

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
* * * *

C.R.P.No.2501 of 2002 & W.P. No.15068 of 2003

C.R.P.No.2501 of 2002

Between:

A.P.State Wakf Board,
Represented by its Chief Executive Officer,
Nampally, Hyderabad.

....Petitioner

And

M.Mahender Reddy and others

....Respondents

W.P. No.15068 of 2003

Between:

Y.Dhana Lakshmi and others

....Petitioners

And

The Chief Executive Officer,
A.P.State Wakf Board, Haj House, Nampally,
Hyderabad

....Respondent

JUDGMENT PRONOUNCED ON: 26.10.2018

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : No

T.AMARNATH GOUD, J

*** THE HON'BLE SRI T.AMARNATH GOUD**

+ C.R.P.No.2501 of 2002 & W.P. No.15068 of 2003

% DATED 26TH OCTOBER, 2018

A.P.State Wakf Board,
Represented by its Chief Executive Officer,
Nampally, Hyderabad.

.. Petitioner

Vs.

\$ M.Mahender Reddy and others

.. Respondents

<Gist:

>Head Note:

! Counsel for the petitioner (in CRP) : Sri Mirza Safiulla Baig
^Counsel for the Respondents : Sri Wasim Ahmed Khan

! Counsel for the petitioners (in WP) : Sri Akella Srinivasa Rao
^Counsel for the Respondent : Sri Mir Masood Khan

? CASES REFERRED:

(2007) 13 Supreme Court Cases 174



THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.R.P.No.2501 OF 2002 & W.P.NO.15068 OF 2003

COMMON ORDER:

There are several directions of this Court in W.P.No.15068 of 2003 to list it along with C.R.P.No.2501 of 2002 by docket proceedings dated 4.12.2008, 17.06.2010 and 19.07.2010.

The subject matter in both these cases and also the parties are one and the same. Hence, with the consent of both parties, both the matters have been heard together and disposed of by a common order.

For the purpose of convenience, the parties are herein after referred to as they are arrayed in the writ petition.

2. **C.R.P.No.2501 OF 2002:-** This Civil Revision Petition is filed by the A.P. State Wakf Board, against the Judgment and Decree in O.S.No.30 of 1999 dated 13.06.2001 on the file of the A.P. Wakf Tribunal, Hyderabad, wherein the suit filed by the plaintiffs therein against the Wakf Board for grant of perpetual injunction was decreed.

C.R.P.M.P.No.8994 of 2017 was filed under Order I Rule 10 of Code of Civil Procedure, seeking to implead the petitioners therein as respondents 10 to 15 in the main Civil Revision Petition and this Court by order dated 24.08.2018 allowed the said petition.

3. **W.P.NO.15068 OF 2003:-** This writ petition is filed, challenging the notice issued by the respondent, Wakf Board in File No.1807/LG/RR/95, dated 18.6.2003, wherein the respondent appointed the enquiry officer under Section 54(3) of the Wakf Act,

1995 (for short, “the Act”) to cause enquiry into the matter as to whether the subject property is the Wakf property.

4. It is the case of the petitioners that originally the subject lands admeasuring Ac.2.24 guntas was purchased by one Mr.K.Mallanna father of Mr.K.M.Narasimha Rao, who is the husband of Smt.K.Padma Bai under 19 different registered sale deeds during the year 1932 onwards. After the death of K.Mallanna and K.M.Narasimha Rao, the petitioners purchased plots out of Ac.2.24 guntas in Sy.No.58, situated at Tirumalgherry Village, Secunderabad under a registered sale deed dated 21.8.2001 from Smt.K.Padma Bai and others. While so, one Mohsin Ali Khan filed a complaint before the Wakf Board against their vendors with ulterior motive and hence the Wakf Board tried to interfere with the possession of their vendors. Their vendors filed O.S.No.30 of 1999 on the file of the Wakf Tribunal, Hyderabad to restrain the Wakf Board from interfering with their peaceful possession and enjoyment in respect of their lands and that the Wakf Tribunal after thorough trial, decreed the said suit on 13.06.2001. Thereafter, the petitioners purchased the said property from their vendors, vide registered sale deeds.

