
(2000) 08 AP CK 0056
In the Andhra Pradesh High Court
Case No : CRP No. 2707 of 2000

Jai Bharat Co-operative Housing Society Ltd.	APPELLANT
Vs	
Andhra Pradesh. State Wakf Board, Hyd.	RESPONDENT

Date of Decision : 08-08-2000

Acts Referred:

Waqf Act, 1995 — Section 36, 4, 43, 5, 7

Citation : (2000) 5 ALD 743 : (2000) 5 ALT 389 : (2001) 1 RCR(Civil) 201

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. K. Lakshmaiah, for the Appellant; Mr. A.M. Quereshi, SC for APSWB, for the Respondent

Judgement

1. The petitioner is facing a suit filed by respondent Wakf Board before the Wakf Tribunal. He filed an application seeking dismissal of the suit on the ground that the Tribunal has no jurisdiction to try the suit. The Tribunal has dismissed the application. Hence this revision. The only ground agitated before this Court is that the Tribunal has no jurisdiction to try the suit which has been filed before it.

2. It is submitted that the petitioner society has purchased the land in Survey Nos.18/1 and 18/2 measuring Ac.9-11 guntas from the owners by sale deeds in the year 1981. The petitioner society had obtained the layout from the competent authorities for making the plots and the plots have been transferred in the names of the member of the society and 71 members have purchased the land and they are in possession of the said plots. Some of them have constructed houses and compound walls have also been erected. The respondent Board filed a suit being OS No.87 of 1999 claiming 2000 Sq. yards of the suit land. This suit is for perpetual injunction. The suit was based on a Muntakab dated 18th January, 1951. They claim that the land has been under the control of the plaintiffs and they have leased it out to one Mr. Khumeer Pasha on 12-8-1999. It was contended in the suit that the petitioner-Society was interfering in the possession of the property. The Tribunal passed an interim order of stay which

was challenged in a revision petition and the High Court has already remanded back the matter to the Tribunal for passing appropriate orders on merits.

3. The jurisdiction of the Tribunal is challenged on the ground that Section 4 of the Wakf Act requires preliminary survey of Wakfs and publication of a list, no such survey was conducted and the property in question has not been published in terms of Section 5 as Wakf property, it has not also been registered at the office of the Wakf Board u/s 36 of the Act. There is a bar created u/s 87 of the Act for enforcement of rights on behalf of unregistered wakfs.

4. The learned Counsel appearing for respondents submitted that the matter involves only the legal questions, therefore he was also heard although no counter is filed. The petitioners claim that suit property was their land purchased by them through sale deeds from legitimate owners whereas the Wakf Board contends that it was a Wakf property. The admitted position is that no survey has been conducted u/s 4 of the Act and no notification has been issued u/s 5 of the Wakf Act. Now, the only question to be considered by this Court is, whether the disputes with regard to property which is not notified u/s 5 or registered u/s 36 of the Wakf Act, 1995 can be entertained by the Tribunal. Section 4 of the Act lays down :

"4. Preliminary survey of Wakfs:--(1) The State Government may, by notification in the official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional or Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of Wakfs existing in the State at the date of the commencement of this Act".

(2) All Additional and Assistant Survey Commissioners of Wakfs, shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary submit his report, in respect of Wakfs existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:--

(a) to (f).....

(4).....

(5).....

(6).....

Section 5 of the Act lays down:

"5. Publication of list of Wakfs:--(1) On receipt of a report under sub-section (3) of Section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and

publish in the Official Gazette a list of Sunni Wakfs or Shia Wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed".

Section 36 lays down :

"36. Registration :--(1) Every Wakf, whether created before or after the commencement of this Act, shall be registered at the office of the Board".

While one reads these sections together one finds that these sections do not purport that, if not notified in terms of Section 5 or registered u/s 36 it cannot at all be a Wakf property, because Section 43 of the Act lays down :

"43. Wakfs registered before the commencement of this Act deemed to be registered :--Notwithstanding anything contained in this Chapter, where any Wakf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the Wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act".

So, if the property was a Wakf property before commencement of the Act it will continue to be Wakf property even if it is not notified u/s 5 or registered u/s 36 of the Act. The respondents claim that from 1951 it is shown as Wakf property and Wakf has been created prior to 1951. Therefore, this is a question of fact which has to be decided whether the property in question is a Wakf property or not. The question as to the jurisdiction of the Tribunal is related to the finding on fact as to whether the property is Wakf property or not. That question is still open. Now, the question would be, who is going to determine whether a property is Wakf property or not. Section 83 of the Wakf Act lays down:

"83. Constitution of Tribunals, etc. :--(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Wakf or Wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals".

So, all disputes relating to Wakf property have to be decided by the Tribunal. This interpretation on Section 83 gets further cemented by the mandate of Section 85 which lays down:

"85. Bar of jurisdiction of civil Courts:--No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by a Tribunal".

So, if the respondents claim the property as Wakf property, they cannot go to a Civil Court to seek an injunction against the petitioners because that would be barred u/s 85. Therefore, if the interpretation that is being tried to be placed by

the petitioner on Sections 4, 5 and 36 would render the respondents remediless. Coupled with this, a reference is also needed to be given to Section 7 of the Act which lays down :

"7. Power of Tribunal to determine disputes regarding Wakfs :--(1) If, after the commencement of this Act, any question arises, whether a particular property specified as Wakf property in a list of Wakfs is Wakf property or not, or whether a Wakf specified in such list is a Shia Wakf or Sunni Wakf, the Board or the mutawalli of the Wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final."

Reading Sections 7, 84 and 85 together it leaves no doubt that whenever there is a dispute with regard to certain property as to whether it is Wakf property or not the only forum which can decide it is the Tribunal created under the Wakf Act, 1995. The judgments of this Court in T. Shivalingam Vs. A.P. Wakf Tribunal, Presiding Officer, Hyderabad and others, , M. Bikshapathi Vs. Government of Andhra Pradesh and others, are also laying down the same principle.

5. For these reasons, the (writ) civil revision petition is dismissed. No costs.