
(2013) 10 AP CK 0111

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16183 of 2013

Mohammed Jaffar and Another

APPELLANT

Vs

The A.P. State Wakf Board and Others

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Waqf Act, 1954 — Section 56

Citation : (2013) 6 ALD 794 : (2014) 2 ALT 19

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : E. Madan Mohan Rao, for the Appellant; M.A.K. Mukheed for Respondent No. 1, Sri Mohd. Anwar Siddiqui for Respondent No. 2 and Sri K. Venu Madhav, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a mandamus to set-aside proceedings in F. No. 16/N1/Hyd/13/Z-1, dated 13-5-2013 of respondent No. 1 whereby it has permitted respondent No. 3 to construct mulgies over terrace of the second floor attached to the Wakf mulgi Nos. 21-1-1036/63/67/E/1 to 26, adjacent to Misjid-e-Mirde Munnawar, Pathergatti. It is the pleaded case of the petitioners that the management of respondent No. 2-Trust/Wakf was taken over by respondent No. 1 on the ground that the latter was mismanaging the Trust properties. It is the further pleaded case of the petitioners that before respondent No. 1 took over the management from respondent No. 2, the latter has executed lease deed dated 1-12-2011 whereunder the property bearing municipal Nos. 4-1-1036, 63 and 67 (3rd and 4th floors) was given possession to the petitioners. The petitioners further pleaded that the initial lease period was 11 months; that thereafter the same was being extended from time to time and that respondent No. 1 has assumed the management of respondent No. 2 from 17-1-2012.

2. The petitioners averred that they made representations on 6-11-2012,

26-11-2012 and 29-5-2013 to respondent No. 1 requesting for permission for making constructions in the property leased out to them by spending Rs. 40 lakhs and that subsequently on noticing that some construction material was being collected, they came to know that respondent No. 1 has granted lease of the said property to respondent No. 3 under the impugned proceedings. According to the petitioners, respondent No. 1 has exceeded its jurisdiction by granting lease to respondent No. 3 without restricting the same to three years and without considering the claim of the petitioners.

3. On behalf of respondent No. 1, its Chief Executive Officer has filed a counter affidavit wherein it is inter alia stated that it has taken over the management of respondent No. 2 as it was mismanaging and misappropriating the funds by leasing properties contrary to the procedure prescribed; that respondent No. 2 had no right to execute the lease deed to the petitioners and such lease has not been approved either by the Managing Committee or the Wakf Board. It is further averred that respondent No. 1-Board, with a view to earn income by allowing the open space to be utilised, has leased out the premises to respondent No. 3 and that as the said lease is in terms of Section 56 of the Act, the same does not suffer from any illegality.

4. Respondent No. 2 filed a counter affidavit wherein it has admitted the execution of the lease deed in favour of the petitioners on 1-12-2011 in respect of the property bearing municipal No. 21-1-1036, 63, 67 (3rd and 4th floors) for a period of 11 months and that the petitioners were regularly paying the rents to respondent No. 2.

5. Respondent No. 3 filed a counter affidavit wherein he has disputed the genuineness of the alleged lease set-up by the petitioners. He has also averred that as on 1-12-2011, the 3rd and the 4th floors in the disputed premises were not in existence and that therefore the lease deed was bogus and a created one. Respondent No. 3 has also raised an objection to the maintainability of the Writ Petition in view of Section 83(2) of the Act under which any disputes or questions or other matters relating to Wakf or any other property can be decided by the Wakf Tribunal.

6. I have heard Sri E. Madan Mohan Rao, learned Counsel for the petitioners, Sri M.A.K. Mukheed, learned Counsel for respondent No. 1, Sri Mohd. Anwar Siddiqui, learned Counsel for respondent No. 2 and Sri K. Venu Madhav, learned Counsel for respondent No. 3.

7. At the outset, it needs to be noted that this Court does not intend to adjudicate on the competing claims of the petitioners on one side and respondent Nos. 3 on the other. Ordinarily, a dispute of this nature could be adjudicated by the Wakf Tribunal u/s 83(2) of the Act. However, the law is well settled that mere availability of alternative remedy would not be a bar for this Court to entertain a Writ Petition for adjudication on merits of the case (See: Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, and Whirlpool Corporation Vs.