5. It is further stated that the Wakf Board issued a notice under Section 54(1) of the Act in File No.1807/LG/RR/95, dated 16.4.2002 to their vendor G.Mahender Reddy stating that the subject property is the wakf property and called for his explanation. He submitted his explanation dated 17.07.2002, stating that the said property is not the wakf property and they are not encroachers and it is private property purchased by them

through registered sale deeds. There is a temple in portion of lands and that they are paying taxes to the Cantonment Board and also informed about the suit filed by them. After receipt of the above explanation, the Wakf Board again issued a notice under Section 54(3) of the Act in File No.1807/LG/RR/95, dated 14.10.2002, stating that the Board appointed under Section 71 of the Act one Mr.Jalaluddin as an enquiry officer with full powers that of a civil Court under the pretext that the property is the wakf property and to cause enquiry. On that they filed W.P.No.1074 of 2003 on the file of this Court, and the respondent Board for the reasons best known to it, withdrew the said notice dated 14.10.2002. In pursuance thereof, the writ petition was also withdrawn as there was no cause of action survives for adjudication.

6. It is further stated that the respondent Board once again issued a notice in File No.1807/LG/RR/95, dated 18.06.2003, which is impugned herein, appointing said Syed Jalaluddin under Section 54(3) of the Act to enquire into the subject lands and submit a report. Aggrieved thereby, the present writ petition has been filed, contending that the notice is contrary to the Judgment and Decree in O.S.No.30 of 1999 and there is no official Gazette notification issued under Wakf Act showing that the subject lands as wakf property and prayed to allow the writ petition by setting aside the impugned notice dated 18.06.2003. The learned counsel appearing for the petitioners relied on a judgment reported in **Madanuri Sri Rama Chandra Murthy V. Syed Jalal**¹, regarding the procedure for appointment of Survey Commissioners for the

¹ (2007) 13 Supreme Court Cases 174

purpose of making survey of wakfs in the State and publication of notification of the wakf properties in the official gazette.

7. The respondent Wakf Board filed a counter affidavit and contended that the subject property is the wakf property and relied upon the entry in Muntakab and prayed to dismiss the writ petition and to allow the Civil Revision Petition.

8. Heard.

9. In the grounds of Civil Revision Petition filed by Wakf Board only three grounds which were relied upon i.e., ground No.5 that the Court below (Wakf Tribunal) failed to appreciate the documents Exs.B1 to B8; and also ground No.7 that the Court below failed to see that Ex.B1 Muntakab is nothing but certificate of Wakf. In ground No.8, it is submitted that any property registered under the earlier law is deemed to be registered under Section 43 of the Act.

10. The Court below framed issue No.1; whether the plaintiffs are entitled for perpetual injunction as prayed for. In this regard, the Court below has examined PWs.1 and 2 and marked Exs.A1 to A90, in all 84 documents on behalf of the plaintiffs. Further, the Court below examined DW.1 and marked Exs.B1 to B8 on behalf of the defendant.

11. Now, the point for consideration is; whether the plaintiffs are entitled for perpetual injunction as decreed by the Wakf Tribunal. Pw.1 in his evidence categorically stated that one Mr.K.Mallanna and his son K.M.Narasimha Rao were the original owners and pattedars of the plaint schedule property admeasuring Ac.2.25 guntas in Sy.No.58 of Tirumalgherry Village and that they acquired

