

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No. 26114 OF 2017

DATED : 06.02.2018

Between :

Mecca Madina Alladin Wakf Charities
And Zakat Wakfs Tenant Welfare Association,
Rep. by its President Md.Rahmath ali,
Regd.No.468/2014,
#21-6-661, 3rd floor, Sattar Market,
Rikab Gunj, Hyderabad – 500 002 and others

.. Petitioners

And

The State of Telangana rklep. By its Principal Secretary
Minority Welfare Department,
Secretariat, Hyderabad

... Respondents



This court made the following :

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ORDER:

Heard Sri T. Srikanth Reddy, learned Counsel for the petitioners, learned Government Pleader for respondent No.1, Sri M.A. Mujeeb, Standing Counsel for Wakf for Respondents 2 and 3 and Sri Prabhakar Sripada for Respondent No.4.

2. The petitioners claim to be tenants of Shop in MCH No.21-1-1081/22, Shop.No.M5/09 in MCH No.21-1-1081/22, Shop Nos.BS/67 in MCH.No.21-1-1036/22, ACW 6 and 7 in MCH No.21-1-1036/123 & 124, B8/93 in MCH No.21-1-1032, FF.17 in MCH No.21-1-1098/FF.17 and 21-1-1098/GF/26 belonging to 4th respondent. It appears petitioners were earlier paying rents to the 4th respondent. Thereafter, management of 4th respondent was taken over by the Wakf Board. There appears to be a dispute between Wakf board as well as the 4th respondent on management of affairs of 4th respondent. They are respectively claiming that rents should be paid to them. In those circumstances, a representation was made on 29.7.2017 addressed to the Chief Executive Officer of Telangana State Wakf Board seeking for appropriate directions in the pending O.A.No.4 of 2012 in the Telangana State Wakf Tribunal in inter-se claim between the State Wakf Board and the 4th respondent with reference to payment of rents. Alleging inaction on the said representation, this Writ Petition is filed.

3. According to the State Wakf Board, it is Wakf property and according to the 4th respondent a trust is created and the income

generated from the properties owned by the trust are utilized for welfare of poor Muslims and it is a charitable institution.

4. Though the prayer is innocuously drafted, the relief sought is to declare action of respondents in threatening to dispossess the petitioners from the leased premises and further direction to Wakf Board to dispose of representation claimed to have been submitted to the State Wakf Board with reference to payment of rents. In substance, tenancy rights of petitioners vis-à-vis the State Wakf Board and the 4th respondent is in issue.

5. The issues concerning Wakf properties are governed by the A. P. Wakf Act, 1995. As per provisions in Chapter-8 of the Act, Tribunal is constituted. The Tribunal is vested with power to adjudicate all disputes concerning the Wakf properties. An aggrieved party on any issue concerning wakf properties can invoke the jurisdiction of the Tribunal.

6.1. The scope of jurisdiction of Wakf Tribunal and maintainability of Writ Petition under Article 226 of the Constitution of India concerning lease of Wakf properties was considered by a Division Bench of this Court in **ALLAUDDIN CHARITIES AND ZAKATH WAKF vs. HAMEED ALI AND OTHERS**¹. The Writ Appeals were filed aggrieved by the decision of learned Single Judge declaring the order passed by the Chief Executive Officer of the Wakf Board directing eviction of the petitioners from the premises in question, as illegal and without jurisdiction.

6.2. Considering the relevant provisions of the Wakf Act, the Division Bench held as under:

¹ 2002 (1) ALD 67 (DB)

“39. When the statute provides for an alternative remedy of filing a suit against the orders of the CEO passed under Section 54(1) to establish that they have a right, title or interest in the land, building space or other property and when disputed questions of fact arise in relation thereto, the learned single Judge ought not to have gone into such disputed questions of title and determined the nature of property as wakf property or not. It is well settled principles of law that when a statutory authority or a Tribunal or a Court has been conferred with certain powers in relation to any dispute or with regard to determination of the nature or title of the property, such authority should be allowed to play its role as per the statutory provisions. The Court should not enter into the arena or jurisdiction of such statutory authority or Tribunal.

40. Under sub-section (5) of Section 83, the Tribunal constituted under sub-section (1) of Section 83 shall be deemed to be a civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure while trying a suit or executing a decree or order. The jurisdiction of the Civil Court is specifically barred under Section 85 of the Act. Therefore, when the Tribunal has been conferred with the power to determine any dispute, question or other matter relating to a Wakf or Wakf property under the Act and acts as a Civil Court for all purposes, this Court, in exercise of the jurisdiction under Article 226 of the Constitution, cannot permit a party to bypass such statutory remedy and assign itself the role of statutory authority or Tribunal by dealing with the disputed questions of fact or title. It is only after the issue or dispute is determined by the Tribunal at the first instance, the High Court, in exercise of the power under the proviso to sub-section (9) of Section 83 of the Act gets jurisdiction and can

go into the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order it may think fit. We are, therefore, of the view that unless the party aggrieved of the orders of the CEO has availed of the alternative remedy available to him under the Statute and the Tribunal has determined the issue or dispute or the nature of the property as provided under the provisions of the Act, this Court, cannot go into question of validity of the orders passed by the Chief Executive Officer.”

7. As noted above, though prayer is innocuously drafted the main relief sought was to declare action of respondents in threatening to dispossess petitioners and further direction to Wakf Board to dispose of the representation made with reference to payment of rents. Thus, it is a case of alleged threat to petitioners in dispossessing them from leased premises and rents payable by them.

8. On the claims made by petitioners, they have an effective and efficacious remedy under the Wakf Act. In view of the decision of the Division Bench referred to above, present Writ Petition is not maintainable. Thus, Writ Petition is dismissed leaving it open to petitioners to work out their remedies as available in law on the grievances sought to be ventilated in the Writ Petition.

9. It is made clear that inter-se disputes among the parties to the Writ Petition are not dealt with and left open for the parties to agitate in appropriate proceedings.

P. NAVEEN RAO,J

Date: 6.2.2018

KPM