
(2003) 08 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6015 of 2001

Nanda Seshikala and Others

APPELLANT

Vs

A.P. State Wakf Board and Others

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Waqf Act, 1995 — Section 54, 54(1), 55, 83

Citation : (2003) 5 ALD 796 : (2003) 5 ALT 466

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : I. Nagesh, for the Appellant; S.M. Subhani, SC for Respondent Nos. 1 and 2 and Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—This writ petition is filed for a writ of mandamus to declare the notice issued by the 1st respondent in F.No. 1820/ M4/Prot/VZM/2000 dated 29.4.2000 and the order passed by the 2nd respondent in proceedings No. 1820/ M6/ProtVZM/2000 dated 25.10.2000 and also the notices issued by the 3rd respondent in Rc.No. 72/2001/L dated 27.1.2001 to all the three petitioners in respect of the land in T.S.Nos. 269 and 506 of Vizianagaram Town, covered by Sy.Nos. 45/2 and 46/26 of Cantonment Area of Vizianagaram Town, as illegal and void.

2. The facts in brief are that the 1st respondent issued the impugned notices to the petitioners u/s 54(1) of the Wakf Act, 1995 (for short "the Act") on the ground that the petitioners unauthorisedly encroached into the land of Wakf property to the extents indicated in the notices. Challenging the said encroachments, the then Managing Committee of New Mosque, filed three suits in O.S. Nos. 137, 138 and 146 of 1994 on the file of the Principal Junior Civil Judge, Vizianagaram, seeking declaration and eviction. Out of the three suits, on 28.7.1998, O.S. No. 137/1994 was dismissed for default and the remaining suits in O.S.Nos. 138 and 146 of 1994 were dismissed as withdrawn on 28.9.2000. It

appears that the latter two suits were withdrawn on the ground that already notices to vacate the encroached land, u/s 54 of the Act were issued by the 1st respondent and the consequential proceedings u/s 55 of the Act were issued for eviction. Challenging these proceedings, the petitioners who are the alleged encroachers filed this writ petition.

3. The learned Counsel for the petitioner contended that the suits were filed and dismissed prior to the coming into force of the Act and therefore the 1st respondent and well as the Tribunal have no jurisdiction to take action against the petitioners. He stated that as per the Act, the Tribunals have to be constituted u/s 83 of the Act immediately after coming into force of the said Act, but in reality they have been constituted only in the year 1997. Therefore, he contends that the plaintiffs in the suits i.e., the then Managing Committee of the New Mosque, ought to have sought for transfer of the suits to the Tribunal after their constitution, instead of withdrawing them. He stated that the Hon'ble High Court also issued a circular to this effect in Roc.No. 2960/E1/98 dated 13.7.1999. He further submitted that a Division Bench of this Court in P. Rama Rao and others Vs. High Court of Andhra Pradesh and others, , has upheld the validity of the said circular.

4. At this juncture it is to be noted that the Division Bench of this Court while upholding the circular dated 13.7.1999 indicated at paragraph No. 6 that the pending suits prior to the constitution of the Tribunal shall be dealt with only by the competent Civil Court, even though the jurisdiction of the Civil Court is explicitly barred u/s 85 of the Act.

5. Therefore, in my considered view, this judgment is of no help to the petitioners, inasmuch as the facts and circumstances of the said case are totally different from the present one.

6. Another Division Bench judgment of this Court in Allauddin Charities and Zakath Wakf Vs. Hameed Ali and Others, , was brought to the notice of this Court, wherein the scope of Section 54(1) of the Act and the powers of the Chief Executive Officer and also the scope of the suit filed prior to the constitution of the Tribunal, were dealt with in detail. The relevant portions at paragraph Nos. 32 and 36 are extracted as under, for ready reference:

"32. We are of the opinion that only because Wakf Board filed a suit for temporary injunction and the same is pending, having regard to the statutory power conferred upon the C.E.O., it cannot be said that by virtue of doctrine of election, the Wakf Board could not have invoked the power under Sub-section (3) of Section 54 of the Act or that the final orders have been issued with mala fide intention. The doctrine of election has no role to play when the authority under the Act is empowered to take action in accordance with the provisions of Sub-section (1) of Section 54 of the Act whenever an encroachment is complained of Independent of such power, the Wakf Board, may under the relevant provisions of the Act, institute a suit before the Tribunal for decision of the Tribunal...

36. The Chairperson exercises the power of delegation of the Board. The C.E.O. in terms of the provisions of Section 25 of the Act acts in terms of the directions of the Board. Thus, if a direction has been issued by the Chairperson to the CEO to make an enquiry as to whether the property in question is Wakf or not and the nature and extent, if any, in exercise of the jurisdiction conferred on the CEO u/s 54, the same cannot be said to be illegal. Furthermore, in terms of Section 54(1) of the Act, the CEO may act on receipt of any complaint or on his own motion. The directions of the Chairperson may be considered to be a complaint."

7. From the above observations it is clear that the power conferred upon the Chief Executive Officer u/s 54(1) of the Act is conspicuous and distinct. It further implies that even if any suit for any purpose is filed by the Wakf Board in a Civil Court, that does not take away the jurisdiction of the Chief Executive Officer conferred u/s 54(1) of the Act.

8. Coming to the present case, it is pertinent to note that the petitioners are taking the plea for the first time, that as per the circular of the High Court, the Wakf Board ought to have sought the transfer of the suits to the Tribunal constituted u/s 83 of the Act. They did not take this ground at the earliest point of time i.e., during the pendency of the suit. However, those suits were dismissed either for default or as withdrawn.

9. It is to be further seen that the two suits were withdrawn on the ground that Chief Executive Officer had issued notices u/s 54(1) of the Act and that the consequential proceedings were issued u/s 55 of the Act.

10. Another factor to be noted is that neither the Chief Executive Officer or the Chairperson or the Board were the parties to the earlier suits and admittedly only the members of the Managing Committee of the mosque filed those suits. In such a case, even if the suits were decided either in favour of, or against the petitioners, such a decision would not bind the Chief Executive Officer, and also would not prevent him from exercising his jurisdiction conferred u/s 54 of the Act, as held by the Division Bench of this Court in the decision (supra).

11. As already pointed out, the powers of the Chief Executive Officer u/s 54(1) are totally distinct and recognized by the statute. Therefore, since the Chief Executive Officer issued notices invoking his jurisdiction u/s 54(1) of the Act and the consequential proceedings were issued u/s 55 of the Act, the only course open to the petitioners is to approach the Tribunal constituted u/s 83 of the Act.

12. It is to be further seen that as per the earlier Division Bench judgment of this Court (supra), pending suits prior to the circular dated 13.7.1999 have to be tried by the Civil Court and they need not necessarily be transferred to the Tribunals after their constitution. Therefore, the trial of the suits by the civil Court and their eventual dismissal, would not alter the situation or even does not go in conflict with the later Division Bench judgment of this Court (supra).

13. Therefore, for the foregoing reasons, I do not find any merit in the writ

petition and the same is accordingly dismissed. No costs.

14. However, the petitioners are given liberty to approach the Tribunal within a period of four weeks from the date of receipt of a copy of this order and till then, status quo shall be maintained.

15. It is also made clear that the petitioners are also at liberty to seek any interim directions from the Tribunal, pending final adjudication.