
(2004) 02 AP CK 0064

In the Andhra Pradesh High Court

Case No : Rev. WPMP No. 27602 of 2003 and WP No. 12980 of 1995

Mir Muzzafar Hussain Khan and Others

APPELLANT

Vs

Andhra Pradesh Wakf Board and Others

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Waqf Act, 1954 — Section 4, 5(1), 5(2), 6(1)

Citation : (2004) 3 ALD 108 : (2004) 3 ALT 554

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : E.S. Kumar, for the Appellant; A.M. Qureshi, SC for Respondent Nos. 1 and 3 and Government Pleader for Revenue for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—Seeking to review the order dated 5.7.2002 in Writ Petition No. 12980 of 1995 passed by this Court, the present review petition is filed.

2. The writ petition was filed, aggrieved of the action of the respondents, by some of the legal heirs and subsequent purchasers of late Nawab Fakhurul Mulk, in respect of property in S.No. 49, parts of 50 and 51 in Yousufguda Village, Hyderabad District, presently under Revenue Mandal Golkonda aggrieved of the Gazette notification issued by the Government u/s 5(2) of the Wakf Act, 1954 published on 16.3.1989, whereby the petitioners land in Sy.No.49 of Yousufguda was also entered as Item No. 10 in the list of Shia wakf, as illegal and arbitrary, unjust, null and void and to consequently restrain the respondents from entering into or interfering with the rights, title and possession of the petitioners. The petitioners also challenged the validity of Sections 4, 5, 6, 6A, 21 and 27 of the Wakf Act, 1954.

3. When the matter came up for final disposal, consequent upon the submissions

made by the learned Standing Counsel for the Wakf Board relying on the decision Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, , this Court dismissed the writ petition holding that the petitioners ought to have assailed the impugned notification within a period of one year from the date of notification before a competent Civil Court and, therefore, the writ petition is not maintainable and is also barred by limitation.

4. Now the petitioners came up with the present review petition contending that for the redressal of the grievance i.e., the period of limitation of one year for filing the suit as specified in first proviso to Section 6(1) of the Wakf Act is not applicable when the dispute is of title between the Wakf Board and a third party. It is also contended that the Government has issued Gazette notification without the petitioners being heard and the Survey Commissioner, who was appointed u/s 4 of the Wakf Act to enquire into, for the purpose of making survey of wakfs existing in the State at the date of the commencement of the Wakf Act. During the course of survey, the Survey Commissioner, appointed by the State Government has not issued notice to the petitioners to represent their case, as the property was not falling within the meaning of wakf and it is a private patta land. It is further contended that the ratio laid down in the decision Board of Muslim Wakfs Vs. Smt. Hadi Begum and others, , is not applicable to the facts and circumstances of the case, inasmuch as the principle relates to a dispute between Wakf Board and Muthawalli and any person interested in the wakf, shall approach the Tribunal constituted under the Act for the redressal of the grievance, the petitioners are strangers and third parties and, therefore, in terms of the principle laid down by the Apex Court in Punjab Wakf Board Vs. Gram Panchayat @ Gram Sabha, , the limitation of one year for filing the suit as specified under first proviso of Section 6(1) of Wakf Act, does not apply to the dispute of title between the Wakf Board and the third parties. For all these reasons, the judgment is sought to be reviewed.

5. The learned Counsel for the petitioners submitted that Section 4 of the Wakf Act empowers the State Government to appoint Survey Commissioner of Wakfs and as many Additional and Assistant Survey Commissioners of Wakfs as many be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act, by notification in the Official Gazette. 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 number of wakf in the State, showing the Shia Wakfs and Sunni Wakfs separately, the nature and objects of each wakf, etc... The Survey Commissioner, while making any inquiry, has the same powers as are vested in a civil Court under the CPC for summoning and examining any witness, requiring the discovery and production of any document, etc. Section 4 further manifests that if during any enquiry, any dispute arises as to whether a particular Wakf is a Shia Wakf or a Sunni Wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

6. After receipt of the report from the Survey Commissioner for the Wakfs, the State Government shall forward a copy of the same to the Wakf Board, which shall examine the report and publish the list of Sunni Wakfs or Shia Wakfs in the State, u/s 5 of the Act. u/s 6, if any dispute arises whether a particular property is a wakf property and is in the list or not, or whether the property is a Sunni Wakf or a Shia 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; provide 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. The explanation to this section and Section 7 with regard to the expression any person interested therein in relation to any property specified as Wakf Property in the list of wakfs published after the commencement of the Act, shall include 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.

