

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.35781 of 2016

Date: 29.03.2018

Between :

Kailash Sankla S/o. Sri Dhanraj Sankla @ Papalal Sankla,
Aged about 34 years, Occu: Business, r/o.H.No.15-6-229/L,
D.R.Complex, Begum Bazar, Hyderabad and others.

.... Petitioners

And

State of Telangana, rep.by its Principal Secretary, Revenue
(Stamps & Registration) Department, Secretariat, Hyderabad
and others.

.... Respondents



This Court made the following:

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ORDER:

Heard Sri M.A.Qureshi, learned counsel for petitioners, learned Government Pleader for Revenue (TG) for respondents 1 to 3, Sri M.A.Mujeeb learned counsel for respondent no.4 and Sri K.Jamali for respondent no.5.

2. Petitioners claim to be lawful owners and in possession of portion of house property, details of which are mentioned in paragraph-2 of affidavit filed in support of writ petition. In paragraph-3 of affidavit, petitioners traced the flow of title. According to petitioners, on 26.09.2016, they have applied for building permission to the Greater Hyderabad Municipal Corporation. Accordingly, building permission was granted and they are undertaking construction of building as per permission granted. In this writ petition, petitioners challenge deed of cancellation of previously registered deed of conveyance executed by their vendor executed by Chief Executive Officer, Telangana State Wakf Board and registered by the Joint Sub-Registrar-I, Banjara Hills, Hyderabad.

3.1. Learned counsel for petitioners would submit that unilateral cancellation is illegal, contrary to Rule 26 (i)(k)(i) of A.P.Registration Rules, 1960; law laid down by Supreme Court in **Thota Ganga Laxmi v. State of Andhra Pradesh**¹ and the decision of Division Bench of this Court in **Gaddam Laxmaiah and others v. The**

¹ (2010) 15 SCC 207

**Commissioner and Inspector General, Registration and Stamps
and others².**

3.2. By referring to the provisions of the Wakf Act, 1995 learned counsel further contended that Chief Executive Officer, Wakf Board alone is competent to notify list of wakf properties and to take decisions affecting wakf properties. The Chief Executive Officer is not authorized to communicate the Registration Department list of wakf properties. According to learned counsel, Chief Executive Officer can only exercise powers as per directions of the Board and cannot independently act. According to learned counsel, there was no direction by the Board to notify the subject properties as wakf properties and to prohibit registration. Therefore, based on alleged letter written by Chief Executive Officer, the registering authority cannot treat subject property as wakf property and entertain cancellation deed unilaterally presented by the Chief Executive Officer.

3.3. New Chapter-XXXIII was incorporated by way of amendment to the Registration Rules. Rule 239-B of Rules mandate Wakf Board to maintain a Register of Auqaf containing particulars of wakf properties and the Board should forward details of properties entered into the register to concerned Land Revenue Office and concerned land record office should make necessary entries in the land record and communicate within a period of six months from the date of registration of wakf property, its objections to the Board. The Chief Executive Officer has no role under Rule 239-B. Thus, according to Rule 243 of Registration Rules, 'only authority

² 2017 (4) ALT 213

competent to execute a document' would mean the 'Board' and that Rule 243 should be read in consonance with Rule 239-B and in terms thereof, the Chief Executive Officer is not competent to execute cancellation deed.

3.4. He would further submit that principles of natural justice are violated in as much as petitioner was not put on notice before registering unilateral cancellation of duly registered deed of conveyance and, therefore, decision of registering authority to entertain deed of cancellation presented by the Chief Executive Officer and registering it is liable to be set aside on this ground alone. In support of said contention, learned counsel placed reliance on decision in **Satya Pal Anand v. State of Madhya Pradesh and others**³; and **Ediga Chandrasekar Gowd and others v. State of Andhra Pradesh and others**⁴.

3.5. According to learned counsel, Section 51 of Wakf Act, initially covered the various issues concerning wakf property, such as, gift, sale, exchange, mortgage etc., and said transaction is void unless prior sanction of Board is obtained on all those aspects. By way of amendment, Section 104-A of Wakf Act was inserted. After introduction of Section 104-A, scope of provision in Section 51 now confined lease of wakf properties only. Therefore, Section 51 is no more attracted.