the said property under 19 different sale deeds dating back to 1932 onwards. The original registered sale deeds are in Urdu and they filed English translation in the Court below and they are marked as Exs.A1 to A34. After the death of K.Mallanna and his son K.M.Narasimha Rao, their legal heirs sold the plaint schedule property to plaintiffs 1 to 3 and M/s.Modi Construction under an agreement of sale marked as Ex.A39. Later M/s.Modi Construction relinquished their right in the said property by executing an agreement marked as Ex.A40. Plaintiffs 1 to 3 entered into a compromise with the occupants of the 30 tenements and as per the compromise, the tenants agreed to give part of their land to plaintiffs 1 to 3 and that plaintiffs 1 to 3 agreed to construct houses for them and accordingly, they entered into the agreements Ex.A41 to A61 and Exs.A62 to A67 are the receipts towards payments made to the tenants. Exs.A68 to A71 are the receipts and Exs.A72 to A79 are the assessment forms in the name of K.M.Narasimha Rao. Exs.A80 to A86 are the photographs of the suit property.

12. In the cross examination on behalf of the Wakf Board, PW.1 denied the suggestion that the suit property is an open land and there are no tenements and he stated that the plaintiffs and the tenants are in possession and enjoyment of the property and it is the private property and that the Wakf Board has no right to interfere with their possession. The 5th plaintiff, who was the son-in-law of late K.M.Narasimha Rao was examined as PW.2 and he corroborated the evidence of PW.1 on all material aspects of the case.

13. On behalf of the Wakf Board, DW.1 who was working as Executive Officer has been examined and he stated that old Sy.No.54, corresponding to new Sy.No.58, admeasuring Ac.2.24 guntas of Tirmalgherry Village is a wakf property attached to Dargah Hazrath Koh-e-Imam Zamin. According to revenue records and Munthakab, the suit property is Inam land. The total extent attached to said Dargah is Ac.82.27 guntas and out of which Ac.55.10 guntas was acquired by defence authorities by paying compensation and remaining extent left over is Ac.27.17 guntas and Sy.No.58 admeasuring Ac.2.24 guntas is part and parcel of the remaining Ac.27.17 guntas. According to DW.1, there is a temple and also a Church in the said land. The Wakf Board has issued a notice under Section 54(1) of the Act to the occupants and the tenants have represented before the Wakf Board and the Wakf Board fixed the rent and asked them to execute rental agreements and pay rents to the Wakf Board.

14. In the cross examination, DW.1 admitted that he has not filed any rental agreements or receipts in support of his contention to show that the Wakf Board is in possession of the property and the occupants are its tenants. DW.1 also stated that there is no mention that the property was registered in the Endowments Register maintained by Ummare Majabi, which means, there is no record to show that the said property is wakf property. DW.1 admitted that in Column No.6 of Sy.No.58 it is shown as Mafi Inam land, but in Column No.2, it is mentioned as agricultural land attached to a temple. There is no evidence to show that old Sy.No.54 corresponding to new Sy.No.58. The existence of a

Temple and Church in the subject land gives a doubt as to whether the subject land is wakf property.

15. Admittedly, the plaintiffs are in possession of the suit property and the defendant was never in possession of the same. The defendant failed to establish that the Wakf Board is in possession and the plaintiffs were in unlawful possession of the suit property. The defendant failed to establish its right over the subject land. The plaintiffs have categorically fulfilled the requirements to grant an order of injunction on the weightage of the evidence and exhibits marked in their favour. The findings given by the Court below suffers no legal infirmities and the judgment and decree, granting injunction by the Court below is confirmed. The Civil Revision Petition filed by the Wakf Board is liable to be dismissed.

16. The writ petitioners herein are the respondents in the above Civil Revision Petition. They filed the present writ petition, challenging the impugned notice dated 18.06.2003, issued under Section 54(3) of the Act in File No. No.1807/LG/RR/95. Before issuing the impugned notice, the respondent on the earlier occasion issued notice dated 16.04.2002 in File No.1807/LG/RR/95 and also issued notice dated 14.10.2002. Thus, the impugned notice is the third notice issued under Section 54(3) of the Act. Initially on 16.4.2002, notice was issued under Section 54(1) of the Act. The Chief Executive Officer of the Wakf Board indicated that the Dargah Koh-e-Imam-e-Zamin, situated at Tiramalgherry is a registered wakf having landed property comprising in Sy.No.58, admeasuring Ac.2.24 guntas. Further

