THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.41032 OF 2015

ORDER

Accused No.18 in Crime No.152 of 2015 of Atmakur Police Station, SPSR Nellore District, registered for the offence punishable under Sections 52(A) of the Wakf Act, 1995 (for short, 'the Act'), filed this writ petition under Article 226 of the Constitution of India, to quash the proceedings against him in the above crime.

Respondent No.5 was authorized by the Wakf Board to lodge a complaint in the above crime against the petitioner and 18 others alleging that the Government constituted a task force committee with Senior Revenue and Police officials vide G.O.Ms.No.374 Revenue (Sec/1) Dept. dt,25-06-2002, to strengthen and enforce the existing arrangements for eviction of encroachments and prevention of further encroachments of wakf land and to take stringent action/ measures to safeguard and to curb the grabbing of waqf lands, accordingly the Inspector-cum-Auditor submitted a report on 28.09.2015. According to the said report, the petitioner and 18 others purchased the property belonging to the wakf on various dates under various documents. In the table mentioned in the complaint, the petitioner was arraigned as accused No.18 alleged that he purchased the land to an extent of Ac.1.41 cents in Sy.No.848 of Atmakur Village & Mandal, and thus he occupied wakf land illegaly the above crime was registered for the offence punishable under Section 52A of the Act, and issued F.I.R.

The present writ petition is filed to quash the proceedings against the petitioner in the above crime, raising several contentions, mainly on the ground that out of the land to an extent of Ac.1.41 cents in Sy.No.848 of Atmakur Village, an extent of Ac.0.46 cents land was acquired by the Government for laying public road leading from Atmakur to Somasila Project, the remaining extent of the land to an extent of Ac.0.95 cents was acquired by him in two parts under two different sale deeds. Prior to purchase of the property, a saw mill was in existence in an extent of Ac.0.35 cents and the same is being upgraded by the petitioner since the date of its acquisition. Earlier, the said land belongs to one Darga Mohammed Shamshuddin Saheb, he acquired the same by Ryothwari patta, issued by the then Special Deputy Tahsildar for Inams Nellore under sub-Section (3) of Section 3 of the Andhra Inams (Abolition and Conversion into Ryothwari) Act 1956. Thus, the subject land is Inam land and issued patta in favour of Darga Mohammed Shamshuddin Saheb referred above. The said land was originally belonging to Nawab of Udayagiri and the title deed bearing No.1417 was issued by the then Nawab of Udayagiri on 17.11.1863 and thus the said land was clearly classified as Inam land from the entries in Inam Fair Register. It is further submitted that aggrieved by the *ex parte* report of the Inspector Auditor of Wakf, SPSR Nellore District, he filed W.P.No.38878 of 2015, but it was dismissed as premature.

The main contention urged by the counsel for the petitioner before this Court is that the Act was amended by Act 27 of 2013 with effect from 01.11.2013 introduced Section 52A which deals with Penalty for alienation of waqf property without sanction of Board, but the purchase of the subject land was in the year 2007 i.e. sale deed bearing No.2511/2007 registered with Sub-Registrar, Atmakur, purchased from Yashodamma, w/o.late Gaddam

Ramana Reddy Venkata Krishna Reddy, the vendor of petitioner has purchased the property from Inam patta holder in the year 1963, thereby alienation in favour of vendor of the petitioner by name Gaddam Yashodama w/o.late Gaddam Ramana Reddy, Venkata Krishna Reddy was prior to existence of Section 52A of the Act. Therefore, the penal provision will have no retrospective effect. When the alienation has taken place prior to the commencement of, Section 52A of the Act, cannot be applied and that to by the date of alienation, the act of his vendors is not an offence, but it was made as an offence subsequently i.e., with effect from 01.11.2013, therefore the petitioner is not liable to be prosecuted for the offence punishable under Section 52A of the Act. In support of his contention, he placed reliance on the judgment of the Apex Court in **Soni Devrajbhai Babubhai v. State of Gujarat and Others**[1] and requested to quash the proceedings against the petitioner in the above crime.

