
(1999) 08 AP CK 0150

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12805 of 1999 and WA No. 1065 of 1999

M. Bikshapathi

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Waqf Act, 1995 — Section 4, 6, 7, 83

Citation : (1999) 6 ALD 270 : (2002) 2 ALT 530 : (2003) 1 RCR(Civil) 212

Hon'ble Judges : M.S. Liberhan, C.J.; V.V.S. Rao, J

Bench : Division Bench

Advocate : Government Pleader for Revenue and Mr. A.M. Quareshi for AP State Wakf Board, for the Respondent

Judgement

M.S. Liberian, C.J.—The learned Counsel for the appellant had impugned the order of the learned single Judge dismissing the writ petition, inter alia, holding that the dispute relates to a wakf property and the petitioner-appellant is at liberty to approach the Wakf Tribunal as envisaged u/s 83 of the Wakf Act, 1995. The learned Counsel for the appellant vehemently argued that the land in dispute was traced by the appellant as a wakf property. He filed an application for leasing of the said property in his favour which was not considered by the Wakf Board but the same was leased out to the respondent No.3 herein. The appellant preferred an appeal to the Minister, who granted an ex parte stay order and later vacated the same without granting the appellant an opportunity of hearing. The said order was challenged in the writ petition.

2. To bring the dispute to an end and not to keep alive is the avowed object of justice in order to determine the dispute between the parties, though the writ petition was filed against an interim order only, ends of justice will be squarely met, in view of the facts and circumstances of the case and the question raised. If the matter is finally determined as it raises a pure question of law only.

3. The learned Counsel for the appellant vehemently contended that the Wakf Tribunal has got only the jurisdiction to determine the dispute relating to the

nature of the wakf u/s 6 of the Wakf Ad, 1995, which runs thus:

"6. Disputes regarding Wakfs: (1) If any question arises whether a particular property specified as Wakf property in the 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 institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of Wakfs.

Explanation :--For the purposes of this Section and Section 7, the expression "any person interested therein", shall, in relation to any property specified as Wakf property in the list of Wakfs published after the commencement of this Act shall include also every person who, though not interested in the Wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry u/s 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any Wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of wakfs shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1) be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be institute or commenced in a Court in that State in relation to any question referred to in sub-section (1)."

4. According to the learned Counsel for the appellant, the Tribunal cannot determine any other question except the nature of the wakf property i.e., whether it is a wakf or not; whether it is a Shia Wakf or Sunni Wakf and the persons who can institute a suit before the Tribunal are the Board, the Muthawalli or any person interested therein,, giving a finality to the decision of the Tribunal with respect to the nature of the wakf property. Consequently, the Tribunal has no right to determine the right of priority of leasing of the wakf property to the appellant.

5. The learned Counsel for the respondent-Wakf Board refuted the submissions made by the learned Counsel for the appellant and relied on Section 83 of the Wakf Act, which runs thus:

"S3. 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 Tribu hills.

(2) Any mutawalli or person interested in a wakf or any other person aggrieved by an order made under this Act or Rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf.

(3) Where any application made under sub-section (1) relates to any Wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the Wakf or any other person interested in the Wakf or the Wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such Wakf or Wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage, which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be member of the State Judicial Service holding a rank, not below that of a District Sessions or civil Judge, Class I and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil Court and shall have the same powers as may be exercised by a civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6)Notwithstanding anything contained in the CPC 1908 (5 of 1908) the Tribunal shall follow such procedure as may be prescribed.

(7)The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil Court.

(8) The execution of any decision of the Tribunal shall be made by the civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit."

6. Going by the principles of interpretation of a statute, a section should be read in a manner that both 1hc sections should be operative so as to give effect to the intention of the Legislature. It is discernible from reading Section 83 that the State Government can appoint a Tribunal for the determination of any dispute, question or any matter relating to wakf or wakf property under the Wakf Act and define the local limits jurisdiction etc. There is no dispute that the Wakf Tribunal has been constituted with such vast powers as envisaged by Section 83. Thus, the jurisdiction of the Wakf Tribunal cannot be limited by reading Section 6 alone providing for the decision to determine the nature of the wakf property i.e., to the effect whether it is a wakf property or not; whether it is a Shia Wakf or Sunni Wakf and who is the interested person who can institute a suit. Section 6 further specifies that the person interested shall, in relation to the property, include every person who though not interested in the wakf concerned, is interested in such property. We are of the considered view that reading both the sections together and permitting them to operate in their totality, it is within the jurisdiction of the Tribunal to determine whether the wakf property has been rightly leased or wrongly leased or any questions relating to wakf property. Consideration or non-consideration of the application of the appellant for leasing out the wakf property is within the purview of the Wakf Board and any irregularity or illegality in its consideration is within the jurisdiction of the Tribunal.

7. It has been further brought to our notice that the lease was granted for 11 months and according to the Counsel for the appellant lease has not yet been granted. In either of the eventualities, within a reasonable period on the expiry of the lease, we have no doubt that the Wakf Board will consider the applications of a"fl the persons who apply for lease and it being a public property, the same would be leased out in accordance with the principles settled by the Supreme Court to serve the best interest of the Wak"f and not by shady deals.

8. In view of the observations made above, both the writ petition and the writ appeal are disposed. No costs.