
(1999) 12 AP CK 0064

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18439 of 1999

Manjula Varsheney and another

APPELLANT

Vs

A.P. State Wakf Board and others

RESPONDENT

Date of Decision : 09-12-1999

Acts Referred:

Transfer of Property Act, 1882 — Section 106
Waqf Act, 1954 — Section 15
Waqf Act, 1995 — Section 32(1), 50, 51, 52, 56

Citation : (2000) 1 ALD 452 : (1999) 6 ALT 725 : (2000) 1 APLJ 473

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : M/s. V. Venkataramana and V. Srinivas, for the Appellant; Mr. A.M. Queresh, SC and Mr. Shaik Mahmood Ali, for the Respondent

Judgement

1. Legal notice dated 16-8-1999 issued by an advocate, on behalf of the first respondent-A.P. State Wakf Board, Hyderabad, terminating the tenancy of the petitioners, u/s 106 of the Transfer of Property Act, is challenged in this writ petition.

2. Property bearing No.6-1-1057, known as "Zard Bungalow" situated at Khairatabad, Hyderabad, is a wakf property. There is no dispute about the same. The said property was leased out under a registered lease deed dated 5-1-1970 in favour of one late Roopkishore Gupta, for a period of sixty years with effect from 5-1-1970 under an express permission granted by the first respondent-A.P. State Wakf Board (for short "the Board") vide resolution dated 22-12-1969. The terms and conditions regulating the lease were set out in the said registered lease deed dated 5-1-1970. We are not concerned in the instant writ petition with the various terms and conditions and as to whether the said lease could have been granted at all.

3. The said Roopkishore Gupta after obtaining lease, had demolished the existing structure and constructed cinema theatres -Meera Talkies and Meera Deluxe

cinema. After the death of Roopkishore Gupta, his son, Raj Kumar Gupta succeeded the property as a lessee under the lease deed and after his death, the petitioners are continuing as the existing lessees of the property.

4. It is the case of the petitioners that the transaction of lease is between the beneficiaries under the deed of "Wakf on one hand and the petitioners father-in-law on the oilier. The Board does not have any authority in law or jurisdiction to interfere in any manner whatsoever with the said transaction of lease. It is claimed that the predecessor in title of the petitioners were authorised to make constructions in the vacant area covered by the lease deed and accordingly constructions were made.

5. Be that as it may, the first respondent herein got issued a legal notice purporting it to be u/s 106 of the Transfer of Property Act, on the ground that the lessee has violated some of the conditions of the lease and the alleged violations of the terms and conditions of the lease dated 5-1-1970, are listed in the impugned notice. The notice itself would disclose that action has been initiated determining the lease at the instance and request of the Muthawalli.

6. Learned Counsel for the petitioners, Mr. Vedula Venkata Ramana, contends that the Board has no jurisdiction or authority in law as the provisions of the Wakf Act, 1995 (for short "the Act"), do not confer any jurisdiction upon the Board to determine the tenancy between the Wakf institution and its tenants. It is urged that the notice, if at all, any, could have been issued only by the Muthawalli and not by the Board through its lawyer.

7. In the counter-affidavit filed by the Board, it is stated that the petitioners have violated the terms and conditions of the lease deed and, therefore, notice u/s 106 of the Transfer of Property Act, determining the lease has been issued and got served upon the petitioners. It is the case of the Board that the petitioners are carrying the business of cinema, which, itself, is an objectionable business, as per the Islamic religion. However, the Court, in the instant writ petition is not concerned with the said controversy. It is submitted that u/s 32 of the Wakf Act, 1995, the Board has jurisdiction in law to determine the lease. The power to issue such a notice is traced to Section 32 of 1995 Act. The rest of the averments made in the counter-affidavit may not be relevant.

8. In the counter-affidavit, filed by the contesting respondents, it is stated that the question relating to the validity of notice issued u/s 106 of the Transfer of Property Act cannot be gone into by this Court, as it is always open to the petitioners to raise all such pleas raised in the writ petition, as and when any suit is filed against them seeking their eviction from the property in question. It is also the case of the respondents that the petitioners have an alternative and effective remedy, as the dispute raised by the petitioners may have to be gone into and resolved by the Tribunal constituted under the Act.

9. The questions that arise for consideration in the instant writ petition are :

1. Whether the notice issued by the first respondent-Board u/s 106 of the Transfer of Property Act, suffers from any jurisdictional errors.

2. Whether the Wakf Board is entitled to issue such a notice in purported exercise of its power u/s 32 of the Wakf Act, 1995.

10. At the outset, it must be made clear that the Court, in the instant writ petition is not concerned with the question-- whether the petitioners herein have violated any of the terms and conditions of the lease deed. This Court is also not concerned with the question -- whether the lease could be terminated on the ground of violation of terms and conditions of the lease deed.

11. Learned Counsel for the petitioners fairly conceded that such questions cannot be gone into by this Court and accordingly confined his submissions only to the jurisdictional aspect of the matter. Learned Counsel contends that such a notice, if at all, could have been issued only by the Muthawalli and not by the Board.

