
(2003) 03 AP CK 0077
In the Andhra Pradesh High Court
Case No : CRP No. 329 of 2002

Gajjala Venkateswarulu and Another	APPELLANT
Vs	
A.P. State Wakf Tribunal and Others	RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Waqf Act, 1995 — Section 54, 54(3), 54(4), 83, 83(2)

Citation : (2003) 3 ALD 269 : (2003) 3 ALT 693 : (2003) 1 AnWR 612 : (2003) 2 APLJ 222

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : B. Vijaysen Reddy, for the Appellant; A.M. Qureshi, SC for Respondent Nos. 1, 2 and 4 and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The petitioners herein are the plaintiffs in the suit filed by them against the respondents herein questioning the order dated 7-11-2001 issued by the Chief Executive Officer of the State Wakf Board u/s 54(3) of the Wakf Act directing the petitioners herein to remove the encroachment said to have been made by the petitioners herein in the Wakf land to an extent of 854 Sq.Yds., belonging to Jail Mosque situated at Jail, Asifabad. It is stated in the said order that notice u/s 54(1) of the Wakf Act, 1995 was issued to the petitioners calling upon them to show cause as to why the order should not be passed against them to remove the encroachments. The petitioners filed their objections and the same has been rejected and made the aforesaid order u/s 54(3) of the Act. The prayer of the petitioners in the suit to pass a judgment and decree declaring the said order dated 7-11-2001 as illegal, arbitrary and consequently grant injunction directing the respondents not to interfere with their peaceful possession and enjoyment of the suit schedule property. The A.P. State Wakf Tribunal has returned the plaint by order dated 11-1-2002 stating that the notice u/s 89 of the Act, 1995 is mandatory and non-issuance of notice is vital to the proceedings

itself. Hence, the plaint is returned for compliance with the provisions of the Act.

2. Sri B.Vijaysen Reddy, learned Counsel appearing for the petitioners submits that the said order of the Wakf Tribunal returning the plaint is contrary to law and the suit filed by the petitioners is maintainable u/s 54(4) of the Wakf Act, 1995 against the order passed by the Chief Executive Officer, u/s 54(3) of the Act. Questioning the order of the Chief Executive Officer made u/s 54(3) of the Act, a suit is maintainable u/s 54(4) of the Act and no notice u/s 89 of the Act is necessarily to be given. Two months notice contemplated u/s 89 of the Act relates to the suit to be filed against the Wakf Board and not in respect of the suit filed against the orders passed u/s 54(3) of the Act. He further placed reliance of a judgment of this Court in W.R No. 25141/1999 dated 7-12-1999 wherein the order passed by the Chief Executive Officer of the State Wakf Board u/s 54(3) was questioned and this Court held that the suit alone is maintainable against the said order u/s 54(3) and no notice needs to be issued for filing a suit u/s 89 of the Act. The Chief Executive Officer appointed u/s 23 of the Act is not an integral part of the Board and the said officer cannot be equated to that of the Board. Therefore, the question of issuing notice u/s 89 of the Act does not arise before filing the suit. An aggrieved person against the order passed by the Chief Executive Officer u/s 54(3) of the Act is entitled to file a suit challenging the order passed by the Chief Executive Officer directly without any prior notice as required u/s 89 of the Act before filing the suit against the Board. Accordingly, it was held by this Court that the suits filed against the orders passed u/s 54(3) of the Act, are maintainable before the Tribunal for adjudication u/s 54(4) of the Act without any notice as required u/s 89 of the Act.

3. On the other hand, the learned Counsel appearing for the Wakf Board placed reliance on another judgment of this Court in CRP No. 4311/1999 dated 31-8-2001 and submitted that in every suit filed u/s 89 of the Act, notice is required to be given and without issuing any such notice, the plaints are liable to be rejected under Order VII, Rule 11 CPC and, therefore, the plaint was rightly returned by the Wakf Tribunal.

4. A perusal of the Wakf Act discloses that Wakf Board is incorporated u/s 13 of the Act and the composition of the Wakf Board shall be u/s 14 of the Act consisting of a Chairperson and one or more members to be elected from the electoral college consisting of Muslim Members of the Parliament, Muslim Members of the State Legislatures, Muslim Members of the Bar Council of the State, Mutawallis of the Wakfs having an annual income of rupees one lakh and above, one and not more than two members to be nominated by the State Government representing eminent Muslim organization, one and not more than two members to be nominated by the State Government, each from recognized scholars in Islamic Theology, an Officer of the State Government not below the rank of Deputy Secretary. The term of the office of the members of the Wakf Board shall be for a period of five years. There is a disqualification for appointment and for continuing as a member of the Board if a person is not

Muslim or less than 21 years of age or is a person of unsound mind or insolvent or has been convicted of an offence involving moral turpitude or if a person is removed from the office as a member or as a mutawallis earlier. The Committees of the Wakf Board shall be established either generally or for a particular purpose for the supervision of the Wakf. The Board shall meet for the transaction of business at such time and places as may be provided by regulations. The Board is empowered to decide by a majority of votes of the members present any question, which comes before it in any meeting.