3.6. On the specific contention of respondent counsel on registering the document in Sub-Registrar Office at Banjara Hills, instead of Sub-Registrar Office in Dood Bowli, learned counsel for

³ (2016) 10 SCC 767

⁴ (2017) 3 ALT 420

petitioners would submit that as it was more convenient to the petitioners to come to Sub-Registrar Office located in Red Hills, they had opted to the said Office. According to learned counsel, it was permissible for a person to register deed of conveyance in any Registration Office within a district and, therefore, registration of document in Sub-Registrar Office, Red Hills is not vitiated on that ground.

4.1. Learned counsel for the unofficial respondent impleaded as respondent no.5 would submit that property belongs to their ancestors. Father of the 5th respondent donated 400 square yards at Darursalem, Hyderabad. On 200 square yards, Mosque was constructed, and balance 200 square yards is utilized as burial ground. Property was notified as wakf property and was included in the Gazette published by State Government.

4.2. He would submit that as step-brothers were resorting to create false documents and registering deeds of conveyance, respondent no.5 filed O.S.No.115 of 2013 before the Wakf Tribunal against his step-brothers praying to grant permanent injunction against alienating 200 square yards of land and the Tribunal granted interim order on 10.09.2013 in I.A.No.1204 of 2013. Said interim order is operating and in terms thereof, the step-brothers cannot sell the property nor register deeds of conveyance and, therefore, any registration of property after interim order is void *ab initio*. There is no illegality in unilaterally cancelling earlier deed of conveyance and no rights accrued to the petitioners merely because they claim to be *bona fide* purchasers. If at all petitioners

have grievance, they must work out their remedies against their vendors.

5.1. Learned standing counsel would submit that it is the bounden duty of the Chief Executive Officer to protect Wakf properties. The powers conferred on the Chief Executive Officer to protect Wakf properties are sweeping and no fetters can be imposed.

5.2. The subject property is notified as Wakf property. The State Government published Gazette including this property as Wakf property. The Chief Executive Officer intimated vide his letter dated 01.09.2007 to the Revenue and Registration authorities the subject property as Wakf property. Further intimation was also given on 10.05.2016. The Wakf Board has taken all measures as required by the Act to protect the property.

5.3. Learned Standing counsel would further submit that Full Bench of this Court in **Vinjamuri Rajagopala Chary v. State of Andhra Pradesh and others**⁵ held that the Chief Executive Officer is competent to intimate registering authorities about status of property as Wakf property in accordance with Section 22-A (i) (c) of the Registration Act.

5.4. He would submit that as the subject property is Wakf property, the CEO is competent to cancel the previously registered deed of conveyance.

⁵ 2016 (2) ALD 236 (FB)

6. As per the direction of this Court dated 12.03.2018 learned standing counsel produced record relating to the letter dated 10.05.2016 and the earlier notification dated 01.09.2007. However, learned standing counsel would submit that correspondence leading to execution of deed of cancellation could not be secured. On going through the record produced by learned standing counsel for the Wakf Board, the file was returned.

7. It is seen from the record that the Chief Executive Officer vide his letter F.No.M5/35/Prot/Hyd/2007 addressed to the Sub-Registrar, Dood Bowli, Hyderabad informed the Sub-Registrar that grave yard namely Fateh Sultan bearing M.C.H.No.14-1-486 situated at Darussalam road is a registered and notified Wakf admeasuring 400 Square yards under the Towliath of Mir Mouzam Sultan published in A.P.Gazette No.12-A dated 21.03.1985. The Sub-Registrar was informed that some attempts were made to encroach the property and to sell to third parties and requested not to register wakf property. On the same day, he has also addressed another letter to Station House Officer, Mangalhat Police Station, Hyderabad requesting him to provide police assistance to the Inspector Auditor Wakfs, City Circle No.II and the Task-force team of Wakf Board as and when required for protection of graveyard.