12. It may be necessary to notice that Section 32 of the Act confers a very wide jurisdiction and power upon the Wakf Board with a view to ensure that the Wakfs under its supervision are properly maintained, controlled and administered and the income thereof is duly applied to the objects and the purposes for which such wakfs are created or intended. It declares that the general superintendence of all the wakfs in the State shall vest in the Board established. The Board is under the duty to exercise its power under the Act to ensure that the wakfs are properly maintained, controlled and administered. It is authorised to give directions for the administration of the Wakf and even to settle schemes for the Management of Wakfs. It is clothed with the jurisdiction to appoint and remove Muthawallis in accordance with the provisions of the Act. The Board is authorised to institute and defend suits and proceedings relating to wakfs and to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease in accordance with the provisions of the Act. The Board is also conferred with the power to do all such acts as may be necessary for the control, maintenance and administration of the wakf.

13. Section 51 of the Wakf Act, 1995, declares that notwithstanding anything contained in the wakf deed, any gift, sale, exchange or mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board. Section 52 of the Act declares that no immovable property shall be purchased for and on behalf of any wakf from the funds of any wakf, except with the prior sanction of the Board. Section 54 authorises the Chief Executive Officer to take steps for removal of encroachment from the wakf property. Section 56 in turn declares that lease or sub-lease for any period exceeding three years of any immovable property, which is a wakf property, shall, notwithstanding anything contained in the deed or instruments of wakf, or in any other law for time being in force, be void and of no effect, unless it is made with the previous sanction of the Board.

Such a wide power is conferred upon the Board so as to ensure that the wakfs are properly maintained, controlled and administered for the purpose for which such wakfs are created or intended. Section 50 of the Act imposes duties and obligations on every Muthawalli to carry out the directions of the Board in accordance with the provisions of the Act or of any Rule or Order made thereunder.

14. It is, thus, clear that the Board is authorised to issue such directions as may be necessary to the Muthawallis in the interest of the wakf concerned and for its better administration and the Muthawalli is duty bound to comply with such lawful directions of the Board. Such directions would not amount to interference by the Board in the day to day affairs of the wakf. The Board is authorised to issue such lawful directions even in cases where it has not assumed the direct management of the wakf.

15. However, the learned Counsel for the petitioners, would place heavy reliance upon a decision rendered by the Madras High Court in T.E. Mohammed Shareef Vs. The Superintendent (Wakfs), Central Zone and Others, , in support of his submission that the Wakf Board cannot interfere in the management of the wakf in purported exercise of its power u/s 32, where the wakf is under the management of the Muthawalli. It was a case where Muthawalli of the institution challenged the action of the Superintendent of Wakfs in issuing notice to the tenants of the wakf properties requiring them not to pay rents to Muthawalli from the date of the notice and to deposit the rents in the name of the Secretary to the Special Officer for Wakfs, Madras, through one of the Banks or the Wakf Inspector, Thanjavur. In the said context, it is observed by the Madras High Court that "the Superintendent of Wakfs as such is not contemplated by the Wakfs Act, 1954 (Central Act 29 of 1954). There is nothing to show whether- the Wakf Board or the Special Officer of wakfs had authorised the Superintendent to issue such a notice". Having said so, the Court expressed its opinion that the Superintendent of Wakfs has no power whatever to issue any notice. The Court, however, observed that even the Wakf Board will have no jurisdiction whatever to issue any such notice. The Court held that such an action would amount to interference with the management of the properties by the Muthawalli. It was a case where an authority not specified under the Act issued notice requiring the tenants of the wakf property not to pay the rents to the Muthawallis; under those circumstances the Court came to the conclusion that such notice could not have been issued. The rest of the observations -that even the Wakf Board could not issue such a notice may have to be confined to the contextual facts of that case. At any rate, there is not even a reference to Section 15 of the Act, 1954.

16. The decision in The Palni Muslim Dharmapariपालana Sangam and Others Vs. The Tamil Nadu Wakf Board and Others, , says that the power of general superintendence will not extend to nullify or ignore or supersede a scheme for the administration of a wakf. So long as the decree is in existence and has not been modified or set aside or reversed, the Wakf Board has no jurisdiction to

ignore it and act contrary to the scheme in the purported exercise of its general powers of superintendence u/s 15 of 1954 Act.

17. The Court further observed that if the Wakf Board is not satisfied with the functioning of the Sangam to which the management was entrusted under the scheme framed by the Court, it is open to it initiate proceedings in this behalf for the purpose of either modifying the scheme or settling a new scheme, but it cannot arrogate to itself the power or authority to set aside or supersede an existing decree of the Court settling the scheme. Under those circumstances, having regard to the existence of the scheme - decree and the terms thereof, the Court came to the conclusion that the Wakf Board acted without jurisdiction when it purported to approve the election of the committee held contrary to the scheme framed by the Court. The proposition is unexceptionable. Obviously, the Wakf Board in purported exercise of its jurisdiction and authority u/s 15 of the Act cannot be permitted to tinker with the scheme framed by the Court for the administration of the Wakf.

