
(2010) 02 AP CK 0070

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2211 of 2010

Muppu Raju Lakshmi

APPELLANT

Vs

Andhra Pradesh State Wakf Board and Another

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Waqf Act, 1995 — Section 109, 54, 54(1), 54(3), 71

Citation : (2010) 3 ALT 244

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Syed Shareef Ahmed, for the Appellant; Shafath Ahmed Khan, SC for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner states that she is the owner of 86.89 sq. yards of land, out of premises bearing No. 2/74, Kondapalli Village, Ibrahimpatnam Mandal, Krishna District. She purchased that property from Shaik Mastan Bee, through sale deed dated 04-05-2006. Mastan Bee, in turn, was gifted that property, by the original owner, Shaik Zalaha Bee.

2. Alleging that the petitioner encroached into a Wakf property, proceedings were initiated against her, by the 1st respondent, u/s 54 of the Wakf Act, 1995 (for short "the Act"). Requisition was given by the 1st respondent, vide proceedings dated 03-04-2009 to the Revenue Divisional Officer, Vijayawada, with a request to evict the petitioner. Challenging the said proceedings, the petitioner filed W.P. No. 4912 of 2009 before this Court. The writ petition was allowed, on 30-3-2009, on the ground that the Wakf Board did not pass any order of eviction, and that the matter ought (sic. ought not) to have been referred to the Revenue Divisional Officer, straightaway for eviction. It was left open to the 1st respondent to take necessary action, in accordance with law.

3. The 1st respondent took up the matter, after this Court passed the order in

the writ petition. He had appointed the 2nd respondent as inquiry Officer to conduct summary Inquiry against the petitioner, and to submit a compliance report, within a period of one month. The petitioner challenges the same.

4. Heard the learned Counsel for the petitioner, and learned Standing Council for the respondents.

5. Section 54 of the Act prescribes the procedure for removal of encroachments of Wakf property. The Chief Executive Officer is conferred with the power to issue a notice to the encroacher of any Wakf property, duly specifying the particulars. If any explanation or objections are submitted by the alleged encroacher, the Chief Executive Officer is required to conduct inquiry. If, after conducting such inquiry, he arrives at the conclusion, that the subject-matter is a Wakf property, he can require the encroacher to remove the encroachment and deliver possession. Sub-section (3) of Section 54 of the Act reads as under:

Section 54(3): If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutuwalli of the wakf.

6. In case the encroacher does not deliver the possession of the property, the Wakf Board can apply to the Sub-Divisional Magistrate, i.e. the Revenue Divisional Officer, to take necessary steps, to remove the encroachment.

7. In the instant case, the 1st respondent entrusted the matter to the Revenue Divisional Officer, without passing any order of eviction. Therefore, this Court interfered, and left it open to the 1st respondent to take necessary steps, in accordance with law. Obviously with a view to comply with the provisions of Section 54(3) of the Act, the 1st respondent has appointed the 2nd respondent, as an Inquiry Officer. That, however, is impermissible. The reason is that, the provision confers power only upon the Chief Executive Officer.

8. Section 109 of the Act confers power on the State Government to make Rules, to carry out the purposes of the Act. The Rule making power includes the one, to make Rules, providing for the manner in which, any inquiry is to be made, under Sub-section (3) of Section 54 of the Act. The provision reads as under:

Section 109: Power to make rules:

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

Xxx

Xxx

(xiii): The manner of service of notice issued under Sub-section (1) of Section 54 and the manner in which any inquiry is to be made under Sub-section (3) of that section;

Xxx

Admittedly, no such Rules were framed by the Government of Andhra Pradesh.

9. Learned Standing Counsel made an effort to sustain the impugned order, by placing reliance upon Section 71 of the Act. That, however, is a provision, which deals with the inquiries, relating to the administration of Wakf, and does not take in its fold, the proceedings u/s 54 of the Act. It is brought to the notice of this Court, that some of the States have framed Rules, providing for appointment of Inquiry Officers. As the things stand now, in the State of Andhra Pradesh, an inquiry u/s 54(3) of the Act can be conducted, only by the Chief Executive Officer. This may, no doubt, lead to heavy pressure on the functioning of the incumbent. However, that can be remedied, only by framing the relevant Rules.

10. Hence the writ petition is allowed, and the impugned order, appointing the 2nd respondent, as inquiry Officer, is set aside.

11. There shall be no order as to costs.