

THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT APPEAL No.261 OF 2018

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan).

Heard Sri K. Ratanga Pani Reddy, learned counsel for the appellant-writ petitioner and Sri P. Veera Reddy, learned Senior Counsel appeared on behalf of the A.P. State Wakf Board.

This appeal, under Clause 15 of the Letter Patent, is preferred against the order of the learned Single Judge in W.P.No.2924 of 2018 dated 06.02.2018. The appellant herein filed the said Writ Petition seeking a *Mandamus* to declare the notice issued by the Tahsildar, Kurnool dated 24.1.2018, directing the petitioner to remove the encroachments from the subject property in Sy.No.136, situated at Kothapeta area of Kurnool Town belonging to the Wakf institution, called Sultani Mosque, as illegal, arbitrary and in violation of Section 54 of the Wakf Act, 1995 (for short, "the Act"). A consequential direction was sought to the respondents to follow the due process of law as contemplated under the Act, and the Wakf Properties Lease Rules, 2014 (for short, "the Rules"), in order to evict the petitioner from the subject property.

The learned Single Judge has, in the order under appeal, taken note of Section 54 of the Act and Rule 24 of the Rules and has, thereafter, observed that Section 54 of the Act speaks of a notice, the right of the party to file objections, and for conducting of an enquiry thereafter; after receipt of the notice on 16.2.2013, the petitioner did not file any objections; she had, on the other hand, challenged the same before the Wakf Tribunal; the Wakf Tribunal had considered the contentions of both the parties, and had delivered judgment; in such

circumstances, technical compliance of Section 54(3) and (4) of the Act could not be insisted upon; the petitioner is bound by the order of the Tribunal; what remained for the petitioner was to vacate the premises as ordered by the Tribunal; if the petitioner refused to do so, Section 54(5) of the Act would come into play; in those circumstances, the first respondent had addressed a letter to the District Collector to take steps for eviction of the petitioner; and the impugned notice, issued by the 2nd respondent, was pursuant to the order of the District Collector directing eviction. The learned Single Judge observed that the procedure, prescribed in Section 54 of the Act, was complied with, and a proper opportunity was given to the petitioner by the Wakf Tribunal while deciding the validity of the earlier notice dated 16.2.2013. The writ petition was dismissed with costs of Rs.5,000/-.

Before us Sri K. Ratanga Pani Reddy, learned counsel for the petitioner, would submit that, by the earlier notice issued on 16.2.2013, the petitioner was merely intimated of the expiry of the lease period; it is not a notice for eviction referable to Section 54(1) of the Act; the petitioner is still in possession of the subject land; as Section 54(1) of the Act contemplates a detailed procedure for eviction, the respondents should be directed to follow the said procedure; and the petitioner should not be forcibly evicted from the subject land.

Sri P. Veera Reddy, learned Senior Counsel appeared on behalf of the respondents, would place before us a copy of the report of the Inspector Auditor of the A.P. State Wakf Board dated 16.2.2018 informing the Chief Executive Officer of the A.P State Wakf Board that the Tahsildar, Kurnool had delivered possession of the subject land, of an extent of Ac.3.59 cents situated at Kothapet area of Kurnool belonging to Sultani Mosque, vide panchanama dated 16.2.2018. A copy of the said panchanama is enclosed to the said letter.

The fact that the subject property belongs to a Wakf institution, called the Sultani Mosque, is not in dispute. It is also not in dispute that the petitioner was granted lease of the subject land which was extended from time to time. The petitioner's grievance is that the impugned notice, issued by the Tahsildar, required her to remove the encroachments, and hand over possession within seven days, failing which action would be taken to remove the encroachments; and since Section 54(1) of the Act requires a notice to be served on the encroacher, calling upon her to show cause why an order of removal should not be passed, the impugned action, removing the encroachments forcibly, is in violation of Section 54(1) of the Act, and is therefore illegal.

The notice issued by the A.P. State Wakf Board on 16.2.2013 is a notice directing the petitioner to vacate the subject land within 30 days, from the date of receipt of the notice, by paying arrears of lease till the date of vacating the land, failing which proper action would be initiated against her. While the said proceedings did not call upon the petitioner to show cause, the fact remains that, even pursuant to the said notice, issued nearly five years ago, the petitioner neither submitted her reply thereto nor did she vacate the leased property. The petitioner unsuccessfully questioned the said notice both before the A.P. State Wakf Tribunal, and thereafter in revision before this Court. Section 54(5) of the Act stipulates that, if there is failure to comply with the order of eviction within 45 days from the date of receipt of the notice under Sub-Section (2) of Section 54 of the Act, the Chief Executive Officer, or any other person duly authorized by him in this behalf, may evict that person from, and take possession of, the Wakf property.

