

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.40957 OF 2018

Date:14.11.2018

Between:

P. Anil Kumar Kishan, S/o. Late P.N. Kishan,
Aged about 56 years, R/o. PlotNo.418, Road
No.18, Jubilee Hills, Hyderabad and others .. Petitioners

And

Telangana State Wakf Board, rep., by its
Chief Executive Officer, Nampally,
Hyderabad .. Respondent



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.40957 OF 2018

ORDER:

Heard learned senior counsel for petitioners and learned Standing Counsel for Waqf Board appearing for the respondent.

2. On 12.10.2018, notice under Section 54 (1) of the Waqf Act, 1995 (for short, 'the Act') was issued independently to all the petitioners alleging that they are in occupation of wakf property, a description of which was also included in the notice, and called upon them to show cause as to why application should not be made to the State Waqf Tribunal for grant of eviction. They were given 15 days time to show cause along with documentary evidence in support of their claim, if any. Petitioners filed their explanation and claimed to have submitted the requisite documents. On 05.11.2018, the Chief Executive Officer, Nampally, Hyderabad, respondent herein, issued the notice impugned in the Writ Petition directing the petitioners to attend the summary enquiry on 15.11.2018 along with the valid original documentary evidence, if any. Hence, this Writ Petition.

3. According to learned senior counsel appearing for the petitioners, as the power to pass order of eviction is now vested in the Waqf Tribunal, the Chief Executive Officer is not competent to hold summary enquiry and pass orders. He has to only refer the matter to the Waqf Tribunal to decide the issue. According to him, all the required documents were already furnished to the Chief Executive Officer pursuant to the show cause issued on 12.10.2018 and there are no other documents to submit. He also

submits that petitioners do not intend to appear before the Chief Executive Officer in persons and make their submissions in addition to the material already placed on record and explain their stand. According to him, as a consequence to the amendment carried out to Section 54 (3) of the Act, by way of Amendment Act, 2013 (Act 27 of 2013), no power is vested in Chief Executive Officer to conduct enquiry and pass orders.

4. Prior to amendment to Section 54 (3) of the Act, the power to pass order requiring the encroacher to remove encroachments was vested in the Chief Executive Officer. This portion of the provision was amended and as per amended provision, the Chief Executive Officer has to make an application to the Tribunal for grant of order of eviction for removing such encroachment.

5. Section 54 (3) of the Act reads as under:

“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 Waqf property and that there has been an encroachment on any such Waqf property, he may make an application to the Tribunal for grant of order of eviction for removing such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the Waqf.”

6. From a reading of Section 54 (3) of the Act, it is clear that in the first instance, whenever the Chief Executive Officer opines that there is encroachment of waqf property, he has to issue notice specifying the particulars of encroachment and call upon the person to show cause on a date specified by him. After the notice is issued and objections are filed, he should conduct an enquiry in

such a manner as may be prescribed and if found that there has been an encroachment on any such waqf property, he should file an application before the Tribunal.

7. Having regard to the scheme of Section 54 (3) of the Act, I am of the considered opinion that there is no merit in the contention of the learned senior counsel on the competency of the Chief Executive Officer to issue show cause notice. Unless the Chief Executive Officer conducts enquiry as required by Section 54 (3) of the Act and arrives at a decision that there is an encroachment, he cannot file an application before the Waqf Tribunal seeking its orders for eviction and for removing the encroachment and delivering possession of the waqf property. The notice issued by the Chief Executive Officer is in accordance with the provisions of Section 54 (3) of the Act and it is not vitiated on the ground of lack of jurisdiction and competence.

8. Since learned senior counsel for petitioners, on instructions, submits that petitioners did not appear before the Chief Executive Officer on 15.11.2018, as per notice dated 05.11.2018, and do not intend to appear, it is open to the Chief Executive Officer to take further course of action as required by Section 54 (3) of the Act on due consideration of the documents furnished by petitioners to notice dated 12.10.2018.

9. The Writ Petition is accordingly disposed of. There shall be no order as to costs. Pending Miscellaneous Petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:14.11.2018
KH