

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 726 of 2020

ORDER:

In this writ petition, petitioner challenges the proceedings dated 16.11.2019 issued by respondent No.4-Chief Executive Officer, Telangana State Wakf Tribunal.

The petitioner asserts that the impugned proceedings are contrary to Section 54 (3) of the Wakf Act, 1995 (for short 'the Act') as the same were issued without giving any opportunity to him and without considering the material placed by him.

As can be seen from the impugned proceedings, the Wakf Board after issuing notice and calling for objections from the petitioner and after giving him an opportunity of hearing had come to the *prima facie* conclusion that he has occupied the subject property without any authority and he is an encroacher. Accordingly, the Wakf Board had taken a decision to approach the Wakf Tribunal under Section 54 (3) and (5) of the Act for eviction of the petitioner, encroacher. This is only a *prima facie* conclusion arrived at by the Tribunal based on the material placed before it in terms of the procedure prescribed. However, the question as to whether the petitioner is an encroacher or not is required to be considered by the Wakf Tribunal. It may be noted that the petitioner challenged the impugned proceedings before this Court in order to prevent the Wakf Board from approaching the Wakf Tribunal. In this context, Section 41 of the Specific Relief Act may be noted as under:

41. Injunction when refused.—An injunction cannot be granted— (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

[(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.]

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.”

From the above, it is evident that an injunction cannot be granted to restrain any person from initiating judicial proceedings. In this view of the matter, entertaining the writ petition and granting any order would be contrary to the provisions of the Specific Relief Act.

In those circumstances, without expressing any opinion on merits of the matter, the writ petition is dismissed as not maintainable.

Miscellaneous Petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:09.01.2020

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