

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

Writ Petition No.2924 of 2018

Order:

Heard learned counsel for the petitioner, learned counsel for the first respondent and learned Government Pleader for the second respondent.

The case of the petitioner is that an extent of Ac.3-59 cents, situated in Survey No.136 of Kothapet area of Kurnool Town, is a registered Wakf property belonging to the Wakf Institution by name Sultania Mosque. The said Sultania Mosque is not made a party to the present Writ Petition. The petitioner states that her father-in-law took the above property on lease about 50 years back and the lease was being renewed from time to time. She has been running a dairy farm and cultivating the said land by paying the lease amount regularly. While so, on 28.02.2011, the second respondent extended the lease for a period of one year from 10.08.2011 to 09.08.2011 by issuing appropriate proceedings by enhancing the lease amount to Rs.26,000/- per year. She states that she affected the repairs to the cattle shed by seeking permission from the second respondent on 13.02.1997 under the supervision of the Inspector Auditor, Wakfs, Kurnool. While so, the first respondent directed the petitioner to vacate the premises by issuing a notice on 08.05.2012. She submitted an application to the first respondent for renewal of lease for further period of three years and when the same was not considered, she filed W.P.No.25629 of 2012 and the same was disposed of on 21.08.2012 at the admission stage by directing the respondents to consider her representation. When a notice of eviction was issued on 10.10.2012, she states that she submitted a representation to the first respondent to extend the lease period. On 16.02.2013 the second respondent issued eviction notice and the same was challenged by her in O.S.No.22 of 2013 before the A.P. State Wakf Tribunal, Hyderabad. The

same was dismissed on 23.10.2017 and even after dismissal also the second respondent should have taken action as per law and he has no right to evict the petitioner by issuing notice on 16.02.2013. Challenging the said judgment and decree passed by the A.P. State Wakf Tribunal, the petitioner filed CRP No.6142 of 2017 and the said CRP was disposed of on 15.11.2017 by directing the Wakf Board to follow due process of law. Even before filing the said CRP, the petitioner states that W.P.No.37486 of 2017 was filed and the same was dismissed on 08.11.2017. Now, when a notice was issued by the second respondent on 24.01.2018, the present Writ Petition is filed.

This Court noticed that in all the above averments, the second respondent was wrongly mentioned, as no proceeding emanated from the second respondent except the impugned notice dated 24.01.2018. As already stated above, the Wakf Institution is not made a party to the present Writ Petition.

Learned counsel for the petitioner submits that the present notice is issued by the second respondent who has no jurisdiction either under Section 54 of the Wakf Act, 1995 (for short 'the Act') or the Rules framed thereunder.

Learned Senior Counsel appearing for the first respondent, on the other hand, submits that the lease rules on which the petitioner is placing reliance are of the year 2014 and are not applicable to the case of the petitioner.

A reading of the notice dated 16.02.2013 discloses that the request of the petitioner for extension of the lease was placed before the Wakf Board in its meeting held on 27.09.2012 and an unanimous resolution was passed on the same day not to grant further lease and directed the office to take further action in accordance with law. Accordingly, a notice was issued on 10.10.2012 directing the petitioner to vacate the land within thirty (30) days

by paying the arrears of lease till the date of vacating the land. Again the petitioner submitted a representation for extension of lease and the matter was once again placed before the Wakf Board on 11.02.2013 and an unanimous resolution was passed authorizing the Inspector Auditor, Wakfs to collect the arrears and rejecting the request for extension of lease. It was directed to initiate the process for eviction. In view of the same, a notice dated 16.02.2013 was issued directing the petitioner to vacate the land within thirty (30) days. The said notice was challenged in O.S.No.22 of 2013 before the A.P. State Wakf Tribunal, Hyderabad, and the Wakf Tribunal upheld the said notice. As a consequence thereof, the petitioner ought to have vacated the premises within thirty (30) days, but the learned counsel for the petitioner submits that the said notice as well as the impugned notice is not in accordance with law. Now, it is not open to the learned counsel for the petitioner to raise the point of validity of the notice dated 16.02.2013 in the present proceedings, as the said notice was upheld by the A.P. State Wakf Tribunal in O.S.No.22 of 2013.

A reading of Section 54 of the Act shows that the procedure for eviction of unauthorized occupants was provided in the said section and it speaks of a notice and the right of the party to file objections and conducting of an enquiry thereafter. After receipt of notice as aforesaid on 16.02.2013, the petitioner did not file any objections and, on the other hand, challenged the same before the Wakf Tribunal. The Wakf Tribunal considered the contentions of both the parties and delivered the judgment. In such circumstances, the technical compliance of sub-sections (3) and (4) of Section 54 cannot be insisted and the petitioner is bound by the order of the Tribunal. Now, what remains for the petitioner is to vacate the premises as ordered by the Tribunal and if the petitioner refuses to vacate, sub-section (5) of Section 54 comes into play and, in those circumstances only, it

appears that the first respondent addressed a letter to the District Collector, as the first respondent has no mechanism to take steps for forcible eviction of the petitioner. The impugned notice was issued by the second respondent in pursuance of the directions of the District Collector for eviction. This Court sees that the procedure prescribed in Section 54 of the Act is complied with and proper opportunity was given to the petitioner by the Wakf Tribunal while deciding the validity of the earlier notice dated 16.02.2013.

In the circumstances, this Court sees no ground to entertain the present Writ Petition and the Writ Petition is, accordingly, dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) payable to the first respondent.

As a sequel thereto, the miscellaneous petitions, if any, pending in this writ petition shall stand closed.

Date: 06.02.2018
Nsr

A. RAMALINGESWARA RAO, J