with a pre-meditated mind, the respondent has observed that Mr.M.Mahender Reddy has un-authorisedly encroached a part of land to an extent of Ac.2.24 guntas belonging to the Wakf institution and to explain as to why an order under Section 54(3) of the Act, requiring him to remove the encroachment should not be issued. In pursuance thereof, a reply to the said show cause notice was submitted on 17.07.2002, explaining the antecedents of the property and also about the Judgment and Decree in O.S.No.30 of 1999. They also stated that it is a private property and it is not the wakf property and they are in lawful possession as owners. Later, the respondent has issued the order dated 14.10.2002, appointing an enquiry officer under Section 71 of the Act to enquire into the matter and submit the enquiry report to the Wakf Board by conducting enquiry under Section 54(3) of the Act. It is also indicated in the said order that the enquiry officer shall have the same powers as are vested in a civil Court under Code of Civil Procedure, 1908.

17. It is submitted by the learned counsel appearing for the petitioners that W.P.No.1074 of 2003 was filed, challenging the notice dated 14.10.2002 and in pursuance of the withdrawal of the above notice by the respondent, the writ petition was withdrawn as no cause of action survives for adjudication. It is an undisputed fact and there is no denial. The respondent once again issued the order dated 18.06.2003 with a pre-meditated mind, stating that the persons 1 to 14 in the list appended and to whom impugned orders have been served are encroachers and a show cause notice under Section 54(1) of the Act was issued and on receipt of the reply, the Wakf Board while denying the contentions of the explanation has

opined that prima facie, it is a fit case to cause an enquiry and thus, the Chief Executive Officer of the Wakf Board appointed the enquiry officer.

18. At the stage of admission, this Court granted interim suspension of impugned order dated 18.6.2003 vide W.P.M.P.No.18642 of 2003 dated 23.07.2003. Undisputedly, the petitioners and their vendors are in possession of the subject land and prima facie, they are entitled for the injunction in the light of the exhibits marked in O.S.No.30 of 1999. The petitioners have also placed before the Court, relevant documents marked as exhibits in support of their claim to show their title and possession upon the subject land. The respondent has grossly failed to establish its possession upon the property.

20. Now, with regard to the issue of title is concerned to say that the subject land is wakf property; it is necessary to refer Section 5 of the Act:

5. Publication of list of wakfs.—(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni wakfs or Shia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

First of all the respondent has to establish whether the property so claimed is either Shia Wakf or Sunni Wakf, but the impugned order is silent. The definition of Shia wakf, Sunni wakf and Wakif is as follows:

3. Definitions:— In this Act, unless the context otherwise requires:—

- (n) “Shia wakf” means a wakf governed by Shia law;
- (o) “Sunni wakf” means a wakf governed by Sunni law;
- (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and “wakif” means any person making such dedication;

There is no publication of official Gazette enclosing the list of wakf properties placed before the Wakf Tribunal or before this Court.

The matter has been referred under Section 6 of the Act by raising the dispute to the Wakf Tribunal, which reads thus:

6. Disputes regarding wakfs.—(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

Explanation.—For the purposes of this section and section 7, the expression “any person interested therein”, shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.

The decision of the Wakf Tribunal in O.S.No.30 of 1999 is in favour of the petitioners herein, the plaintiffs before the Tribunal in whose favour the suit is decreed.

21. Though the Chief Executive Officer of the Wakf Board is vested with powers under Section 25 of the Act for inspecting the records and also investigating into the nature of the property, he is authorized to remove the encroachments under Section 54 of the

Act by following the procedure and after conducting due enquiry,
which reads thus:-

25. Duties and powers of Chief Executive Officer:-(1)

Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include—

- (a) investigating the nature and extent of wakfs and wakf properties and calling whenever necessary, an inventory of wakf properties and calling, from time to time, for accounts, returns and information from mutawallis;
- (b) inspecting or causing inspection of wakf properties and account, records, deeds or documents relating thereto;
- (c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of wakfs.

