

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT APPEAL NO.130 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 interlocutory order passed by the learned Single Judge in WP.MP.No.52631 of 2017 in WP.No.42457 of 2017 dated 20.12.2017.

The first respondent herein filed W.P.No.42457 of 2017 seeking a mandamus to declare the action of the A.P. State Wakf Board in publishing, the list notified Wakf Properties, in Andhra Pradesh, Guntur District Gazette under Gazette Serial No.874 dated 28.06.1962, that an extent of Acs.11.38 cents in Survey No.508 and another extent of Acs.4.00 in Survey No.509 was Wakf property under the Wakf Act, 1995; and intimation thereof by the District Collector, Guntur, in his proceedings dated 29.10.2007, to the District Registrar, Guntur to prohibit registration of documents relating to transfer of said property under Section 22-A of the Indian Registration Act, 1908 ("the Act" for brevity), as illegal, arbitrary and without jurisdiction. By way of interim relief, the first respondent herein sought a direction to the District Registrar, Guntur, the Joint Sub-Registrar-I and Joint Sub-Registrar-II, Guntur to receive, register and release the conveyance deeds as and when presented by the petitioner in respect of the lands which are the subject matter of the Writ Petition.

In the order under appeal, the learned Single Judge observed that, since the land in question has been held as not belonging to the A.P. State Wakf Board in the S.A., it could not have been included by the A.P. State Wakf Board in its communication to the District Collector & Magistrate, Guntur; and the District Collector & Magistrate could not have included it in the list of prohibited properties communicated by him to the Joint Sub Registrar-I and the Joint Sub Registrar-II, Guntur.

While Sri S.Arifullah, learned Standing Counsel for the A.P. State Wakf Board, appearing on behalf of the appellant, would submit that, in respect to the lands in the very same survey numbers, this Court, by its order in WA.No.68 of 2018 dated 23.01.2018, had set aside a similar interim order passed by the learned Single Judge, Sri Kotagiri Sreedhar, learned counsel for the first respondent-writ petitioner, would draw our attention to the letter addressed by the Revenue Divisional Officer, Guntur to the District Collector, Guntur dated 16.06.1985, informing the latter that the lands in Survey Nos.508 and 509 were not Wakf properties; the High Court in its judgment in SA.No.224 of 1978 dated 18.08.1980 had stated that the suit properties were not Wakf properties; the said judgment was against the Wakf Board; the suit properties were declared as personal properties; and the notification published, in the Guntur District Gazette dated 20.11.1982, discloses that the subject lands have been withdrawn from the notification. Learned counsel would further submit that, in the light of the aforesaid proceedings of the Revenue Divisional Officer, it is evident that the subject lands are private properties, and are not

Wakf properties; and consequently, the Wakf Board could not have sought inclusion of these lands in the list of prohibited properties under Section 22-A of the Act.

In its order in W.A.No.68 of 2018 dated 23.01.2018, a Division Bench of this Court observed as under.

“.....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.”

The subject lands, in the present case, are also in the very same survey number, and reliance is also placed on the judgment and decree in S.A.No.224 of 1978 which was also noted by the Division Bench in its order in W.A.No.68 of 2018 dated 23.01.2018.

There shall be a similar direction as in W.A.No.68 of 2018 dated 23.01.2018. The order under appeal is set aside, and W.P.M.P.No.52631 of 2017 is restored to file. Sri S.Arifullah, learned Standing Counsel, requests two weeks' time for a

counter affidavit to be filed on behalf of the appellant. It is open to Sri Kotagiri Sreedhar, learned counsel for the first respondent-writ petitioner, to request the learned Single Judge to take up W.P.M.P.No.52631 of 2017 for hearing any day after two weeks.

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

(RAMESH RANGANATHAN, ACJ)

(M.S.K.JAISWAL, J)

31st January 2018
RRB

