect of allowing the Writ Petition itself.

¹ (2010) 14 SCC 588

The relief sought for in the Writ Petition is to declare the refusal endorsement issued by the Joint Sub-Registrar, Kurnool dated 09.10.2017, treating the petitioner's land as wakf land based on the letter of the District Collector, Kurnool dated 17.01.2012, as arbitrary, illegal and in violation of Articles 14, 21 and 300-A of the Constitution of India. A consequential direction is sought in the said Writ Petition to register and release the partition deed dated 07.10.2017.

The interim relief sought for is identical to the main relief sought for in the Writ Petition. The effect of the ad-interim order is to allow the Writ Petition itself, without giving the appellant (respondent in the Writ Petition) an opportunity of filing a counter-affidavit. We consider it appropriate, in such circumstances, to set aside the order under appeal and restore the WPMP to file. The appellant shall file their counter-affidavit in the Writ Petition within two weeks from today. It is open to the respondent-writ petitioners to request the Learned Single Judge to take up the WPMP any day after two weeks.

The Writ Appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

Date: 13.12.2017

MRKR