8. The file also contained photographs showing erection of notice board describing the property as Wakf property. There is further correspondence with various authorities by the Wakf Board on the issue of ownership, illegal encroachment, filing of O.S.No.51/2002, orders passed thereon etc., evidencing that Wakf

Board has been alert and continuously monitoring the illegal activities of persons who claim the property as belonging to them and to sell the property to third parties. On 29.02.2008 the Chief Executive officer, addressed letter to the Revenue Divisional Officer, Hyderabad Division, authorising him to exercise powers under Section 55 of the Wakf Act, 1955 to get the encroachments evicted from the schedule mentioned property and deliver vacant possession in continuation to the earlier correspondence. On 11.07.2016 the Chief Executive Officer, addressed letter bearing F.No.M5/35/Prot/Hyd-II/2007 to the Circle Inspector of Police, Mangalhat Police Station, to the Revenue Divisional Officer and the Sub-Divisional Magistrate, Hyderabad, informing them that long ago a request was made to exercise power under Section 55 of the Act to enforce the order under Section 54 of the Act, for removal of encroachments and to hand over vacant possession and requested to hand over possession of the subject property.

9. The correspondence on record would disclose that there was intimation/notification of status of subject property as Wakf property to the registering authorities, to the revenue authorities and to the police and effective steps were taken to remove illegal encroachments and to protect the property. It appears, no further steps are taken to remove encroachments as W.P.No.25270 of 2016 is pending in this Court against eviction and interim order is granted by this Court. In the face of this record, it is no more open to anybody to plead ignorance on status of land and to claim as *bona fide* purchaser.

10. It is vehemently argued by learned counsel for petitioners that Chief Executive Officer is not competent to execute deed of cancellation. Bare perusal of Section 25 of the Wakf Act makes it clear that Chief Executive Officer is administrative head of the Wakf Board. As per Section 25 of the Act, he has the duty and responsibility of doing generally of such acts as may be necessary for the control, maintenance and superintendence of Wakfs.

11. Section 26 of the Act makes it clear that the Chief Executive Officer has power to defer with resolution passed by the Board, if he is of the opinion that decision made is not in accordance with law or in excess or is an abuse of powers conferred on the Board or if implemented, is likely to cause financial loss to the Board or to the concerned wakf or to the wakfs generally or lead to a riot or breach of peace or cause danger to human life, health or safety or is not beneficial to the Board or to any wakf or to wakfs generally. If the CEO differs with the decision of Wakf Board Government alone can interfere and deal with the matter. Thus, in the matter of protection of wakf properties power vested in the CEO by the Act are sweeping and all encompassing.

12. At this stage, it is appropriate to note the observations of Full Bench in paragraph 91. It reads:

“91. Therefore, once the property finds place in a Gazette published as envisaged under Section 5 or in the Register of Auqaf, which is the prescribed Register, it is prima facie proof that the property is a Wakf. And, if that property is included in the list of prohibited properties communicated to the Registrar concerned, then, any document presented for registration dealing with such property comes within the prohibition under clause (c) of the Section 5, insofar as the properties of Wakfs falling under the Wakfs Act.”

13. It is also relevant to note, by way of amendment to Registration Rules, Chapter-XXXIII is added. Rule 239-B deals with wakf properties. Rule reads as under:

“Rule 239-B: The Wakf Board shall maintain a Register of auqaf containing the particulars of all Wakf properties and all title deeds and documents relating thereto. Sub-Section (2) of Section 37 of Wakf Act, 1995 provides that the Board shall forward the details of properties entered in the Register of auqaf to the concerned land record office having jurisdiction of the wakf property. The concerned land record office, in turn, under sub-section (3) shall either make necessary entries in the land record or communicate within a period of six months from the date of registration of wakf property under Section 36, its objections to the Board. **After completion of aforesaid process the Chief Executive Officer, Telangana, State Waqf Board shall update the entire records with the Revenue officials concerned and he shall furnish lists of immovable properties falling under clause (c) of sub-section (1) of Section 22-A including any subsequent additions, deletions or modifications** to the District Registrar concerned and to the Inspector-General of Registration under proper acknowledgment in the Form V and VI of Appendix XI. The lists shall be signed by the Chief Executive Officer, Telangana State Waqf Board.” [emphasis supplied].

14. In the case on hand, property is identified as wakf property and notified in the Gazette. Once this stage is over, as per later limb of Rule 239-B, the Chief Executive Officer is competent to notify to the authorities under the Registration Act. As noted above, such intimation was already furnished on more than one occasion.

15. Rule 243 vests power in authority/officer competent to execute a document cancelling previously registered document by unauthorized person affecting immovable property notified under Section 22-A of Registration Act. The subject property is notified as wakf property and therefore Section 22-A (1)(c) is fully attracted.

Thus, registration of a document affecting such property can be cancelled as per Rule 243.