5. u/s 23 of the Act, the Chief Executive Officer of the Board shall be a Muslim Member appointed by the State Government and the Chief Executive Officer shall be ex-officio Secretary of the Board and shall be under the administrative control of the Board. u/s 25 of the Act, subject to the provisions of the Act and the Rules made thereunder and directions of the Wakf Board, is empowered to investigate the nature of the Wakf, Wakf property calling whenever necessary, inventory of the Wakf property and calling from time to time, for accounts, returns and information from mutawallis s, inspecting or causing inspection of Wakf properties and account, records deeds or documents or documents relating thereto and doing generally of such acts as may be necessary for the control and maintenance of wakfs. The Chief Executive Officer is also empowered to perform such duties as may be assigned and delegated to him under the Act. u/s 26 of the Act, the Chief Executive Officer shall implement the orders, resolutions passed by the Board if they are passed in accordance with the law in conformity with the act and the rules thereunder. Thus, there is a distinction and also separation of powers of the Wakf Board and the Chief Executive Officer. The powers of the Chief Executive Officer and the functions of the Wakf Board are distinct and separate. Section 32 deals with the functions of the Board. Independent and separate powers are also vested on the Chief Executive Officer and the Chief Executive Officer is not merely an officer who executes the resolutions of the Wakf Board alone.

6. u/s 54 of the Act, the Chief Executive Officer is empowered to receive any complaint with regard to any encroachment of any land, building or other property which is of Wakf property registered under the Wakf Act and issue a show-cause notice on the encroacher calling upon the encroacher to show-cause why he should not be removed from the encroachment. After submitting the explanation u/s 54(2), the Chief Executive Officer alone is empowered to pass an order u/s 54(3). u/s 54(4), any person aggrieved by the order passed by the Chief Executive Officer u/s 54(3), is entitled to institute a suit in a Tribunal to establish his right, title and interest in the land, building, space or property. But under proviso to Section 54(4), the lessee, licensee or mortgagee is not entitled to institute a suit. u/s 55, if the order passed by the Chief Executive Officer u/s 54(3) becomes final, then the Chief Executive Officer may apply to the Divisional Magistrate within the local limits for eviction of the encroacher and such Magistrate is empowered to remove the encroacher. Chapter VIII deals with the judicial proceedings and the Tribunals are to be constituted u/s 83(1) of the Act

for determination of any disputed question or other matters relating to the Wakf or Wakf property under this Act. There is a bar of suits to be entertained by the Civil Court u/s 85 of the Act in respect of the Wakf property and Wakf Tribunals alone are entitled to determine the dispute under the Wakf Act. u/s 89 of the Act, no suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or any rules made thereunder until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left. Section 89 makes it abundantly clear that no suit shall be instituted against the Board in respect of any act purported to be done by the Board in pursuance of the Act or any rules made thereunder until the expiration of two months notice issued by the plaintiff.

7. In the instant case, the plaintiffs have not instituted the suit in respect of its action done under the Act or the Rules thereunder. The powers of the Wakf Board are different and distinct from that of the Chief Executive Officer. The Chief Executive Officer is also empowered independently to do certain acts and initiate proceedings. In the instant case, the Chief Executive Officer alone under the powers vested in him initiated action and passed the order u/s 54(3). In such a case, the statute itself empowers the aggrieved person to institute a suit and the said suit instituted by the plaintiff is not against the act done by the Board but against the order passed by the Chief Executive Officer and, therefore, the judgment relied on by the petitioners in W.P. No. 25141/1999 is squarely covers the question in issue. The other judgment relied upon by the learned Counsel for the respondents relates to a suit filed by the plaintiff for declaration of perpetual injunction from carrying out the construction of Urdu Bhavan-cum-Community Centre or Shadi Manzil. The decision taken for construction of Urdu Bhavan-cum-Community Centre or Shadi Manzil, appears to have been taken either by the Wakf Board or by the Government and it is specific that the said decision was not taken by the Chief Executive Officer and, therefore, the suit filed was held to be not maintainable without there being any prior notice issued u/s 89 of the Act. The said judgment has no application as the order passed thereunder was not by the Chief Executive Officer of the Wakf Board. All suits are necessarily to be u/s 83 of the Act only before the Tribunal for determination of any dispute, the question or other matter relating to the Wakf. The suit instituted by the aggrieved persons against the orders made u/s 54(3) are also be filed u/s 83(2) of the Act and such suits are maintainable u/s 54(4). But in respect of suits filed u/s 83(2) filed against the order of the Wakf Board are not maintainable if no such prior notice is issued until the expiration of two months notice u/s 89 of the Act. Thus, there is a clear distinction of the maintainability of the suits filed against the orders by the Chief Executive Officer u/s 54(3) and the suits filed against the acts done by the Wakf Board under the Act and the Rules. Any suit filed against the order of the Wakf Board, suit is not maintainable unless the

expiration of two months notice is issued u/s 89 of the Act.

8. Therefore, returning of the plaint by the Wakf Tribunal is illegal and the said order of the Wakf Tribunal dated 11-1-2002 returning the plaint is accordingly set aside and the petitioners are directed to re-present the suit within 10 days from the date of receipt of a copy of this order and on representing the suit, the Wakf Tribunal is directed to number the suit and dispose of the same in accordance with law.

9. The Civil Revision Petition is accordingly allowed. There shall be no order as to costs.