7. The learned Counsel for the petitioners submitted that the petitioners are not persons interested in the wakf, but they are strangers and interested in their property. He further submitted that since the property was inherited by the petitioners from Nawab Fakhru'l Mulk, as a private land, in the capacity of successors, therefore, during the course of enquiry conducted by the Survey Commissioner, no notice, as contemplated u/s 6(1) of the Act was given to the petitioners and they came to know of the same only after the impugned Gazette publication appeared, as such, they had no opportunity to represent their case before the Survey Commissioner. Therefore, aggrieved of the same, the writ petition was filed.

8. On the other hand, the learned Standing Counsel for the Board, filed counter to the review petition, admitted that no notice was given to the petitioners during the course of enquiry by the Survey Commissioner. He further submits that if the contention of the petitioners is accepted that they are strangers to the wakf property, as contemplated u/s 6(1) of the Act, they have to approach competent Civil Court for redressal of the grievance, within the period of limitation, as prescribed by law. In support of his contention reliance is sought to be placed on a decision Karnataka Wakf Board Vs. State of Karnataka and Another, .

9. In the backdrop of these submissions, I have gone through the entire material placed on record and the judgment of this Court in the writ petition, which is sought to be reviewed, requires reconsideration.

10. The Wakf Act (43 of 1995) received assent of the President of India on 22.11.1995 and was published for general information. The Act aims at better administration of wakf and for matters connected therewith or incidental thereto. The Act came into force from 1.1.1996 and it extends to the whole of Indian

territory except the State of Jammu and Kashmir. The Wakf Act, 1955 provides that the Wakf Boards for the States and for the Union Territory of Delhi shall have not less than seven and not more than 13 members, the distribution of powers between the Wakf Board and the Chief Executive Officer and the Chief Executive Officer would be subordinate to the Wakf Board, appointment of the Executive Officer in respect of Wakfs whose performance is not satisfactory and whose annual income is Rs. 5.00 lakhs or more, to strengthen the finances of the Wakf Board, one of the measures being contemplated is to raise the rate of the contribution by a wakf to the Wakf Board from 6% of its annual income to 7%, restrictions on the powers of Myutawallis in the interest of better management of wakf properties, setting up of Wakf Tribunals to consider the question and disputes pertaining to wakfs, alienation of wakf properties to be made difficult and to bring uniformity in respect of wakf administration throughout the country except in the State of Jammu and Kashmir.

11. As stated supra, Section 4 of the Wakf Act deals with appointment of Survey Commissioner, his powers and duties; whereas Section 5 of the Act deals with publication of wakfs. Section 6 of the Act envisages that the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal, with regard to the question whether a particular property specified as wakf property in the list of wakfs is a Wakf Property or not or whether the wakf specified in such a list is a Shia Wakf or Sunni Wakf, for the decision on that question and such decision shall be final. Proviso to Section 6(1) mandates 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.

12. Section 4(4) of the Wakf Act empowers the Survey Commissioner, while making any enquiry, shall have the same powers as are vested in a Civil Court under the CPC in respect of summoning and examining any witness, requiring the discovery and production of any document, requisitioning any public record from any Court or office, issuing commissions for the examination of any witness or accounts, making any local inspection or local investigation. Apart from that, explanation to Section 6(1) expressly mandates notice to every person, who, though not interested in the wakf concerned, is interested in such property, during the course of enquiry. It is the admitted case of the respondents that during the course of survey, no notice was issued by the Survey Commissioner, though he is empowered u/s 4(4) of the Act and obligated under proviso to Section 6(1).