16. In paragraph 93, Full Bench further observed as under:

“93. Thus, insofar as clause (c) of sub-section (1) of Section 22-A is concerned, it is clear that immovable properties of Charitable and Religious Endowments required to be entered in a prescribed Register, the certified extract of which needs be supplied to any applicant under Section 43 of the Endowments Act. There is a finality attached to the entries in the Register until the contrary is proved. Similarly, the waqf properties will be either Gazetted or will be entered in the prescribed Register. There is a finality attached to such entries in the Register and the properties gazetted, until the contrary is proved. When once the properties of Charitable and Religious Endowments are entered in the prescribed Register and when once the Waqf properties are either gazetted or entered in the prescribed register and the details of such properties find place in the list of prohibited properties made available to the Registrar concerned, he would be justified in refusing to register any document presented for registration related to such properties of Charitable and Religious Endowments or Waqfs, which find place in the list of prohibited properties, provided they are not executed by person statutorily empowered to do so or authorized to do so. It is needless to mention that the parties aggrieved have a liberty to invoke the mechanism provided under the special Statutes, if they intended to challenge the ownership of the Charitable and Religious Endowments or of the Wakfs.”

17. In paragraph No.100 (3) of the judgment, Full Bench directed the Chief Executive Officer to notify the list of wakf properties to the authorities under the Registration Act. Thus, the Chief Executive Officer is competent to notify to the registering authority about the status of subject property as Wakf property.

18. In fact, in the case on hand, the Chief Executive Officer has not decided status of property. Subject property was already classified as wakf property and notified as such in the gazette

published by State. He has only taken consequential steps to protect the wakf property.

19. As subject property is notified as wakf property, in the process of protecting the wakf property, it is competent for the Chief Executive Officer to cancel any deed of conveyance executed by one person in favour of another person when such person was not authorized in terms of Wakf Act and the Registration Act. The Wakf Board was not party to the earlier transaction and the said transaction is not binding on them. As the Wakf Board is not a party, power of unilateral cancellation of previously registered deed of conveyance is traceable to Rule 243 of Rules made under the Registration Act in general and sweeping provisions of the Wakf Act in particular. Further, this is not a case where a party to the registered document has resorted to unilateral cancellation. The transaction was made by two strangers to the wakf property. As custodian of wakf properties, the CEO of Wakf Board has all the powers at his command to protect and in the process, he is competent to cancel earlier transaction. Once a property is gazetted, it is deemed to be wakf property unless held otherwise by competent court or the Wakf Tribunal. Thus, the deed of cancellation of previously registered deed of conveyance is not invalid. It does not amount to illegal exercise of power by CEO. Therefore, decision of Division Bench relied by learned counsel for petitioner also does not come to the aid of petitioners.

20. Having regard to the history of correspondence, noted above, on various issues and Gazette notification and communication to the registering authority and other revenue authorities by the Wakf

Board as early as in the year 2007, I do not see any error committed by the registering authority in entertaining unilateral deed of cancellation of registered deed of conveyance affecting wakf property.

21. There is no merit in the contention of learned counsel for petitioners that due to introduction of Section 104-A of the Act, 1995, the measures required to protect wakf properties from alienation is diluted. No doubt after the amendment, Section 51 of the Act, 1995 is now confined to lease of wakf properties, but all other aspects, which were earlier incorporated in Section 51, are now incorporated in Section 104-A. In terms thereof and on cumulative reading of other provisions of Wakf Act, wakf property cannot be sold by unauthorised person to any other person and such sale is void *ab initio*.

22. It is also to be noted that matter is pending before the Wakf Tribunal and Wakf Tribunal granted injunction restraining alienation of suit schedule property. The vendors of the petitioners are parties before the Wakf Tribunal and the interim order is operating against them. During subsistence of said interim order, there cannot be any transaction to sell the property. Thus, deed of conveyance, on which reliance is placed by the petitioners, is void and cannot be enforced.

23. Under Article 226 of the Constitution of India writ court exercises equity jurisdiction. Though writ court has wide amplitude of jurisdiction under Article 226, it is subject to self-imposed restraint. The power under Article 226 is discretionary. *'It will be exercised only in furtherance of interests of justice and not merely*

on the making out of a legal point' [**RAMNIKLAL N BHUTTA Vs. STATE OF MAHARASTRA**⁶]. It must be exercised with great caution and only in furtherance of public interest or to set right grave illegality. Larger public interest must be kept in mind to decide whether intervention of the court is called for in a given case, more so when community properties are involved.

