
(2004) 12 AP CK 0080

In the Andhra Pradesh High Court

Case No : Writ Petition No. 707 of 2002

Muzafar Ali and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 06-12-2004

Acts Referred:

Waqf Act, 1995 — Section 54, 83, 85

Citation : (2005) 1 ALD 750

Hon'ble Judges : Devinder Gupta, C.J.; M. Narayana Reddy, J

Bench : Division Bench

Advocate : Wasim Ahmed Khan, for the Appellant; A.G., Abdul Muqeth Qureshi and K. Mahipathy Rao, for the Respondent Nos. 4 to 7, for the Respondent

Judgement

Devinder Gupta, C.J.—This petition is filed as "Public Interest Litigation" by seven individuals with the grievance that in Hanwada Village, there is a land admeasuring about Ac.6.00 being used for Muslim Grave Yard since times immemorial. It is stated that out of this land, an extent of 2.00 acres of land is in the name of Ali Akbar Ashow Khana. One Dargah is also located in the land known as "Rawoofullha Sha Qhadri Rh". It is stated that Urs will be taken from the said Dargah every year. Even at the time of Moharam, procession will take place from that place. It is stated that the land has also been recorded as "Goutan" land in the revenue records and there is no Survey number assigned to it. But, it is being used as Muslim grave yard. The land is also alleged to have been duly entered in the register maintained by the Wakf Board and is stated to be notified as Wakf Property. It is stated that despite it being so notified, some encroachers are trying to encroach upon the land and when some construction was sought to be raised by encroachers in the grave yard, with great difficulty the same was stopped by the petitioners and others. It is stated that Respondent No. 3 is duly bound to maintain and protect Wakf Property. Consequently, a direction is sought against the respondents to take necessary steps to stop illegal encroachment and to keep the property free from encroachments.

2. During the pendency of the writ petition, Respondents 4 to 7 got themselves impleaded. They have resisted the claim of the petitioners by filing affidavit in reply. The stand taken by the Respondents 4 to 7 in the affidavit is that the description of the land is vaguely stated by the petitioners. According to the deponent:

"An area of about 13 acres surrounded by a compound and adjacent to Survey No. 417 (dry) of Hanwada Village is our ancestral property and once upon a time it was almost like a fort (Gadi) and this land is always being called as Gadi land, which means Fort land. Whenever, a dispute is raised by Muslims of the village, we gave land of about 800 sq. yards for Muslim Grave Yard and we also gave about 800 sq. yards of land for using it as Mosque during Peerla (Muslims) festival and the said piece of land viz., Grave yard is enclosed by Kadi stones. Now they want our entire land to be declared as Wakf land. I submit that a dispute was raised as early as in the year 1957 with regard to the land in our occupation stating that it is not a personal property but a Gouthan land, i.e., Government land. Our crops and tamarind trees on the said land were sought to be attached and taken over into Government custody. The RDO Mahabubnagar in File No. 1120/56 initiated proceedings and on our objections, an enquiry was done on the spot by the RDO., Mahabubnagar in the presence of the villagers, the then Sarpanch and my late father Sri Janardhan Reddy and by order dated 27-3-1957, the RDO held that neither the Government nor the Panchayat have any claim over the said GADI land and that it is our private land."

3. Further details have been submitted to various proceedings saying that their title was duly accepted in those proceedings and consequently out of the land, an extent of 3.00 acres of land was sold under Registered Sale Deed in 1983. The land was also given for construction of Veterinary Hospital and Godown, Police Station etc. The land was also sold under various registered sale deeds where constructions have been raised.

4. In nut shell, Respondents 4 to 7 have denied the claim of the petitioner saying that the land in question is neither a Goutan land nor Muslim Wakf Property and the petition is mis-conceived and is liable to be dismissed.

5. Sri Mohd. Zaheer, Mandal Revenue Officer, Hanwada Mandal has filed affidavit saying that a complaint was received which was enquired into, but, in view of the conflicting claims, the then Mandal Revenue Officer passed an order on 28.7.2001 directing the parties to approach the competent Court for redressal of their grievances.

6. Mr. Mirza Hasan Ali Baig, Chief Executive Officer of A.P. State Wakf Board has pointed out that when some vested interests were trying to dispose of the Wakf properties, on 1-6-2001, a letter was addressed to the Station House Officer, Hanwada Police Station, Mahaboobnagar with a request to stop the illegal sale of Wakf property. It is stated that thereafter another letter was also sent by the Wakf Board to the District Collector and District Revenue Officer, Mahaboobnagar

and also to the Station House Officer, Hanwada Police Station requesting them to stop the illegal sale and construction on the Wakf property. It is not denied by the Chief Executive Officer that it is the obligation of the Wakf Board to protect the Wakf property.

7. Having considered the conflicting claims of the parties as regards the property in question, we are of the view that such disputed questions must be decided by the appropriate and competent authority constituted for the purposes of the Act. Wakf Act, 1995 is the Legislation brought in for providing better administration of Wakfs and for matters connected therewith or incidental thereto. The State Government is required to constitute Wakf Tribunals u/s 83 of the Act, which, alone is competent to determine any dispute, question or other matter relating to a Wakf or Wakf Property under the Act. The jurisdiction of the Civil Courts is barred u/s 85 of the Act. The decision of the Wakf Tribunal is subject to further appeals. Section 54 requires the Chief Executive Officer of the Wakf Board to take steps for removing of encroachment from Wakf Property. This, of course, has to be done by him after issuing notice in the prescribed manner and on failure to remove the encroachments from the Wakf Property, to take further steps for removal of encroachments.

8. In this view of the matter, it will not be appropriate for us to adjudicate in these proceedings as to whether the property is or is not a Wakf Property. The respondent-Wakf Board is under obligation to protect the property, in case, it is a Wakf Property. Action as such, has to be taken by the Chief Executive Officer of the respondent-Board in that behalf and any person aggrieved by the order passed by the Chief Executive Officer is entitled to invoke the jurisdiction of the Tribunal constituted under the Act.

9. Accordingly, we direct the 3rd respondent to consider the entire material as has been brought upon and then to take appropriate decision and in case he will come to the conclusion that the property is a Wakf Property and that there has been an encroachment on the said property, he will order for removal of such encroachments. Respondent No. 3 will take appropriate decision in the matter within a period of four months from the date of receipt of a copy of this order.

10. The writ petition is accordingly disposed of. No costs.