(2007) 02 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25731 of 1997

Agrapu Venkatamma APPELLANT

Vs

Revenue Divisional Officer and Others RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:
Waqf Act, 1995 — Section 54, 54(1), 54(2), 54(3), 55

Citation : (2007) 3 ALD 152 : (2007) 2 ALT 595

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Rama Rao, Adv for P. Veera Reddy, for the Appellant; G.P, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner states that she purchased a plot of about 270 Sq. yards in T.S. No. 224 in Srikakulam, through a sale deed, dated 29-08-1969, from one Sri B. Lakshmaiah. She is said to have constructed a building thereon and is living in it. The third respondent, the Inspector Auditor, Wakf Board, Srikakulam, issued a show cause notice, dated 07-04-1997, requiring the petitioner to show cause as to why she shall not be evicted from the said site. According to him, the property was entered in the register maintained by Shavani Mosque and that the petitioner is in illegal possession and enjoyment of the same. On receiving the same, the petitioner submitted an explanation within the stipulated time. Thereafter, the first respondent, the Revenue Divisional Officer, Srikakulam, issued a show cause notice, dated 10-09-1997, stating that he has been informed by the third respondent that the petitioner is an encroacher and was requested by him to recover possession. The petitioner challenges various proceedings that ensued from the respondents.

2. Sri Rama Rao, the learned Counsel for the petitioner submits that Section 54 of the Wakf Act, 1995, (for short ''the Act'') empowers the Chief Executive Officer of the Wakf Board, the second respondent herein, to initiate steps for removal of

encroachments and that the third respondent issued a notice referable to the one under Sub-section (1) of Section 54 of the Act. He contends that once a notice was issued and explanation was submitted, it becomes mandatory for the authority concerned, to pass an order under Sub-section (3) and that no such order has been passed. The learned Counsel further submits that the notice issued by the first respondent under the circumstances is totally untenable.

3. Sri S.M. Subhani, the learned Counsel for the respondents, on the other hand, submits that the petitioner has to work out her remedies by filing a suit before the Wakf Tribunal u/s 6 of the Act. He contends that the third respondent has addressed a letter to the first respondent u/s 55 of the Act and that no exception can be taken to the action initiated against the petitioner in view of the fact that the property is already entered in the Wakf register.

4. Section 54 confers almost quasi-judicial powers upon the second respondent, namely the Chief Executive Officer of the Wakf Board. Whenever he receives any information or comes to know that any property belonging to the Wakf has been encroached upon, he can issue a show cause notice on the encroacher and call upon him to show cause as to why the encroachment shall not be removed. Sub-section (2) requires that a show cause notice must be served in the prescribed manner. Sub-section (3) mandates that on receiving the objections or explanation, as the case may be, in response to the show cause notice, the second respondent shall conduct an enquiry in the prescribed manner and pass an order requiring the encroacher to remove the encroachment. Therefore, till an order is passed under Sub-section (3), after conducting the enquiry in the prescribed manner, the question of the second respondent requiring an encroacher to remove the encroachment does not arise.

5. Throughout its length, Section 54 of the Act empowers the Chief Executive Officer alone, and it does not enable him to delegate his powers to any other authority. Admittedly, in the instant case, the notice referable to Sub-section (1) was issued by the third respondent. Therefore, it is per se without jurisdiction. Further, the said notice did not entail in passing of any final orders.

6. Another aspect of the matter is that, after the exercise contemplated u/s 54 becomes final, and the removal of encroachment does not materialize, the second respondent is empowered u/s 55, to request or approach the revenue authority to cause removal of encroachments. Here again, there is a serious lapse. The first respondent did not refer to any request made by the second respondent. Viewed from any angle, the impugned action cannot be sustained.

7. In that view of the matter, the writ petition is allowed. It is, however, made clear that it shall be open to respondents 2 and 3 to take necessary steps, in accordance with the provisions of the Act. There shall be no order as to costs.