

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.1442 OF 2020

O R D E R

Petitioner presented the sale deed to the 4th respondent – Sub Registrar, Stamps and Registration Department, Champapet, Rangareddy District, for registration in respect of subject property in an extent of Ac. 1-32 gts. situated in Sy.Nos.302 and 303, Mamidipally village, Balapur mandal, earlier in Saroornagar Mandal, Rangareddy District. Vide the Lr.No.459/2019 dated 30.12.2019, the 4th respondent refused to register the same on the ground that the subject property is in the prohibitory property list under Section 22-A of the Registration Act, 1908 and that the land in Sy.Nos.302 and 303, is a wakf land as per the Andhra Pradesh Gazettee No.6-A dated 09.02.1989. Aggrieved by the said action of the 4th respondent, the present writ petition is filed.

The case of the petitioner as per the averments made in the affidavit filed in support of the writ petition is that, originally one Mr.Mir Ahasam Ali Khan was the Maqtadar of the land in an extent of Acs.18.00 situated in Sy.Nos.302 and 303, Mamidipally village, Saroornagar mandal, Rangareddy District. Consequent to introduction of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, (for short 'the Inams Abolition Act') the land is notified as Inam Dastagardan. After the demise the Maqtadar i.e., Mr. Mir Ahasam Ali Khan in the year 1982, his legal heirs, executed a registered sale deed vide document No.3548 of 1982 dated 17.05.1982 in favour of Mr. Jaffer Bin Ahmed Barzaqee, for an extent of Acs.18-00, i.e., Acs.11.20mgrts. in Sy.No.302 and Acs.6.20 gts in Sy.No.303. Thereafter, the Revenue Divisional Officer, after issuing notice to the affected parties, and conducting enquiry, issued Occupancy Rights Certificate (ORC), under the provisions of Section 8 read with Section 10 of the Inams Abolition Act to Mr. Jaffer Bin Ahmed Barzaqee vide proceedings No.H/5391/1984 dated 11.05.1984. During the year 1997, the said Mr.Jaffer Bim Ahmed

Barzaqee, sold an extent of Acs.11.08 gts. vide registered sale deed dated 17.01.1997 bearing document No.344 of 1997. Out of the remaining extent of Acs.6.32 gts., owned by Mr.Jaffer Bin Ahmed Barzsaqee, an extent of Acs.5.00 is under litigation in the civil court, and the balance extent of Ac.1.32 gts. is free from any litigation and to this extent, the name of Mr. Jaffer Bin Ahmed Barzaqee, is also mutated in the revenue records and he was also issued with pattadar pass book and title deeds. The petitioner purchased the said extent of Ac.1-32 gts. under registered agreement of sale-cum-general power of attorney with possession under document bearing No.861 of 2008 dated 21.02.2008 from the said Mr.Jaffer Bin Ahmed Barzasae. Now the grievance of the petitioner is that when he intended to sell the subject property, the 4th resident refused to receive the document on the ground that the said land is included in the list of prohibited properties under Section 22-A of the Act, and the land is notified as belonging to wakf institution vide notification dated 09.02.1989. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed on behalf of the 5th respondent – Wakaf Board by its Chief Executive Officer. In the counter affidavit it is stated that the subject land forms part of Dargah in the area of Saif Nawaz Jung situated at Mamidpally village, which is a wakf property and that the lands in Sy.Nos.269 to 277, 281 to 297, 299 to 306, totally admeasuring Acs.228-00 of Mamidipally village, were notified as wakf property vide notification dated 09.02.1989. It is stated that under Section 8 of the Act, ORC will be issued to the occupant of the inam land as non-protected tenant, but whereas the vendor of the petitioner i.e., Mr. Jafer Bin Ahmed Barzeeq, is a purchaser of the subject land and he is not a non-protected tenant over the said land and hence he is not entitled for any ORC, and the ORC obtained by him vide the proceedings No. H/5391/1984 dated 11.05.1984, is by fraudulent means, and hence the same cannot be relied upon. It is further stated that when the Revenue Divisional Officer, Rangareddy District, issued ORCs during the year

2005, in respect of the lands in Sy.Nos. 269 to 277, 281 to 297, 299 to 306, appeals were filed and the Joint Collector passed a common order dated 25.02.2006 setting aside the ORCs, and in one of the writ petitions filed against the orders passed by the Joint Collector in W.P.No.5039 of 2008, this court passed interim order dated 11.03.2008 directing the parties to maintain status quo and the said writ petition is pending as on today. Therefore, it is stated that as the lands belongs to wakf institution and a notification was published on 09.02.1989 and the ORC obtained by the vendor of the petitioner was in a fraudulent manner and this court granted *status quo* in respect of the survey numbers, where the land of the petitioner is situated, and the said writ petitions are pending, the objection taken by the 4th respondent for not registering the document, is sustainable, and the same may not be interfered with.

Learned counsel for the petitioner while reiterating the averments made in the writ affidavit, further submits that in identical set of facts and circumstances in W.P.No.9378 of 2009 dated 06.02.2012, where the Sub Registrar, refused to receive and register the sale deed presented by the petitioner therein in respect of the land in Sy.Nos.302 and part of 303 of Mamidiapally village, Saroornagar Mandal, Rangareddy District, in view of the information received from the Wakf Board to the effect that the subject property therein belongs to them, and a notification in respect of the said properties was published on 09.02.1989 and that survey was conducted way-back in the year 1960; the learned single Judge, while not accepting the case of the Wakf Board, held that the survey conducted in the year 1960 cannot be said to be the basis for publication of a notification in the year 1989 and, therefore, the notification dated 09.02.1989 cannot be said to be in conformity with the provisions of the Wakf Act. Accordingly, the learned Single Judge allowed the said writ petition as prayed for. Therefore, the learned counsel for the petitioner seeks to pass similar order.