Per contra, learned counsel appearing for the 6th respondent contended that the offence committed by the petitioner is a continuing offence, as the petitioner is continuing in possession of the property even by the date of commencement of the amended penal provision i.e. Section 52A and thereby the contention of the counsel for the petitioner cannot be accepted and limitation continues as long as the offence continuing and placed reliance on the judgment of the Apex Court in **Udai Shankar Awasthi v. State of Uttar Pradesh and Another**[2]. On the strength of the principle laid down in the above judgment, learned counsel for the 6th

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[1] (1991) 4 SCC 298
[2] (2013) 2 SCC 435

respondent contended that the offence committed by the petitioner is continuing offence as defined under Section 472 of the Code of the Criminal Procedure, 1973 and prayed to dismiss the writ petition at the stage of admission.

Considering rival contentions, perusing the material available on record, the point that arise for consideration is,

> ***Whether the purchase of the property by the petitioner, continuing in possession and enjoyment of the property allegedly belonging to wakf is a continuing offence? If not, whether the amendment to the Act by incorporating Section 52A be given retrospective effect? If so, whether the petitioner is liable to be proceeded for the offence punishable under Section 52A of the Act?***

POINT:

The basis for registration of this crime is Auditor's report and according to the Auditor's report, the petitioner illegally purchased the land to an extent Ac.1.41 cents in R.S. No.848 in Atmakur Village. The petitioner did not deny the purchase of the property under registered sale deed while contending that part of land to an extent of Ac.0.46 cents was acquired by the Government for laying road running from Atmakur to Somasila Project and that to the said land originally classified as Inam land and on the advent of Andhra Inams (Abolition and Conversion into Ryothwari) Act 1956, patta was issued in favour of his vendor's vendor Darga Mohammed Shamshuddin Saheb, thereafter he sold the property to the vendor of the petitioner and in turn the petitioner purchased in the year 2007 under registered sale deed referred supra. It is further contended that the property does not belong to wakf, he is unaware about the notification issued under the provisions of the Act classifying the property as wakf. Therefore, he is a bonafide purchaser for a valuable consideration. Whether it is wakf property or not cannot be decided in this proceedings.

Assuming for a moment that the property belongs to wakf, issued notification under Section 5 of the Act, after conducting survey under Section 4 of the Act. The said notification was not challenged before the Tribunal, though it has attained finality. In such circumstances it is contended by the counsel for the 6th respondent that it is purely wakf property. For a moment, without conceding the claim of the respondents, I would like to examine the issue whether the offence punishable under Section 52A of the Act is a continuing offence?

According to Section 472 of the Code of criminal Procedure, 1973, in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

In **Balakrishna Savalram Pujari Waghmare and others v. Shree Dnyaneshwar Maharaj Sansthan and others**[3] the issue before the Apex Court was whether the wrongful act of forcible ouster is continuing offence or not, wherein it was observed that continuing offence is an act which creates a continuing source of injury, and renders the doer of the act, responsible and liable for the continuation of the said injury. In case a wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the said act may continue. If the wrongful act of such character that the injury caused by it

[3] AIR 1959 SC 798

itself continues, then the said act constitutes a continuing wrong. The distinction between the two wrongs therefore depends upon the effect of the injury, and held that the resulting injury caused, was complete at the date of the ouster itself, and therefore, there was no scope for the application of Section 23 of the Limitation Act in relation to the said case. Thus, in view of the above, the law on the issue can be summarized to the effect that, in the case of a continuing offence, the ingredients of the offence continue, i.e., endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all i.e. when the same actually taken place. In such cases, there is no continuing offence, even though the damage resulting from the injury may itself continue.