(2) In exercising the powers of giving directions under sub-section (1) in respect of any wakf, the Board shall act in conformity with the directions by the wakf in the deed of the wakf, the purpose of wakf and such usage and customs of the wakf as are sanctioned by the school of Muslim law to which the wakf belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

54. Removal of encroachment from wakf property:- (1)

Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a

Tribunal to establish that he has right, title or interest in the land, building, space or other property: Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf.

In the said process, the Chief Executive Officer in the impugned order has stated that under Section 71 of the Act, he appointed the enquiry officer to enquire into the matter, and Section 71 reads thus:-

71. Manner of holding inquiry.—(1) The Board may, either on an application received under section 73 or on its own motion:—

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

It is relevant to note that Section 71 enquiry is coupled with Section 73 of the Act, which is the power of Executive Officer to direct banks or other persons to make payments, which reads thus:-

73. Power of Chief Executive Officer to direct banks or other person to make payments:—(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a wakf is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the wakf in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the wakf by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall, when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

Since Section 73 of the Act deals with the banks and financial transactions, it cannot be ignored and under Section 71(1)(b) and (2) of the Act, the enquiry officer is vested with the powers to hold an enquiry and they shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908.

21. To say that the land is wakf property, it is necessary to show that it should be registered under Section 36 of the Act by giving description of the property and sufficient identification of the said property. Section 36 of the Act reads thus:-

36. Registration.—(1) Every wakf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:—

(a) a description of the wakf properties sufficient for the identification thereof;

Under Section 37(d) of the Act, the Board shall maintain a Register of wakfs, containing the particulars of all wakf properties and all title deeds and documents relating thereto. Section 37(d) of the Act reads thus:

37. Register of wakfs:—The Board shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely:—

(d) particulars of all wakf properties and all title deeds and documents relating thereto;

22. It is not in dispute that the respondent has not registered the subject land in its registers and there is no registration and no gazette notification was published by the respondent to show that the subject lands are wakf property. In the absence of the preliminary requirement that the physical possession and title

documents are with the respondent, it is unjust on the part of the respondent to appoint an enquiry officer vesting with powers of a civil Court once again to decide the issue, which was already decided elaborately in O.S.No.30 of 1999 by the Wakf Tribunal. This order dated 18.06.2003 of the respondent is nothing but sitting over the judgment and decree of the Wakf Tribunal. In spite of the detailed judgment in O.S.No.30 of 1999 and the reply submitted by the occupants to the respondent, it cannot be construed that petitioners are encroachers of the wakf property and they are liable to be evicted. Prima facie, the respondent has not proved by cogent evidence that the subject land is the wakf property and it has miserably failed to establish the same.

23. The impugned order of the respondent do not speak about the purpose of withdrawing the earlier order dated 14.10.2002 and issuing a fresh order dated 18.06.2003. The impugned order dated 18.06.2003 do not deal with the contentions of the reply and the said order is passed with pre-meditated mind that the petitioners are encroachers and are liable to be evicted. The impugned order dated 18.06.2003 is nothing else but reviewing its own order dated 14.10.2002. There is no power vested with the respondent to review its own order *suo motu*. The decision of the respondent appears to be unilateral and under the garb of issuing notice and passing an order without giving cogent reasons is the one, which is bad and arbitrary and is contrary to law and also contrary to the Judgment and Decree passed in O.S.No.30 of 1999 and therefore, the impugned order cannot be sustained and the same is liable to be quashed.

24. Accordingly, the Civil Revision Petition is dismissed. The writ petition is allowed and the notice issued by the respondent in File No.1807/LG/RR/95, dated 18.06.2003 is quashed. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 26-10-2018

Note:

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