

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO.168 OF 2019

ORDER:

This Revision is filed under Section 83(9) of the Wakf Act, 1995 ("the Act" for brevity) challenging the order dt. 22.03.2018 in O.S.No.204 of 2016 passed by the Telangana State Waqf Tribunal, Hyderabad.

Petitioner herein is the Telangana State Waqf Board, which is the successor to the A.P. State Wakf Board after the division of the composite State of Andhra Pradesh into the State of Telangana and the residuary State of Andhra Pradesh.

The respondent herein filed O.S.No.91 of 2009 before the A.P. State Wakf Tribunal at Hyderabad to declare the proceedings of the petitioner bearing No.M5/77/Prot/2001 dt. 23.07.2002 issued under Section 54(3) of the Act by the petitioner, as illegal and void and sought perpetual injunction against the petitioner from interfering with the peaceful possession and enjoyment of the respondent in respect of the suit schedule property.

In the plaint, it is contended that the respondent is the owner of the subject property having purchased it under registered sale deed dt. 12.11.2008 and was in continuous possession and enjoyment thereof and that his vendor had purchased it under registered sale deed dt. 28.07.1970 from the erstwhile owner. It is contended that after purchase, the respondent was in continuous possession and enjoyment of the suit schedule property since November, 2008. But on

17.07.2009, the Inspector Auditor working in the office of the petitioner visited the site and instructed the respondent to vacate the schedule property immediately. The respondent contended that she enquired from the Inspector Auditor as to the circumstances under which he is asking the respondent to vacate from the subject property, and contended that the Inspector Auditor stated that orders were passed declaring the respondent as an encroacher by the petitioner and that he handed over copies of notice dt. 12.10.2001 under Section 54(1) of the Act and order passed on 23.07.2002 under Section 54(3) of the Act. She disputed the title of the petitioner and also contended that the schedule property is not Wakf property and it is not at all mentioned in the Gazette issued by the petitioner. It was contended that the respondent had not received the notice dt. 12.10.2001 under Section 54(1) of the Act and she had also not received the order dt. 23.07.2002 under Section 54(3) of the Act and she came to know about the same on 17.07.2009 for the first time when the Inspector Auditor of the petitioner approached the respondent and tried to dispossess her and so, she filed the suit for the above reliefs.

Written statement was filed by the petitioner that the first respondent is one of the encroachers of the Wakf property attached to Takia Kabir Ali Shah; that sale or alienation of Wakf property is illegal and the sale deed document No.2672 of 2008 dt. 12.11.2008 did not confer any title over the subject property on the respondent and it is a sham, created and concocted document. It was alleged that notice under Section 54(1) of the Act was issued asking the

respondent to remove the encroachment; that occupant of the property received the notice but did not give explanation, and thereafter, orders were passed under Section 54(3) of the Act on 23.07.2002. It is also alleged that revenue officials and officers of the petitioner obtained possession on 17.07.2009 and a copy of panchanama was also filed. It is also alleged that order under Section 54(3) of the Act was served on the encroacher. Plea that the suit is also barred by limitation was raised.

Before the Wakf Tribunal, the respondent examined P.Ws.1 and 2 and marked Exs.A1 to A12. The petitioner examined D.W.1 and marked Exs.B1 to B3.

By order dated 22.03.2018, the suit, which had been renumbered as O.S.No.204 of 2016 before the Telangana State Waqf Tribunal constituted in the meantime, was decreed and the proceedings issued by the petitioner on 23.07.2002 were declared as illegal and void, and a perpetual injunction was granted in favour of the respondent restraining the petitioner and their agents from interfering with the possession of the respondent over the suit schedule property.

After considering the evidence on record, the Tribunal held that the notice dt. 12.10.2001 (Ex.A1) under Section 54(1) of the Act as well as the order dt. 23.07.2002 (Ex.A2) passed under Section 54(3) of the Act were not proved by the petitioner to have been served on the respondent. It relied on the evidence of D.W.1 wherein he stated that he do not know whether notices to the possessors of the land were

given or not before conducting survey under Exs.A11 and B3. It also noted that Exs.A1 and A2 do not show the descriptive particulars of the alleged encroached area by the respondent in the Wakf property, and they do not show even the boundaries of the encroached area by the respondent and no sketch map was annexed to Exs.A1 and A2. It held that in the absence of details of boundaries of the encroached area being mentioned in the notice, even if a person receives it he would not be in a position to respond. It therefore concluded that Ex.A1-notice does not show that area of the Wakf property was encroached by the respondent. It also noted that no acknowledgment of service of Ex.A1-notice was produced by the petitioner and so, it drew an adverse inference against the petitioner that Ex.A1-notice was served on the respondent. It also stated that the petitioner did not file survey report which was conducted by D.W.1 in the presence of the Inspector Auditor before issuing Ex.A1-notice. It therefore declared the order dt. 23.07.2002 issued under Section 54(3) of the Act as illegal and void. It held that Exs.A6 to A10 prove the possession of the respondent over the suit schedule property on the date of filing of the suit and the respondent had filed not only her sale deed but also the link document and so, she is entitled to perpetual injunction restraining the petitioner from interfering with her possession and enjoyment over the property.

Assailing the same, this Revision is filed.

Counsel for the petitioner contended that the property in occupation of the respondent is Wakf property covered by Ex.A12,

Gazette; that notice under Ex.A1 issued on 12.10.2001 under Section 54(1) of the Act was served on the respondent. The respondent had referred to the same in para-3 and so, the Tribunal below was not right in coming to the conclusion that Ex.A1-notice was not served on the respondent.

A close reading of the plaint filed by the respondent indicates that respondent had received Ex.A1-notice and Ex.A2-order only on 17.07.2009 as per paras-2 and 3 of the plaint. Therefore, this plea of counsel for the petitioner cannot be accepted. When no notice was served on respondent under Section 54(1) of the Act before the order was passed under Section 54(3) of the Act, the said order is not sustainable.

In any event, the petitioner is not able to show how findings of the Tribunal that notice (Ex.A1) as well as the order (Ex.A2) contain particulars of boundaries of the encroached property as was held by the Tribunal in the impugned order. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference with the impugned order passed by the Telangana State Waqf Tribunal.

Accordingly, Revision fails and is dismissed. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand dismissed.

(M.S.RAMACHANDRA RAO, J)

10th June 2019
RRB