On the other hand Sri S.R. Mahajir, learned Standing Counsel for 5th respondent – Wakf Board, while reiterating the averments made in the writ affidavit, further submits that the ORC obtained by the vendor of the petitioner is defective. The learned Standing Counsel while not disputing that the *lis* in the present writ petition is squarely covered by the above said order of this court, submitted that the order of the learned single Judge is being challenged. But no particulars in this regard have been furnished by the learned Standing Counsel, or stated in the counter affidavit. Learned Standing Counsel, contends that the subject land belongs to Wakf Board and the vendor who sold the property to the petitioner, has no title and hence the petitioner will not get any title and hence, he is not entitled to sell the property. He submits that even if the sale deed is registered, the same will always be subject to the result of the future litigation to be initiated by the Wakf Board.

Heard the learned Assistant Government Pleader for Revenue, appearing for respondents 1 to 5, who also does not dispute that the *lis* in the present writ petition is squarely covered by the order passed by this court, which is referred to above.

In the present case, there is no dispute that the vendor of the petitioner was issued with ORC in respect of the subject land. As per the counter affidavit, the Joint Collector, Rangareddy District, by common order dated 25.02.2006 set aside the ORCs issued during the year 1986 in the lands in Sy.Nos.269 to 277, 281 to 297, 299 to 306 and in the writ petition filed against the said dismissal order of the Joint Collector, this court granted status quo and the writ petition is pending adjudication. But in the present case, it is to be noticed that the ORC granted to the vendor of the petitioner vide No.H/5391/1984 dated 11.05.1984, is not challenged and the same is subsisting as on today and the ORCs, which were set aside by the Joint Collector, pertain to different proceedings.

The other contention of the learned Standing Counsel for Wakf Board is that the 4th respondent refused to register the document presented by the petitioner on the ground that the property is included in the in the list of prohibited properties under Section 22-A of the Act, as the government issued notification dated 09.02.1989.

In identical set of facts and circumstances, where the 4th respondent herein refused to register the document presented by the petitioner therein on the ground that the subject land in an extent of Acs.26.25 gts. in Sy.No.302 and part of 303 of Mamidipally village, Saroornagar mandal, Rangareddy District, is the wakf property and a notification dated 09.02.1989 was issued, the learned single Judge, considering Section 4 of the Wakf Act, 1995, held that notification dated 09.02.1989 is not in conformity with the provisions of the Act and accordingly allowed the writ petition directing the Sub Registrar to register the document in accordance with law. In the said judgment, the learned single Judge, considering Section 4 of the Wakf Act, held as under:

“From this, it is clear that a detailed survey is required to be conducted. The publication of the notification must be soon, through not immediately, after the survey. The reason is that, any events, that occur between the date of survey, and date of publication of the notification would render the very existence futile. If any substantial development takes place between the two events, the survey conducted earlier cannot at all constitute the basis for publication. Even otherwise, unreasonable delay would defeat the very objective, underlying the provision.

It was way back in the year 1960, that the survey in respect of the land in Sy.No.299 to 306 of Mamidipally village was conducted under Section 4 of the Wakf Act, 1954. The publication was made only in the year 1989. In the period of three decades, that has intervened, several legislative and administrative changes have taken place. The Inams Act came into force, and in the course of its implementation, the ORCs were granted in respect of the lands. Had any survey been conducted immediately preceding the publication in the year 1989, the fact that the petitioners or their predecessors in title had in possession and enjoyment of the property, as absolute owners or were issued ORCs; could have been noticed, and issuance of notification would certainly have become doubtful. By no stretch of imagination, the survey conducted in the year 1960 can be said to be the basis for publication of a notification in the year 1989. Therefore, the notification dated 09.02.1989 cannot be said to be in conformity with the provisions of the Wakf Act.

This court, in B.Gowra Reddy's case (AIR 2002 AP 313) dealt with the manner in which the notification under challenge herein was issued, and expressed the view that it does not accord with law. The principle laid down therein covers the facts of this case also.

The third contention arises on account of the objection raised by the 2nd respondent, to the effect that the petitioners cannot challenge the notification at this stage, when its right to file a suit under the Act is barred.

The question as to whether the limitation and other aspects covered by Sections 4 to 6 of the Wakf Act would apply in relation to proceedings initiated by third

parties also, was dealt with by the Hon'ble Supreme Court in Board of Muslim Wakfs, Rajasthan vs. Radha Kishan {(1979)2 SCC 468}. It was held that the notification would become final and conclusive as between the Wakf Board and the Mutawalli, on the one hand, and the persons interested in the wakf, on the other, but not against the persons, who are not interest in the wakf, on the other, but not against the persons, who are not interested in the wakf. The petitionrs herein did not claim any interest in the wakf concerned.

For the foregoing reasons, the writ petition is allowed, as prayed for.”

In view of the above judgment of the learned single Judge, the objection taken by the 4th respondent with regard to publication of the notification dated 09.02.1989, notifying the subject land as wakf land, has no legs to stand, as the said notification is held to be not in conformity with the provisions of the Act.

In view of the above facts and circumstances, the objection taken by the 4th respondent, cannot be sustained and the writ petition deserves to be allowed.

Having regard to the facts and circumstances of the case and the submissions of the learned counsel and order passed by this court, which is referred to above, and for the reasons alike, the present writ petition is allowed, and the 3rd respondent is directed to receive and register the document i.e., sale deed presented by the petitioner in respect of the subject land, provided the same is in order as per the provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908 and the Rules made there under.

Interlocutory applications pending, if any, shall stand closed. No costs.

A.RAJASEKHAR REDDY,J

DATE: 11—02—2020
AVS