13. The Apex Court considered the words any person interested therein occurring in Section 6(1) of the Act in Punjab Wakf Board's case (supra), on which the learned Counsel for the petitioners has placed much reliance. In this case, the inter se dispute is between Punjab Wakf Board and Gram Panchayat Hariom Khurd. The arena of controversy is that on a notification dated 19.9.1970 issued by the Board reating the property in question as a Muslim graveyard, the Director of Land Record, Punjab by their letter dated 21.5.1972, wrote to the

Revenue Officer concerned for mutation of the land in the name of Punjab Wakf Board and the Patwari of the area mutated the property in the name of Punjab Wakf Board. Thereafter, the matter was taken up by the Gram Panchayat of the said village, before the Assistant Collector, Grade-I, Samaria, contending that the property was community property which stood vested in the Gram Panchayat and could not have been mutated in the name of the Punjab Wakf Board. Having regard to the facts and circumstances of the case, the Apex Court interpreted the words the Board or the mutawalli of the wakf for any person interested therein occurring in Section 6(1) of the Act to mean that the suit must be in connection with any dispute between the wakf Board on the one hand and mutawalli of the wakf or any person interested in the wakf, as distinct from interested in the property, on the other and, therefore, the dispute between the Wakf Board and a stranger, interested in the property would not fall within Section 6(1) of the Act and the proviso to Sub-section (1) of Section 6, would not come in the way of the Assistant Collector and the Collector to decide, in the dispute raised by a third party like the Gram Panchayat therein, whether the property is modern wakf or not. It is further held that the intention of the Parliament was not say that if a suit was not filed within one year, the notification would be binding not only on those interested in the trust, but even strangers, claiming interest in the property in question, provided they were given notice in the inquiry u/s 4 preceding the notification u/s 5(2).

14. In the instant case, it is the contention of the learned Counsel for the petitioners that during the course of enquiry, the Survey Commissioner has not issued any notice to the petitioners, which is admitted in unequivocal words by the respondents. It, therefore, goes without saying that the petitioners are strangers to the notification and they are not claiming any interest either in the wakf or through the mutawalli. Therefore, it further goes without saying that they can as well agitate the issue before a competent Civil Court, for its decision and the period of limitation of one year to approach Civil Court is not applicable to the petitioners inasmuch as no notice was given to them, as contemplated u/s 5(2) of the Act, by the Survey Commissioner during the enquiry held by him.

15. According to the learned Standing Counsel for the respondent Board, if the petitioners are strangers to the proceedings, they have to approach the Civil Court within a period of one year as prescribed by law and the explanation added to Section 6(1) will operate against the petitioners.

16. I am unable to countenance this argument for the simple reason that admittedly, no notice was issued to the petitioners during the survey conducted by the Survey Commissioner, so as to assail the correctness or otherwise of the inclusion of the properties in question in the list of wakfs.

17. For the above discussion, I hold that the intention of the Parliament was to say that if a suit was not filed within one year, the notification would be binding not only on those interested in the trust but even strangers, claiming interest in the property in question, provided they were given notice in the enquiry u/s 4

preceding the notification u/s 5(2) of the Act.

18. For these reasons, I hold that the petitioners are not persons interested in the trust and claiming any interest through mutawalli or any person interested in the property of wakf board, to fall within the definition of Section 6(1) of the Act and they are interested in their property and the dispute is between the Board and the petitioners, and as such they are strangers. Therefore, they do not fall within the definition of persons interested through Board or Mutawalli of the wakf. Consequently, the question of filing the suit within a period of one year, as contemplated u/s 6(1), from the date of notification by the petitioners does not arise. This finding is also supported by the admitted fact that no notice was given during the course of survey conducted by the Survey Commissioner u/s 4 and notice was given by the Board while publishing the list as per the survey report of the Survey Commissioner u/s 5(1) of the Act, and therefore, the notification would not come in the way of the Civil Court to decide the dispute raised between the Wakf Board and the third parties i.e., the petitioners herein, even if such a suit was filed beyond the date of one year from the date of notification.

19. For the foregoing reasons, the order sought to be reviewed is accordingly reviewed and the writ petition is disposed of directing the petitioners to approach a competent Civil Court for the redressal of their grievance by filing a suit and in the event such suit is filed, the Trial Court is directed to dispose of the same as expeditiously as possible, in accordance with law. In the circumstance of the case, it goes without saying that the trial Court shall dispose of the suit on its own merits without being influenced by any of the observations made herein.

20. The review petition is accordingly allowed. No order as to costs.