In the order under appeal, the learned Single Judge has observed that the action taken by the Wakf Board is referable to Section 54(5) of the Act. Even otherwise, Rule 24 of the Rules, which relates to surrender

of the leased property, stipulates that, on expiration or termination of the lease, the lessee shall immediately surrender possession of the leased premises, and all leasehold improvements, in substantially the condition in which the lessee is required to maintain the leased premises, excepting only reasonable wear and tear; and upon surrender, all right, title, and interest of the lessee in the leased premises shall cease. Rule 24 (2) of the Rules stipulates that if, after expiration or termination of the lease, the lessee continues to occupy the leased premises, it shall be treated as an encroachment, and such encroachment shall be removed in accordance with the procedure specified in Section 54 of the Act.

The appellant-writ petitioner was called upon to vacate the subject land, vide notice dated 16.2.2013, more than five years ago. She, however, continued to retain possession of the subject land ever since, till she was evicted by the proceedings dated 16.2.2018. As noted herein above, Rule 24(1) of the Rules requires the lessee, on expiration or termination of the lease, to immediately surrender possession of the leased property. The petitioner has chosen not to do so, and has remained in illegal occupation of the subject land for the past five years.

Exercise of power under Article 226 of the Constitution is discretionary, and a Writ is not issued as of right or as a matter of course. (**C.R. Reddy Law College Employees' Association, Eluru W.G.District vs. Bar Council of India, New Delhi**¹). The Court may, in appropriate cases, refuse to exercise its discretionary jurisdiction for good and valid reasons. (**Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**.²; **Board of Trustees of Port of Kandla Port v. Hargovind Jasraj**³; **Pune Municipal Corporation v. State of Maharashtra**⁴; **State of Punjab v. Gurdev Singh**⁵; **R. Thiruvirkolam**

¹ 2004(5) ALD 180 (DB)

² (2011) 3 SCC 363

³ (2013) 3 SCC 182

⁴ (2007) 5 SCC 211

⁵ (1992) ILLJ 283 SC

v. Presiding Officer⁶; State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead)⁷ and Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd. etc.⁸).

The power, under Article 226 of the Constitution of India, is exercised only in furtherance of the interest of justice and in larger public interest, and not merely on a legal point being made out. The interest of justice and the public interest coalesce. They are very often one and the same. The Court has to weigh public interest vis-à-vis private interest while exercising its discretionary powers. (**Ramniklal N. Bhutta v. State of Maharashtra⁹; Manohar Lal v. Ugrasen¹⁰**). It is required to keep larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires its interference, would it intervene in the matter. (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd¹¹; Air India Ltd v. Cochin International Airport Ltd.¹²**).

Having chosen not to hand over possession of the land for the past five years, despite the lease having been terminated and notice having been issued calling upon her to vacate the premises, the petitioner now seeks this Court's protection, and a direction to the respondents-Wakf Board to comply with the procedure prescribed under Section 54(1) of the Act and, thereby, permit her to retain possession of the subject lands which belongs to a Wakf institution. The petitioner has, admittedly, violated Rule 24(1) of the Rules which requires her to surrender the land on termination of the lease. She now seeks intervention of this Court contending that, despite violation of Rule 24(1) of Rules by her, this

⁶ (1997) 1 SCC 9

⁷ (1996) 1 SCC 435

⁸ (1997) 3 SCC 443

⁹ (1997) 1 SCC 134

¹⁰ (2010) 11 SCC 557

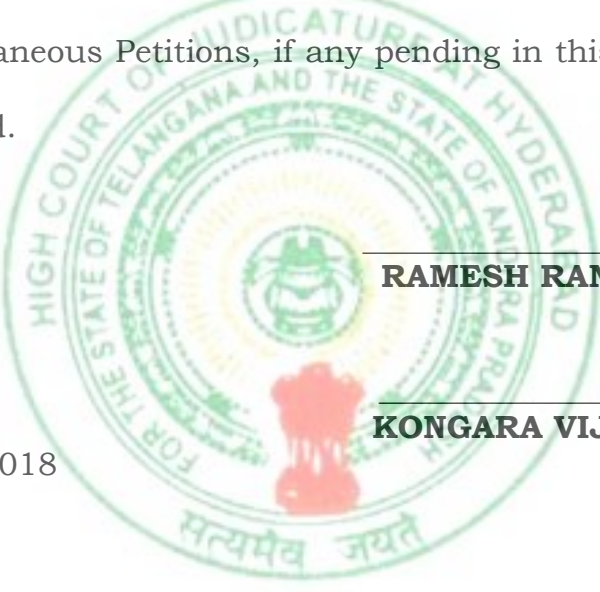
¹¹ (2005) 6 SCC 138

¹² (2000) 2 SCC 617

Court should direct the A.P. State Wakf Board to strictly adhere to Section 54(1) of the Act.

This Court would come to the aid of a person who has complied with the law, and not to the person, who admits having violated the law but still seeks this Court's protection. As the subject property belongs to a Wakf Institution, and as the appellant-writ petitioner has, admittedly, been in illegal occupation of the subject lands for the past more than five years, Larger Public Interest would require this Court to refrain from interference. We see no reason therefore to exercise discretion, under Article 226 of the Constitution, to interfere.

The Writ Appeal fails and is, accordingly, dismissed. No order as to costs. Miscellaneous Petitions, if any pending in this writ appeal shall also stand closed.



RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

22nd February, 2018
Gk

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

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22.02.2018

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