18. The decision in Andhra Pradesh Wakf Board Vs. Mohd. Hidyathulla, , says that so long as Muthawalli is effectively working in office and as long as there are no proceedings pending against him the Board cannot direct the Muthawalli to hand over the record to the committee or to the Board. It is observed that the Wakf Board without assuming the direct management of the Wakf or removing the Muthawalli cannot keep back in its custody or possession the records relating to the wakf. It has to hand over the entire property belonging to the Wakf to the Muthawalli.

19. In Sugra Humayun Mirza Wakf v. Govt. of A.P. 1995 (2) An.WR 506, this Court while interpreting Section 36-A of the Act, held that the Wakf Board cannot alienate the property directly, even in cases where the proposal is made for such alienation by the Muthawalli appointed under the instrument, is not acceptable to the Board. The Board may refuse to sanction alienation proposed by the Muthawalli. It cannot lease out the property directly. The Court obviously came to the conclusion that such an action would amount to interfering with the day to day management of the wakf and the functions of Muthawalli and accordingly upheld the plea of the Muthawalli in that case. But in the said case, the Court has not gone into the nature, scope and amplitude of Section 32 of the Act. Therefore, the said decision does not lay down any law which would support the point urged by the learned Counsel for the petitioners.

20. It is to be noticed that Section 32 of 1995 Act, imposes a duty upon the Wakf Board to exercise its power under the Act to ensure that the Wakfs under its superintendence are properly maintained, controlled and administered. It declares that the general superintendence of all wakfs in the State shall vest in the Board. Clause (c) of sub-section (2) of Section 32 of 1995 Act confers power upon the Board to give directions for the administration of the Wakfs.

21. The expressions "superintendence" and "vest" read together along with

"controlled/administered", they convey absolute control in the authority in order to ensure that all the Wakfs are administered properly and for the purpose for such wakfs were created or intended. The Board is made the sole custodian and controller of the affairs of the Wakfs in the State. These expressions are of very wide connotation and amplitude and may include variety of powers which are incidental or consequential, to achieve the declared objects. The word "superintendence" connotes the act of superintending, care and oversight for the purpose of direction and with authority to direct. (See for the proposition : State of Bihar and Another Vs. J.A.C. Saldanha and Others, .

22. In my considered opinion, Section 32 of 1995 Act, confers a very wide power upon the Wakf Board, including the power to issue necessary directions for the proper administration of the Wakf and Muthawalli of the Wakfs are bound to comply with all such lawful directions. In a given case, the Wakf Board may direct the Muthawalli to act in a particular manner so as to ensure that the Wakf is properly maintained and administered and the income thereof is duly applied for the objects and for the purposes for which such wakfs are created or intended. In the given situation, the Wakf Board can certainly act for and on behalf of Muthawalli, so as to ensure that the Wakf is properly maintained and administered and for the protection of its properties. The power to issue lawful directions includes the power to act on behalf of Muthawalli as long as such act does not amount to interfering with the duties and functions of Muthawalli. Such directions issued may be susceptible to be judicially reviewed but only at the instance of the Muthawalli.

23. In the instant case, in the impugned notice, itself, it is stated that the Muthawalli has brought it to the notice of the Wakf Board through representation dated 30-6-1999 that the petitioners herein have violated some of the conditions of the lease and, therefore, the lease should be terminated/cancelled. The Muthawalli did not challenge the action of the respondent-Wakf Board in terminating the lease of the petitioners herein through the impugned notice. The Muthawallis have no complaint whatsoever against the Board for initiating the proposed action by the Board; if at all, the Muthawalli alone could have objected complaining interference by the Wakf Board. The Muthawalli and the Wakf Board are sailing together. It is not in dispute that the Muthawalli could have got issued such a legal notice terminating the lease. It is as simple as that instead of Muthawalli, the Wakf Board got issued the impugned legal notice, at the request of the Muthawalli.

24. Section 32(1) of 1995 Act, confers power upon the Wakf Board to institute and defend suits and the proceedings relating to Wakfs. In the instant case, the property in question was granted on lease by the then Muthawalli under the express permission of the Wakf Board. Under those circumstances, it cannot be said that the Wakf Board has no jurisdiction or authority to issue the impugned notice terminating the lease and determining the same.

25. Accordingly, the legal notice dated 16-8-1999, in my considered opinion,

does not suffer from any jurisdictional errors. The question as to whether the impugned legal notice suffers from any other legal infirmities and as to whether the lease could not have been terminated at all is not the subject-matter of this writ petition. Suffice it to clarify that this Court has not expressed any opinion with regard to the contents of the notice.

26. For all the aforesaid reasons, I do not find any merit in this writ petition and the same shall accordingly stand dismissed. There shall be no order as to costs.