

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.638 OF 2011

ORDER:

This revision petition is filed under Article 227 of the Constitution of India questioning the order dated 28.01.2011 in I.A.No.989 of 2010 in O.S.No.681 of 2009 passed by the VI Junior Civil Judge, City Civil Court, Hyderabad, allowing the application filed under Order 1 Rule 10 read with Section 151 C.P.C. and Rule 28 of the Civil Rules of Practice, to implead the 1st respondent Syed Moinuddin as defendant No.3 in the suit for perpetual injunction against respondents 1 and 2 i.e. The Commissioner, GHMC and The Asst. City Planner, Circle No.III.

2. The 1st respondent filed petition alleging that the property bearing No.3-4-284 and 285 situated at Kachiguda Cross Roads, Lingampally, Hyderabad is a wakf property, notified and published in Official Gazette vide G.O.Ms.No.28-A, dated 19.07.1984 at Serial No.1607 as a property forms part of Idargah Hazrath Mukke-Shah. In the year, 1960 one Smt Aziz Unnisa Begum filed O.S.No.204 of 1969 for declaration of title and possession of house bearing No.3-4-284 and 285 situated at Kachiguda Cross Roads, Lingampally, Hyderabad and the same was dismissed on 05.03.1975 and confirmed in A.S.No.72 of 1976 on 28.09.1977. In the said O.S.No.204 of 1969, the Court held that the properties are wakf properties and cannot be

alienated to the plaintiff and subsequently, in the year 1989 O.P.Nos.152, 155, 157 and 159 of 1989 were filed before the Special Tribunal-cum-Chief Judge, City Civil Court, Hyderabad by MRO, Musheerabad and the Secretary, A.P. State Wakf Board, Hyderabad against Veeraswamy and eight others for declaration that respondents are land grabbers and the constructions raised by them are illegal and unauthorized and subsequent to delivery of possession of the said property as part of wakf property of Dargah Hajarat Mukkeh Shah and the said OPs are allowed on 03.03.1999, which was confirmed in L.G.A.No.40 of 1999 on 05.02.2001 by the Special Court for A.P. Land Grabbing (Prohibition) Act and that subsequently, O.P.No.113 of 2001 was filed before the Wakf Tribunal for declaration that the gazette publication dated 19.07.1984 notified for the above properties as wakf property as null and void and the same was dismissed on 19.05.2010. The gazette publication, suits and OPs clearly establish that the suit property is notified by the Government as wakf property. Thereafter, W.P.No.6023 of 2005 was filed before this Court seeking a direction to declare the inaction of the A.P. State Wakf Board as null and void and the same was disposed of on 28.03.2005 to consider the representations and take appropriate steps as per law.

3. Subsequent to disposal of writ petition, Tahsildar, Nampally issued a notice in Form No.1 on 21.01.2009 to the petitioner to stop illegal construction and appear before him

on 28.01.2001 along with title deeds and documents pertaining to the construction. Thereafter, several proceedings were taken up, but the petitioner/plaintiff started construction of the house after applying for approval of plan. But defendants 1 and 2 did not respond and that after issuance of notice under Section 440 of HMC Act, the petitioner/plaintiff started construction.

4. The petitioner/plaintiff filed counter denying material allegations reiterating that he started construction only after applying for approved plan, but defendants 1 and 2 did not comply with the process within the time stipulated under the Act. As deemed approval, the petitioner started construction of work and filed suit only against defendants 1 and 2, who are threatening to interfere with the construction work and that the 1st respondent/petitioner has no locustandi to come on record as party in the suit for bare injunction and prayed for dismissal of the petition.

5. Upon hearing argument of both counsel, the Court below allowed the petition without costs holding that the 1st respondent is proper and necessary party as he is interested person as defined under Section 3(k) of the Wakf Act.

6. Aggrieved by the impugned order, the present revision petition is filed on the ground that in a suit for mere injunction, the third party cannot be impleaded since no relief is claimed against such third party and the 1st respondent is

not a person interested as defined under Section 3(k) of the Wakf Act. Even otherwise, he is competent to file an application under Section 83(2) of the Act before the Tribunal, but cannot be impleaded in a suit for bare injunction.

7. During hearing learned counsel for the petitioner contended that the suit is filed for bare injunction and the 1st respondent is interested person to prosecute the suit and not against him and against the officials of GHMC i.e. respondents 2 and 3, hence, he cannot be compelled to claim relief against the person who is not interfering with the construction work. Therefore, the order passed by the Court below is illegal and prayed to set aside the same.

8. Admittedly, the petitioner applied for approval of plan and defendants 1 and 2 did not pass any order on the application made by the petitioner for approval of plan, but based on deemed approval after issuance of notice under Section 440 of the HMC Act started construction. Despite it, defendants 1 and 2 and its officials started interfering with the construction work. Therefore, filed suit for perpetual injunction and obtained an interim injunction against defendants 1 and 2. The 1st respondent filed application under Order I Rule 10 C.P.C. to implead him as defendant No.3 claiming to be the person interested in Wakf as defined under Section 3(k) of the Wakf Act. The person interested in a wakf means any person, who is entitled to receive any

pecuniary or other benefit from the wakf and includes, any person who has a right to (offer prayer) or to perform any religious rite in a mosque, idgah, imambara, dargah, (khanqah, peerkhana and karbala), Maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf, the wakif and any descendant of the waqif and the muthawalli.

9. Thus, only for the purpose of filing proceedings under Section 83(2) of the Wakf Act he can come on record, but in a suit for bare injunction against whom no relief is sought by the petitioner, the third party cannot be impleaded, in view of limited scope of enquiry and if really the proposed party is interested to get the persons in occupation of the property belonging to the wakf, the 1st respondent can initiate proceedings before competent Court or Tribunal, but this Court cannot decide the right of the third party in a suit for injunction simplicitor in view of limited scope of jurisdiction.

10. In view of the above, the 1st respondent, third party is neither necessary nor proper party in a suit for bare injunction. But the Court below based on definition under Section 3(k) of the Wakf Act, erroneously impleaded as defendant No.3, hence, the revision petition is liable to be allowed setting aside the impugned order.

11. In the result, the revision petition is allowed setting aside the order dated 28.01.2011 in I.A.No.989 of 2010 in O.S.No.681 of 2009 passed by the VI Junior Civil Judge, City Civil Court, Hyderabad holding that the 1st respondent/proposed 3rd defendant is not proper and necessary party to the suit and accordingly, I.A.No.638 of 2011 in O.S.No.681 of 2009 is dismissed. There shall be no order as to costs.

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

27.02.2018
kvrn

M. SATYANARAYANA MURTHY,J

