

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No.26025 of 2010

ORDER

This writ petition is filed seeking a *mandamus* to declare the action of the first respondent in interfering with the peaceful possession of the petitioner in respect of plot bearing No.325, measuring 178.95 square yards, having its premises bearing No.8-1-284/OU/325, situated at Osmania University Colony, Shaikpet, Hyderabad, without following due process of law, as illegal and arbitrary.

2. As per the averments in the writ affidavit, initially, the Government vide G.O.Ms.No.232 (M.A.) dated 18.03.1981 had directed the Hyderabad Urban Development Authority (HUDA) to acquire the land to an extent of Acs.65-07 gts in Sy.Nos.320/1/A, 320/1/AA, 320/2, 324, 326/1 and 326/2, situated at Shaikpet, Hyderabad District, for the purpose of construction of houses. Later, the HUDA had approved the layout for the said land consisting of 955 plots, which in turn, came to be allotted to the 4th respondent- Osmania University Employees Co-operative Housing Society vide sale deed dated 23.02.1989. Thereupon, the petitioner purchased plot No.325 in the approved layout, by virtue of the sale deed executed by the General Power of Attorney Holder Mr. V. Vijay Bhaskar Reddy on behalf of Sri H. Krishna, the allottee of the 4th respondent. The said plot is surrounded by a compound wall. It is asserted that when the petitioner was commencing the construction work on 29.09.2010 and 04.10.2010, the officials of the first

respondent had obstructed the same. On further enquiry, the respondents had handed over a copy of Gazette notification dated 01.07.1982, wherein 2266.6 sq. yards, situated in Ward No.8, Block No.1 of Shaikpet, was notified as Wakf Property and they stated that the plot of the petitioner forms part of said 2266.6 sq. yards. It is further asserted that on verification, the plot of the petitioner is located in Ward No.13, Block No.6 of Shaikpet, whereas the notified property is situated in Ward No.8, Block No.1 of Shaikpet. Therefore, without verifying the same, the respondents are interfering with the possession of petitioner over his plot, violating the rights guaranteed under Article 300-A of the Constitution of India. Hence, the writ petition.

3. On behalf of the first respondent, the Chief Executive Officer, A.P. State Wakf Board, filed the counter-affidavit denying the allegation that the first respondent is interfering with the peaceful possession of the petitioner. It is asserted that the property was surveyed by the Commissioner of Wakf, appointed by the State Government in 1960. Based on the survey report, a Gazette Notification was issued in the year 1982. The said Notification was not challenged as on date. It is asserted that the first respondent has no knowledge about the issuance of G.O.Ms.No.232 (MA) dated 18.03.1981 and the alleged land acquisition proceedings. It is asserted that on receipt of information that some persons, who claim vested interest, were trying to usurp the wakf property, the first respondent had deputed the Officers of the Board to inspect the spot and report the matter. The staff had submitted a report on 13.03.2009 stating that Osmania University Employees

Co-operative Housing Society made a layout including the Mosque area and that some vested persons had encroached the Wakf land without any right and title. It is also asserted that though the petitioner pleaded that his plot bearing No.325 is located in Ward No.13, Block No.6 of Shaikpet, which forms part of approved lay out of HUDA and acquired by HUDA prior to the Gazette Notification, since the notified property is situated in Ward No.8 in Block No.1 of Shaikpet Village, he sought a direction to the first respondent not to interfere with his peaceful possession over the premises bearing No.8-1-284/OU/325, which is contrary to the claim put forth by him in paragraph 12 of the affidavit.

4. Heard Sri Vedula Srinivas, learned counsel for the petitioner, Sri M.A. Mujeeb, learned Standing Counsel for the first respondent-Wakf Board, Sri Y. Rama Rao, learned Standing Counsel for the second respondent-HMDA and Sri Sampath Prabhakar Reddy, learned Standing Counsel for the third respondent-GHMC.

5. The contention of the learned counsel for the petitioner is that even assuming that the petitioner is an encroacher, the required procedure has not been followed i.e., the petitioner has not been put on notice. He further submits that the first respondent, without establishing that the property of petitioner is situated in Ward No.8, Block No.1 of Sahikept, cannot interfere with his right, particularly, considering the fact that the petitioner, admittedly, purchased the property in an approved layout of HUDA allotted to the Osmania University Employees Co-operative Housing Society, which in turn had obtained loan from the Government.

6. Learned Standing Counsel for the first respondent-Wakf Board submits that as the subject land belongs to the first respondent, after conducting enquiry, necessary action, as prescribed under law, in particular under Section 54 of the Waqf Act, 1995, which mandates issuance of notice to the alleged encroacher and initiation of proceedings before the Waqf Tribunal, would be taken.

7. In view of the submission made by the learned Standing Counsel for the Waqf Board the Writ Petition is allowed, leaving it open to the first respondent to initiate appropriate action in accordance with the procedure prescribed under law. No order as to costs.

8. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

30th November, 2018

sj

CHALLA KODANDA RAM, J