24. While considering the grievance in a petition under Article 226, the writ court need not grant relief merely because the petitioner makes out a legal point. *'Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved* [**RASHPAL MALHOTRA Vs SATYA RAJPUT MRS AND ANOTHER**⁷ & **COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K G S BHATT**⁸].

25. Prima facie the subject property is notified as Wakf property. Deed of conveyance of Wakf property can be made only by an authorised officer of the Wakf Board, where as deed of conveyance was registered by unauthorised person. Accepting the contention of learned counsel for petitioner that registering unilateral deed of cancellation was without notice and opportunity would amount to restoring ex-facie illegal transaction. In such an event, even if writ court agrees with the contention of petitioner, it need not grant relief if granting of relief to petitioner would amount to restoring another illegal order.

⁶ (1997) 1 SCC 134

⁷ AIR 1987 SC 2235

⁸ AIR 1089 SC 1972

25.1. In the following two leading decisions this very issue was considered by the Hon'ble Supreme Court.

25.2. In **Gadde Venkateswara Rao v. Government of A.P.**⁹, the Panchayat Samithi passed resolution on 25.08.1960 to locate a primary health centre at Dharmajigudem. It passed another resolution on 29.05.1961 to locate it at Lingapalem. On a representation, Government passed orders on 07.03.1962 setting aside the second resolution of Panchayat Samithi and thereby restoring the earlier resolution dated 25.08.1960. On a review, Government passed orders on 07.03.1962 accepting shifting of primary health centre to Lingapalem. The earlier order was without notice to the Panchayat Samithi and later order was passed without notice to villagers of Dharmajigudem, on whose representation Government passed orders on 07.03.1962.

25.3. To the extent relevant for the case on hand, Supreme Court observed at page 189 as under:

“Both the orders of the Government, namely, the order dated 7-3-1962, and that dated 18-4-1963, were not legally passed: the former, because it was made *without giving notice* to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did *not give notice* to the representatives of Dharmajigudem village.”

25.4. Supreme Court further observed that if the High Court quash the order of Government dated 18.04.1963, it would have restored another illegal order and it would have given health centre to a village contrary to the valid resolution passed by the

⁹ AIR 1966 SC 828

Panchayat Samithi and upheld the decision of High Court in not exercising its extraordinary discretionary power.

25.5. In **M.C.Mehta vs. Union of India and others**¹⁰, challenge made against cancellation of retail outlet for petrol to Bharat Petroleum Limited was on the ground that prior to such cancellation, no notice or opportunity was afforded to BPCL. Earlier the very same piece of land was allotted to HPCL. This allotment was cancelled, and allotment was in turn made to Bharat Petroleum corporation. By order dated 10.03.1999, the plot was restored to HPCL withdrawing from BPCL. Both have contended that principles of natural justice violated when allotment was cancelled.

25.6. In the above factual background, Supreme Court observed as under:

“**15.** It is true that whenever there is a clear violation of the principles of natural justice, the courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this Court because the orders of the Department were consequential to the orders of this Court. The question however is whether the Court in exercise of its *discretion* under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no *de facto prejudice* is established. On the facts of this case, can this Court not take into consideration the fact that any such declaration regarding the 10-3-1999 order will restore an earlier order dated 30-7-1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order dated 10-3-1999 is set aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather than one for which it has no right after the passing of the latter order of this Court dated 7-4-1998? ”

¹⁰ (1999) 6 SCC 237

25.7. In **M.C.Mehta**, by referring to **Gadde Venkateswara Rao**, Supreme Court observed,

“17. The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.”

xxxx

21. It is, therefore, clear that if on the *admitted* or *indisputable* factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.”

26. For all the aforesaid reasons Writ petition is dismissed. Pending miscellaneous petitions are closed.

27. It is however made clear that the discussion in the judgment is with reference to competence of CEO of Wakf Board to unilaterally cancel previously registered deed of conveyance and there is no expression of opinion on merits of respective claims and parties are at liberty to raise all pleadings available to them in law in the pending case before the Wakf Tribunal and/or in any other legal proceedings.

JUSTICE P.NAVEEN RAO

Date:29.03.2018
Rds/kkm

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