

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO

Writ Appeal No.68 of 2018

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.51784 of 2017 in W.P.No.41748 of 2017 dated 12.12.2017.

In the order under appeal the Learned Single Judge, while recording that the Learned Government Pleader for Revenue, Sri Shaik Arifulla, Learned Counsel for the Wakf Board and Sri Ancha Pandu Ranga Rao, Learned Standing Counsel for the Municipal Corporation, took notice, observed that, admittedly, the claim of the 2nd respondent, to recover possession of the subject land in Survey No.508 of Vasavi Nagar, Guntur, claiming it to be Wakf property, was negated by this Court specifically in its judgment and decree dated 18.08.1980 in S.A.No.224 of 1978; a finding was recorded therein that no Mutavalli had performed, at any time, any Nikhri service in the said land; though the property was alienated on 16.07.1946, the suit itself was filed in 1967 as O.S.No.129 of 1967 before the Subordinate Judge, Guntur, and the suit was barred by limitation; and this judgment had attained finality.

The Learned Single Judge further observed that the action of the second respondent, in communicating the list of prohibited properties to the third respondent including the land in Survey No.508 referred to supra, was clearly mala-fide. Interim direction, as prayed for, was granted. The interim direction prayed for was to

direct respondents 5 and 6 (the Sub-Registrar, Stamps and Registration, Guntur, and the Guntur Municipal Corporation, rep. by its Commissioner, Guntur) to entertain their respective applications for registration and construction, and process the same for registration as well as for construction, pending disposal of the Writ Petition.

The main relief, sought for in the Writ Petition, is for a mandamus to declare the action of the Andhra Pradesh State Wakf Board, in sending the communication dated 10.03.2016 claiming the property in Survey No.508 situated at Vasani Nagar, Guntur as Wakf property ignoring the decree and judgment dated 30.11.1972 passed in O.S.No.129 of 1967 on the file of the Subordinate Judge, Guntur, against the 2nd respondent which was confirmed vide judgment dated 18.08.1980 passed in S.A.No.224 of 1978 by this Court, as illegal and arbitrary. A consequential direction is sought to set aside the impugned communication issued by the A.P. State Wakf Board, after declaring the subject property as not Wakf property.

The communication issued by the A.P. State Wakf Board, by proceedings dated 10.03.2016 to the Commissioner and Inspector General, Registration and Stamps, Andhra Pradesh, is regarding the list of wakf properties, and its attached properties, as per the proforma in Annexure-III under Section 22A(1)(c) of the Registration Act, pertaining to certain districts in the State of Andhra Pradesh, to prevent its registration. The Wakf Board requested the Commissioner and Inspector General of Registration and Stamps Department, Andhra Pradesh to forward the enclosed

proforma, to the concerned Sub-Registrars in various districts in the State of Andhra Pradesh, for further necessary action.

It is only if the main relief sought in the Writ Petition were to be granted i.e. if the proceedings dated 10.03.2016, requesting the Commissioner and Inspector-General of Registration and Stamps Department to include the subject lands in the prohibitory list under Section 22A(1)(c) of the Registration Act, is set aside would the question, of directing the respondents to register the property and for the Municipal Corporation to receive their applications for construction, arise. The interim relief sought for, in effect, goes even beyond the main relief sought for in the Writ Petition, as the interim relief sought for can be granted only if, and after, the main relief is granted. The aforesaid interim order was passed at the stage of admission, without the respondents being afforded an opportunity of filing their counter-affidavit.

Sri K.V.Bhanu Prasad, Learned Counsel for the respondent-writ petitioners, would submit that the writ petitioners have all purchased small extents of lands, which total to Ac.2.00 and was the subject matter of O.S.No.129 of 1967 on the file of the Subordinate Judge, Guntur; the decree in O.S.No.129 of 1967 has attained finality consequent to the judgment in S.A.No.224 of 1978 dated 18.08.1980; and the appellants have failed, even before this Division Bench, to show that their memo dated 10.03.2016 relates only to the remaining extents of land, in the subject survey numbers, other than these Ac.2.00 of land.

The question, whether or not the prohibitory list furnished by the A.P. State Wakf Board to the Commissioner and Inspector General of Registration and Stamps, includes this Ac.2.00 of land

which, in view of the judgment and decree in S.A.No.224 of 1978, could not have been included therein, necessitates examination in the Writ Petition; and, if the contention urged by the respondent-writ petitioners were to merit acceptance, then the impugned memo dated 10.03.2016, in so far as it relates to this extent of Ac.2.00 of land, would be liable to be set aside. Such an order can only be passed after the appellant-respondents have filed their counter-affidavit, and not at the stage of admission itself.

An interim order, which goes even beyond the main relief sought for in the Writ Petition, and which can be granted only after, and as a consequence of, the main relief being granted, would not, ordinarily, be granted at the stage of admission even without the respondents being given an opportunity to file their counter-affidavit. We are satisfied that the Learned Single Judge ought to have given the appellant an opportunity of filing their counter-affidavit before the order, in the nature sought for in the WPMP, was granted. The order under appeal must therefore be, and is accordingly, set aside and the WPMP is restored to file.

Sri P.Veera Reddy, Learned Senior Counsel appearing on behalf of the appellant, would submit that a counter-affidavit would be filed, on behalf of the appellant, within two weeks from today. It is open to Sri K.V. Bhanu Prasad, Learned Counsel for the respondent-writ petitioners, to request the Learned Single Judge to take up the WPMP any day after two weeks. The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

After the order was dictated in open Court, Sri K.V. Bhanu Prasad, Learned Counsel for the respondent-writ petitioners, stated that the order, of the nature passed by this Court, would cause undue sufferings to citizens. Any person, aggrieved by the order passed by a Court, can avail his legal remedies there against. Unwarranted comments in open Court, on the nature of the order passed by the Court after orders are pronounced, prima-facie tends to lower the authority of this Court, prejudices and interferes with the due course of judicial proceedings, and amounts to obstruction of the administration of justice. Registry is directed to register a suo-motu Contempt Case against Sri K.V. Bhanu Prasad, Learned Counsel for the respondent-writ petitioners, and issue notice to him to show-cause why proceedings, under the Contempt of Courts Act, should not be initiated against him.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

Date: 23rd January, 2018.

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