In **Udai Shankar Awasthi v. State of U.P. & Anr.**[4] the Apex Court had an occasion to deal with an identical question. In the facts of the above case, M/s.Manish Engineering Enterprises, Sudha Kant Pandey, claims to be the proprietor, was given a work order by M/s.Indian Farmers Fertilizer Cooperative Ltd., (hereinafter referred to as “IFFCO”), Phulpur unit, on 01.02.1996 for conducting repairs in their plant worth an estimated value of Rs.13,88,750/-. The said work order was subsequently cancelled by IFFCO on 07.02.1996. Aggrieved by the same, M/s.Manish Engineering Enterprises made a representation dated 21.03.2001, to IFFCO requesting it to make payments for the work allegedly done by it. As there was no response from the management of IFFCO, the said company filed W.P. No.19922 of 2001 before the High Court of Allahabad, seeking a direction for payment of an

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amount of Rs.22,81,530.22 for the work allegedly done by it, also filed W.P.No. 7231 of 2002 for recovery of the said amount, these two writ petitions were disposed of by order dated 25.05.2001 and 20.02.2002 respectively. As there was an arbitration clause in the agreement itself, IFFCO filed an application under Section 34 of the Arbitration & Conciliation Act, 1996. Mr.H.Sabha Kant Padey who is brother of the second respondent filed a complaint case No.4948 of 2008 under Sections 323, 504, 506, 406 and 120-B of I.P.C. before the Special Chief Judicial Magistrate, Allahabad, also filed another complaint case No.26528 of 2009 against the appellants and others under Sections 147, 148, 323, 504, 506, 201 and 379 of I.P.C. The first complaint was rejected by speaking order by the Special Chief Judicial Magistrate, Allahabad vide order dated 20.03.2010 exercising power under Section 203 Cr.P.C. Respondent No.2 filed another complaint case No.1090 of 2010 against the appellants and others on 02.04.2010 for the offence punishable under Sections 323, 504, 506, 406 and 120-B of I.P.C. before the Special Chief Judicial Magistrate, Allahabad and after investigating into the matter, the police submitted a report on 18.04.2010 referring the case as false, basing on which the Special Chief Judicial Magistrate dismissed the complaint. The second respondent filed another complaint case No.628 of 2011 on 31.05.2011 under Sections 403 and 406 of I.P.C. and after taking cognizance of the offence, summons were issued to the complaint in the said case and the matter finally reached the Apex Court. Wherein the Apex Court held that Section 472 Cr.P.C. provides that in case of a continuing offence, a fresh period of limitation begins to run at every moment of the time during which the offence continues.

The expression, 'continuing offence' has not been defined in the Cr.P.C., because it is one of those expressions which does not have a fixed connotation, and therefore, the formula of universal expression cannot be formulated in this respect.

In **Gokak Patel Volkart Ltd. V. Dundayya Gurushiddaiah Hiremath and others**[5] the Apex Court while dealing with the issue continuing offence, adverted to the dictionary meaning of the word 'continuing' and referred 5th edition of Black's Law Dictionary, where the 'continuing' means 'enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences'. Continuing offence means type of crime which is committed over a span of time. As to period of statute of limitations in a continuing offence, the last act of the offence controls for commencement of the period. "A continuing offence, such that only the last act thereof within the period of statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse. So also a continues crime means one consisting of a continuous series of acts, which endures after the period of consummation, as the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act. Though

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[5] (1991) 2 SCC 141

in **Gokak Patel Volkart Ltd**. case referred supra, the Apex Court relied on its earlier judgment in **State of Bihar v. Deokaran Nenshi and another**[6] wherein it was held that continuing offence is one which is susceptible of continues and is distinguishable from the one which is committed once for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with.

Even if the principle laid down by the Apex Court in **Udai Shankar Awasthi** case referred supra is applied to the present facts of the case, the offence allegedly committed by the petitioner i.e. purchase of the property and continuing in possession of the property is not a continuing offence and it is only an instantaneous offence, though damage continuous to run to the wakf board.

