

THE HON'BLE SRI JUSTICE P.KESAVA RAO

WRIT PETITION No.7578 of 2006

ORDER:

Heard the learned counsel for the petitioner, learned Standing Counsel for the 1st respondent Board and also T.Srikanth Reddy for respondent nos.3, 8 and 9.

The relief sought for in the present case is as under:

“.. to issue a Writ of Mandamus directing the Respondents No.1 and 2 herein to take steps to restore the Wakf Property viz., land forming part of and appurtenant to Mosque in Premises No.11-6-297, adjacent to Nampally Railway Station, Hyderabad, and to restore the property of Writ Petitioner's Mosque and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice”.

The facts of the case are that the petitioner-Mosque is situated in the premises bearing No.11-6-297 adjacent to Nampally Railway Station, Hyderabad. The total land comprised in the above said premises is 3450 sq. yards, which was donated by Nawaz Sir Khursheed Jha Bahadur in the year 1298 Fasli as per the gazettee notification of Revenue Department in the year 1984. In the year 1964, the land was surveyed by the Government of Andhra Pradesh in Proforma Sl.No.55 vide Wakf Property Survey Report dated 7.12.1968. Again the said land was surveyed in the year 2005 as per the letter dated 8.6.2005 of the Survey Commissioner of Wakf, Hyderabad. This land is being maintained by the Wakf Board since 1964 under the supervision of the managing

committee of the petitioner-mosque. Out of 3450 sq. yards, at present, 854 sq. yards alone is existing in which the mosque is in occupation and the remaining area of 2596 sq. yards is under illegal encroachments of business establishments like hotels, travel agency, general stores etc., Even though complaints have been made against the encroachments, no useful purpose was served. The remaining extent of 2596 sq. yards is said to be in possession of respondent nos.3 to 9 jointly through builders i.e. respondent no.3. Though this aspect was brought to the notice of the respondent nos.1 and 2, no action has been taken and on the other hand, the construction activity was going on. In those circumstances, the present writ petition is filed.

Per contra, the 1st respondent filed counter affidavit contending that Masjid-e-Khursheed Jahi and Sarai Tippu Khan with connected properties situated at Nampally is a notified Wakf property. As far as the survey conducted by the Survey Commissioner of Wakf through letter dated 8.6.2005 enclosing the list of encroachers is also not disputed. It is also stated in the counter that as per the said report, out of 3450 sq. yards, the petitioner-mosque is in existence in the area of 854 sq. yards alone leaving the balance land in possession of different establishments including an area of 400 sq. yards on which a new construction has come up. After receipt of the letter of the Commissioner of Wakf dated 8.6.2005, the 1st respondent issued notice under section 54 (1) of the Wakf Act 1995 dated 10.10.2005. The notices were served on 14.11.2005. One Sri Mohd.Muzamil Hussain Khan received the said notice on 23.11.2005 and filed explanation to the said notice on 6.12.2005 but, without enclosing any documentary

evidence to substantiate his contention. The 1st respondent, after considering the said the objections, passed orders as required under sub section 3 of Section 54 of the Wakf Act, 1995 on 18.2.2006 and the same has been served on the individual on 6.4.2006. It is also stated in the counter affidavit that the illegal constructions are still going on though this Court has directed to maintain status quo in this regard.

Though it is not stated in the counter affidavit, learned Standing Counsel representing the 1st respondent-Wakf Board has brought to the notice of this Court that subsequent to the orders passed by the 1st respondent under Section 54 (3) of the Wakf Act, some aggrieved persons approached the Wakf Tribunal and the proceedings have been taken up. It is further informed by the learned Standing Counsel that some matters went against the Wakf Board and in some matters the persons who are in possession of the subject property are declared as encroachers. Aggrieved by those different orders, the Civil Revision Petitions have been filed and the same are pending consideration in this Court.

The 2nd respondent-Municipal Corporation also filed counter affidavit stating that it is not aware about the ownership of the petitioner over the subject land. However, the respondent nos.6 to 9 herein and two others submitted an application for construction of commercial building on land admeasuring 1237 square meters. This respondent-Corporation after examining the documents enclosed to the said application and after satisfying about the *prima facie* title, granted permission for construction for Cellar,

ground floor and three upper floors vide permit no.21/37 dated 30.7.2003. Therefore, the allegation that the building is being constructed without sanction plan is not correct. It is also stated in the counter affidavit that since there were more deviations in the building and when the 2nd respondent-Corporation was about to initiate action against the said deviations, the builders have filed O.S.No.1489 of 2005 on the file of IX Junior Civil Judge, City Civil Courts, Hyderabad, and obtained interim orders vide I.A.No.299 of 2005. It is also stated in the counter that necessary action will be taken to remove the said deviations after the orders passed by the Civil Court are modified.

Counter affidavit is also filed by respondents 8 and 9 stating that they are the owners of 550 sq.yards in premises No.11-6-240 and 241. They entered into agreement with the 3rd respondent. Therefore, the complaint made by the petitioner that they are the encroachers is not correct.

A perusal of the material on record, it is revealed that the premises bearing no.11-6-297 adjacent to Nampally Railway Station, Hyderabad, comprising of 3450 sq. yards was donated by one Nawaz Sir Khursheed Jha Bahadur in the year 1298 Fasli. After the survey, it is also established that the said property belongs to the 1st respondent-Board. However, since encroachments are taking place, it was brought to the notice of the Wakf Board by the petitioner herein and others for removal of the said encroachments. Pursuant to the said complaints, the Survey Commissioner of the 1st respondent Board conducted survey and submitted a report indicating that there are encroachments. Some

of the aggrieved persons appears to have approached the Wakf Tribunal. In some of the matters, the persons who approached the Wakf Tribunal, having suffered the orders, approached this Court by filing Civil Revision Petitions. Similarly, the Wakf Board also approached this Court against the orders passed by the Wakf Tribunal. Though this submission has been made, the learned Standing Counsel is unable to give the numbers of the said Civil Revision Petitions pending consideration in this Court.

Therefore, in the light of the submissions made by the learned Standing Counsel, the grievance set up by the petitioner in the present writ petition has been vindicated. However, if the petitioner still wants to agitate his rights regarding the encroachments in respect of the said wakf property, it is open to the petitioner to approach the Wakf Tribunal and seek appropriate orders. The writ petition is accordingly disposed of. Interim order granted earlier stands vacated.

Miscellaneous petitions pending, if any, shall stand closed.

P.KESAVA RAO, J

Date:23/02/2018

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