Registrar of Trade Marks, Mumbai and Others,

8. At the hearing, this Court has noticed that respondent No. 1 has indulged in brazen violation of the provisions of Section 56 of the Act. As the lease granted by respondent No. 1 in favour of respondent No. 3 is *ex facie* illegal and in excess of its jurisdiction, this Court felt that it is not necessary to relegate the petitioners to the Wakf Tribunal as there are no disputed questions of fact except to the extent of legality or otherwise of the impugned proceedings.

9. Section 56 of the Act governing lease or sub-lease of Wakf property places restrictions on the power to grant lease of the Wakf property. For better appreciation, the said provision is reproduced hereunder:

Restriction on power to grant lease of wakf property: (1) A 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 instrument of wakf or in any other law for the time being in force, be void and of a effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

From the above reproduced provision, it is clear that no Wakf institution can lease out the Wakf property for a period exceeding one year without the previous sanction of the Wakf Board. As the lease or sub-lease of any Wakf property cannot be granted for a period exceeding three years, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, Section 56 of the Act declared any such lease granted beyond three years as void and having no effect. A perusal of the impugned proceedings shows that it has not stipulated the lease period. Under the said proceeding, respondent No. 1 has given away the property to respondent No. 3 for construction of mulgies on the second floor terrace. It is consternating to note that no terms of lease have been stipulated except the four conditions referred to below:

1. The construction work should be taken up with the funds of tenant and should not be claimed from the Wakf Board in future.

2. The proposed construction work should be taken up as per the proposed plans and estimates only and by obtaining necessary permission from all concerned departments including GHMC.

3. No other construction work should be taken without prior permission of the Wakf Board.

4. The construction work should be completed within a period of (one year).

10. Respondent No. 1 is a statutory body created for the purpose of securing/protecting the Wakf properties. Ironically, having taken over the properties of respondent No. 2 on the allegation that the latter has been indulging in misappropriation of funds, respondent No. 1 itself has acted without any transparency and semblance of responsibility. It is unthinkable that respondent No. 3 was permitted to raise constructions without first settling the terms of lease. Nothing is discernible from the impugned proceedings as to how the Wakf Institution will benefit by permitting respondent No. 3 to construct mulgies. There is not even a term in the impugned proceedings that respondent No. 3 shall pay the rents as fixed by respondent No. 1, or at least, as mutually agreed.

11. At the hearing, when this Court has put a question to the learned Counsel for respondent No. 1 as to on what basis respondent No. 3 was selected, he has replied by stating that since respondent No. 3 has approached respondent No. 1, the latter has taken a decision in favour of respondent No. 3. I am afraid, such an explanation cannot be countenanced in law. Respondent No. 1 being the custodian of the interests of Wakf properties is expected to function in the manner which advances the interests of the Wakfs and augment their income. Even in the absence of any specific procedure, as held by the Supreme Court in a catena of decisions, the best way of utilising public properties is to put them to public auction (See Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, and Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, . Had respondent No. 1 followed the procedure of inviting tenders or expression of interest from public, there would have been a possibility of its receiving lucrative offers which would have benefited the Wakf Institution. Respondent No. 1, in my opinion, has failed to redeem the public trust by acting in the most whimsical and arbitrary manner by choosing respondent No. 3 for a favoured treatment. Such action on the part of respondent No. 1 deserves to be deprecated in no uncertain terms.

12. For all the above mentioned reasons, the impugned proceeding is set-aside. Respondent No. 3 is directed to handover possession of the property back to respondent No. 1 on as is where is basis, within one month from the date of receipt of this order. If respondent No. 3 has any claim against respondent No. 1, it can independently proceed against the latter by instituting appropriate proceedings in a Court of law. In the event respondent No. 1 wants the property in question to be leased out, it shall issue a public notification inviting applications from interested persons and select the lessee by following a transparent procedure.

13. Subject to the above directions, the Writ Petition is allowed. As a sequel to

the disposal of the Writ Petition, W.P.M.P. Nos. 19606, 19607 and 37535 of 2013 filed for interim reliefs are disposed of as infructuous.