The Courts are consistently held that following offences have been held to be continuing offence –

*a) Non-payment of employer's contribution to the Provident Fund before the due date (**Bhagirath v. State of M.P. 1984 SC 1688**);*

*b) The offence under Section 29(2) of the Delhi Development Act, 1957 (**Oriental Bank of Commerce v. D.D.A. 1982 Crl.L.J.2230 (D) (DB)**);*

*c) The offence under Sections 159 and 160 of the Companies Act (**Ajit Kumar v. Assistant Registrar of Companies (1979 Crl.L.J. (NOC) 61)**);*

*d) Offence under Section 58-B(2) of Reserve Bank of India Act, (1934) (**U.S. & Finance Co. v. Dy.Chief Officer, Reserve Bank of India (1980 Crl.L.J.607(c)**);*

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[6] AIR 1973 SC 908

*e) Offence under Section 16 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (**State v. Bhavani Industries (1983) Guj.L.R. 664**));*

*f) Offence under Section 551(5) of the Companies Act (**Bhawani Shankar v. Assistant Registrar of Companies (1980 Crl.L.J.(NOC)23**));*

*g) Offence under Section 29 of the Industrial Dispute Act, 1947 (**Trichur Urban Co-operative Bank v. District Labour Officer (1986 KLT 1325)**);*

The following offences have been held as not continuing offences:

*a) Offences under Section 3 and 7 of the Tamil Nadu Chit Fund Act 1961 (**Sulochana v. State (1977 LW (CR) 161**));*

*b) Offence under Section 12(1) of the A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966) (**K.Ch.Panduranga Rao v. Secy. Agrl. Appellate Committee (1985 Crl.L.J. 176 (AP) (DB**));*

*c) Contravention of Sections 14(1-A), 14-AA and para 76(b) of Employee's Provident Fund and Family Pension Fund Act (19 of 1952) (**Wise Machinery Mfg. Corporation v, State (1978 Crl.L.J. 839 (C)(DB)**);*

*d) Offence under Section 12(1) of Karnataka Vehicles Taxation Act (1957)(**Channabasappa v. State of Karnataka 1979 Crl.L.J. 185 (Kant)**);*

*e) Offence under Section 18(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**John Joseph v. State of Maharashtra (1979 Crl.L.J. 1150(B)**);*

*f) Offence under Sections 58-A(3)(a),(c), 5(b) and 629-A of the Companies Act, 1956 (**Ritz Continental Hotel Ltd., v. State 1980 Crl.L.J. 414 (c)**);*

*g) Offences under para 30(1) and para 38(1) of the Provident Fund Scheme (1952) (**P.F. Inspector, Mercara v. N.S.Dayananda (1980 Crl.L.J. 161 (c)(DB)**);*

*h) Offence under Section 406 I.P.C.(**Waryam Singh v. State of Punjab (1982 Crl.L.J. (NOC) 137 (P&H)**);*

*i) Offence under Section 159 of the Companies Act, 1956 (**National Cotton Mills v. Assistant Registrar (1983) 2 CHN 180 (DB)**);*

*j) Offence under Section 29 of the Industrial Disputes Act, 1947 (**Harsha C.Desai v. Baskar Dharwad (1984 Crl.L.J. (NOC) 59 (Karn)**);*

But in the present case, the petitioner purchased the property allegedly belongs to wakf in the year 1956 and later in the year 2007 under registered sale deed bearing No.2511/2007 it was purchased by the petitioner. Therefore, the offence of alienation of the property without any prior permission allegedly belonged to the wakf took place long prior to the commencement of Section 52A of the Act.

For the purpose of deciding the real controversy, it is apposite to extract Section 52A of the Act, which was amended by Act 27 of 2013 commenced with effect from 01.11.2013 and it is extracted hereunder:

52A. Penalty for alienation of waqf property without sanction of Board —

(1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time

> ***being in force, be vested in the Board without any compensation therefor.***
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> ***(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.***
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> ***(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.***
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> ***(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.***

In view of the language used in clause (1), a person who alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment.

