

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.692 of 2018

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

Heard Sri A.M. Qureshi, learned counsel for the appellant-writ petitioner, learned Government Pleader for Revenue and Sri M.A. Mujeeb, learned counsel appearing for the Telangana State Wakf Board.

This appeal is preferred against the order passed by the learned Single Judge in W.P. No. 7568 of 2018 dated 8.3.2018. The appellant herein filed the Writ Petition seeking a mandamus to declare the action of the Tahsildar, Asifnagar, in issuing letter dated 3.2.2018, as illegal, void, ultra vires and unconstitutional.

By his letter dated 3.2.2018, the Tahsildar informed the Station House Officer that a complaint was received by him from Sri Afzaluddin Farooqi alleging that land grabbers Sri Syed Faheemuddin, Syed Shakeel, Maiman Jaweed, Mutawalli Mohammed Moin had encroached upon the grave yard situated at Tallagadda; on 2.2.2018, the Mandal Revenue Inspector, along with the VRO, had visited the site and had found that the compound bearing H. No. 12-2-397 to 413, in the name of Ibrahim Shareef, was demolished with the intention of encroaching upon the grave yard situated at Tallagadda, Karwan Road. The Tahsildar requested the Station House Officer to post a police picket to avoid illegal encroachments and untoward incidents.

Aggrieved by the said letter, the appellant-writ petitioner invoked the jurisdiction of this Court contending that he was the Mutawalli of Dargah Hazarath Shah Quli Bahadur (RH) Grave yard and Ashoorkhana (Asar-E-Shareef) Karwansahu, Tallagadda, Hyderabad; he

was appointed as a Mutawalli on 16.12.2006; the Dargah is wakf property notified in Gazette No.20 dated 20.5.1976; the total extent of the property is 21,804 sq. yards; and it consisted of Ashoorkhana, graveyard and a residential portion.

Even though no counter-affidavits were filed by any of the respondents disputing the assertions in the writ affidavit, the learned Single Judge relied on the instructions obtained by the Government Pleader that the subject grave yard was a Government grave yard and held that as there was illegal occupation of the Government grave yard, notices were issued under the Land Encroachment Act; the appellant-writ petitioner had filed O.S. No.130 of 2010 before the Wakf Tribunal; the other encroaches had filed W.P. Nos. 6002 of 2009 and 7190 of 2011 before this Court; and W.P. Nos. 20638 of 2009 and 29886 of 2010 were also filed which are pending.

The proceedings, under challenge in the Writ Petition, is the letter dated 3.2.2018 addressed by the Tahsildar to the Station House Officer requesting that a police picket be kept at the subject site to prevent encroachments. The appellant-writ petitioner's assertion in the writ affidavit, that he was the Mutawalli and the subject property belongs to a Dargah which is included in the list of wakfs, could only have been examined after the respondents filed their counter-affidavits. The order under appeal, dismissing the Writ Petition, could not have been passed based merely on the written instructions received by the Learned Government Pleader which the appellant-writ petitioner had no opportunity to rebut.

As the appellant-writ petitioner has been denied the opportunity of rebutting the assertion made by the learned Government Pleader, and in as much as the Writ Petition was disposed of merely on the basis of written instructions of the learned Government Pleader even without

a counter-affidavit being filed in the Writ Petition, we are satisfied that the order under appeal necessitates being set aside; and the Writ Petition should be restored to file.

Both the learned Government Pleader for Home and Sri M.A. Mujeeb, learned Standing Counsel for the Telangana State Wakf Board, shall file their respective counter-affidavits within two weeks from today. It is open to Sri A.M. Qureshi, learned counsel for the appellant-writ petitioner, to request the learned Single Judge to take up the Writ Petition for admission, and for grant of interlocutory relief, any day after two weeks. We make it clear that we have not interfered with the proceedings dated 3.2.2018 issued by the Tahsildar to the Station House Officer. Needless to state that any action, which the Station House Officer may take pursuant to the request of the Tahsildar shall be the subject to the result of the Writ Petition.

The Writ Appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand disposed of. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

4th June, 2018
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W.A. No. 692 of 2018

Date: 4.6.2018

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