

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.5182 of 2018

ORDER:

Heard learned Counsel for the petitioners, Sri S.Arifullh, learned Standing Counsel for the State Wakf Board, Sri P.Veera Reddy, learned Senior Counsel representing Sri K.Murali Krishna, learned Counsel for R.5.

2. The petitioners herein claim to be the residents of Gudiwada, Krishna District, State of Andhra Pradesh and further claim to be the persons interested in safeguarding the properties of R.5-a registered Wakf institution.

3. The sum and substance of the case of the petitioners is that in collusion wt members of the managing committee of the 5th respondent, the 3rd respondent-Municipality is constructing a shopping complex by encroaching upon the graveyard land of the wakf institution and entrusted the tender to the 6th respondent, who is a distant relative of the Chairman of the Wakf Institution-R.5.

4. This Court, on 19.02.2018, passed the following interim Order:-

“Notice before admission.

Learned Counsel for the petitioners is permitted to take out personal notice to the unofficial 6th respondent by registered post with acknowledgment due and file proof of service.

At request of Sri N.Venkateswarlu, learned Standing Counsel for respondent No.3-Municipality and

Sri S.Arifullah, learned Counsel for respondent Nos.4 and 5, representing through caveat, and at request of learned Government Pleader for Municipal Administration and Revenue on behalf of respondent Nos.1 and 2, including to get written instructions/counter, post on 28.03.2018.

There shall be interim direction not to construct any shopping complex either by the Wakf Board or by the Municipality in the graveyard site, but for continuation of the compound wall.”

5. Respondent No.4-Wakf Board and respondent No.5 have filed vacate applications supported by counter affidavits denying the allegations made in the writ affidavit and stating *inter alia* that as the shops belonging to the respondent No.5 became old and dilapidated, the 5th respondent got the same demolished and on the request made by the 5th respondent, the Municipality with its funds constructed a compound wall in the interest of the subject institution and that the Municipality is not constructing the shops and the construction of the shops in the place of demolished shops is proposed by the 5th respondent only and the Wakf Board also permitted and granted a sum of Rs.75 lakhs. It is also stated that the allegation that the graveyard is being encroached upon is not correct.

6. In the counter affidavit of the Municipality, it is stated that the respondent-Municipality sanctioned a sum of Rs.7,00,000/- from its general funds for construction of compound wall to the muslim graveyard i.e., Gulzar Chowk Masjid Wakf property and the tenders were called for and finalized for construction of the said compound wall vide resolution No.350, dated 31.01.2018 by

the Municipal Council. It is further stated that pursuant to the award of the tender by the Council and work order, the successful bidder i.e., the 6th respondent completed the construction of the compound wall. It is further stated that the proposed construction of shops is being undertaken by the 5th respondent Managing Committee only and not by the 3rd respondent, as alleged in the writ affidavit.

7. In the counter affidavit filed on behalf of the Wakf Board, it is stated that the Gulzar Chowk Masjid and the graveyard, which are situated in one premises is a notified wakf institution, as published in A.P.State Gazettee No.26, dated 28.06.1952 at serial No.512 and that the eastern side of the wakf property, there is a road belonging to the Municipality and the mosque is situated on the south-west corner of the graveyard. The counter also states that there were 34 shops in a row existing on the wakf property, abutting the compound wall facing the eastern side of the road and since the old shops became old and in a dilapidated condition, the Managing Committee submitted a proposal to demolish the old shop rooms and to construct new shops in the same manner, as they were existing and the said proposal was approved by the Wakf Board and sanctioned a sum of Rs.75 lakhs towards revolving fund to the Managing Committee and the Managing Committee, after taking due permission from the wakf board, demolished old shop rooms by constructing the compound wall. It is also stated that since the old shops were in a hazardous condition and keeping in view the movement of the traffic on the road vis-à-vis the visibility of graveyard and in the public interest, the Municipal authorities, on the request of the Managing Committee, proposed to construct

the compound wall with its funds where the old common wall was existing. It is also stated that the shop rooms will be constructed by the Wakf Institution through the Managing Committee constituted by this respondent and the Municipality has absolutely no role or responsibility in construction of the shop rooms. The counter also denies the allegation of encroachment of wakf lands by the Municipality.

8. In the counter affidavit, deposed by the 5th respondent, apart from reiterating the counter of the 4th respondent, it is stated that the 1st petitioner is a co-opted member of Gudiwada Municipality and the wife of the 2nd petitioner is a Councillor of Gudiwada Municipality and out of their political motives, to create hurdles for Gudiwada Municipality in execution of certain works, the Writ Petition is filed. It is also stated that the 3rd petitioner is one of the tenants in a shop room situated on the western side and in view of chronic defaults committed by him, the 4th respondent initiated action under Section 54 of the Wakf Act for eviction of the 3rd petitioner.

9. During the course of arguments, it is submitted by Sri S.Arifullah, learned Standing Counsel for Wakf Board, that against the said action initiated under Section 54 of the Wakf Act, the 3rd petitioner approached this Court by way of filing W.P.No.20423 of 2018 and on 27.06.2018 this Court disposed of the said Writ Petition directing the authorities to hold enquiry and take further action.

10. It is significant to note that earlier the petitioners herein, substantially praying for the same relief, approached this Court by

way of filing W.P.No.40317 of 2017, seeking a direction to the respondent Nos.3 to 5 therein to safeguard the wakf property and this Court disposed of the said Writ Petition by way of an Order, dated 08.12.2017 and the said Order reads as under:-

“Learned Standing Counsel for the Municipality appearing for the third respondent would submit that the subject property is a wakf property.

Sri Arifullah, learned Standing Counsel appearing for the fourth respondent-Wakf Board, would submit that no constructions are made or are being made within the muslim graveyard/burial ground and that there used to be some old shops abutting the compound wall of the graveyard/burial ground on the road side and those shops were demolished and in that place, new constructions are being made but not within the graveyard premises and therefore, the Writ Petition, which is politically motivated, is not maintainable and is liable to be dismissed.

Learned Counsel for the petitioners would submit that if the statement of the learned Standing Counsel for the fourth respondent-Wakf Board that no constructions are being made within the compound of the subject graveyard/burial ground is recorded, the ends of justice would be met.”

11. The action initiated against the 3rd petitioner under Section 54 of the Wakf Act is not disputed by way of filing any reply. While reiterating the same, it is submitted by the learned Standing Counsel for R.5 that the present Writ Petition is a counter-blast for the said action and this Court finds sufficient force in the said submission. Since, the petitioners herein already approached this Court earlier substantially for the same relief and this Court

already disposed of the above said Writ Petition, the present Writ Petition, in the considered opinion of this Court, cannot be maintained and this Court agrees with the contention of the learned Counsel appearing for respondents No.4 and 5 that the present Writ Petition is barred by doctrine of *res judicata*.

12. During the course of arguments, a copy of the Order vide F.No.13/RF/KST/2014, dated 06.07.2017, is placed on record by Sri S.Arifullah, learned Standing Counsel for the Wakf Board, wherein the Wakf Board sanctioned an amount of Rs.75 lakhs for construction of shopping complex. By way of the said proceedings, the Wakf Board also constituted a Building Construction Committee, consisting of as many as '9' members, including the District Collector and Deputy Executive Engineer.

13. It is submitted by the learned Counsel for the petitioner that by way of filing reply, the petitioners herein have denied the alleged defaults on the part of petitioner No.3 herein. The same can be the subject matter of the enquiry already initiated.

14. In view of these reasons, this Court has absolutely no scintilla of hesitation to hold that there are no merits in the Writ Petition.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

A.V.Sesha Sai, J

30th August, 2018
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