In the present case, the petitioner purchased the property in the year 2007 i.e. almost 6 years prior to the date of commencement of the amended penal provision in the Act. The purchase and possession of the property took place in the year 2007, running saw mill in the property purchased, by paying non-agricultural land revenue and electricity consumption charges and after obtaining licence by his vendor vide licence No766, dt.24-04-1973 and similarly the petitioner continuously paying land revenue etc. Thus, the documents produced along with the writ petition established *prima facie* that the petitioner is continuing in possession since the date of purchase i.e. from the year 2007. Therefore, purchase of property and taking possession took place prior to commencement of Section 52A of Act and it is not a continuing offence.

The language used in Section 52A of the Act is specific i.e. “purchase or possession” indicates that the very purchase and taking possession or taking possession itself constitute an offence, it is clear that it is only instantaneous offence and not a continuing offence. If the law declared by the Apex Court in **Balakrishna Savalram Pujari Waghmare**'s case is applied to the present facts of the case, the offence of “forcible ouster” only an instantaneous offence and not continuing and thereby the purchase or taking possession of the land allegedly belonging to wakf is only an instantaneous offence and not a continuing offence.

As discussed above, the offence allegedly committed by the petitioner punishable under Section 52A of the Act cannot be given retrospective effect since the petitioner purchased the property in the year 2007 by the date of purchase it is not an offence, but purchase or taking possession is an offence only with effect from 01.11.2013. Therefore, the penal provision cannot be given retrospective effect, it always operates prospectively and this view is fortified by the judgment of the Apex Court in **Soni Devrajbhai Babubhai** case referred supra.

Even according to Article 20(1) of the Constitution of India, a person can be convicted and sentenced to undergo imprisonment based on the law existing on the date of commencement of the offence and Article 20(1) of the Constitution reads thus:

> ***"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."***

Thus, it is clear from the Article 20(1) of the Constitution, a protection is given to every citizen of the Country, that citizen cannot be punished for any offence when there was no provision for punishment.

In **Soni Devrajbhai Babubhai**'s case the Apex Court held that the protection given by Article 20(1) is a complete answer to the appellant's contention and also held that Section 304-B was incorporated in I.P.C. by Act 43 of 1986 which came into force on 19.11.1986, but the offence took place much prior to the date of commencement of Section 304-B of I.P.C. then the question arise before the court was that Section 304-B I.P.C. can be given retrospective effect, but the Apex Court on the basis of Article 20(1) of the Constitution held that no person shall be convicted except for violation of law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In view of protection guaranteed under Article 20(1) of the Constitution, the Apex Court held that Section 304-B I.P.C. which was added to I.P.C. subsequent to the alleged commission of the offence does not create a new offence and contains merely a rule of evidence is untenable. The rule of evidence to prove the offence of dowry death is contained in section 113-B of the Indian Evidence Act providing presumption as to dowry death which is a simultaneous' amendment made in the Indian Evidence Act for proving the offence of dowry death. The fact that the Indian Evidence Act was so amended simultaneously with the insertion of Section 304-B in the Indian Penal' Code by the same amendment Act is another pointer in this direction. This contention is, therefore, rejected.

The penal provision cannot be given retrospective effect in view of the protection guaranteed under Article 20(1) of the Constitution of India. Thus the principle laid down in the above judgment is directly applicable to the present facts of the case and based on the said principle, registration of crime against the petitioner for the instantaneous offence that took place in the year 2007 by which date Section 52A of the Act was not in existence of and thereby registration of crime against the petitioner in the year 2015 is violative of protection guaranteed under Article 20(1) of the Constitution, and therefore, I am of the considered view that registration of crime against the petitioner in Crime No.152 of 2015 for the offence punishable under Section 52A of the Act is violative of Article 20(1) of the Constitution of India, and accordingly, the proceedings in Crime No.152 of 2015 of Atmakur Police Station are hereby quashed.

Accordingly, the writ petition is allowed. No costs.

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

M. SATYANARAYANA MURTHY, J

Dt. 24.07.2018
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