
(2010) 04 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8940 of 2010

Syed Shah Mohamood Hussaini and Another

APPELLANT

Vs

Mohammed Rafiuddin Khan and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 — Section 10

Waqf Act, 1954 — Section 25

Waqf Act, 1995 — Section 3, 37, 6, 83(1), 83(2)

Citation : (2010) 3 ALT 544

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : D. Srinivas Prasad, for the Appellant; M.A.K. Mukheed, for Respondent No. 2 for GHMC for Respondent Nos. 3 and 4 and Ponnamm Ashok Goud, G.P. for S.W., for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The two petitioners filed instant writ petition seeking a writ of Mandamus to declare O.S. No. 1 of 2010 filed by first respondent on the file of the Andhra Pradesh State Wakf Tribunal is not maintainable. In effect they seek a writ of Prohibition against the Tribunal on the ground that it has no jurisdiction.

2. The brief fact of the matter with reference to the allegations made by petitioners is as follows. The land admeasuring Acs. 1.253/4 guntas situated at survey No. 90 of Bandlaguda Jagir Village of Rajendranagar Mandal in Ranga Reddy District is the property of Mohammed Yousuf. He also had land in survey No. 89. It is alleged that he had obtained Occupancy Rights Certificate dated 10.2.1977 u/s 10 of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. Mohammed Yousuf's successor Syed Turab Hussain sold the land under registered sale deed dated 02.12.2006 to Dilshad Jah. Petitioners, statedly, entered into registered agreement of sale-cum-General Power of Attorney (GPA) dated 05.6.2007 for a sale consideration of Rs. 50,00,000/- and obtained

possession. First respondent filed O.S. No. 1 of 2010 against petitioners herein (defendants 1 and 2) and respondents 2 to 4 (defendants 3 to 5) for a decree directing eviction of defendants from land admeasuring 9,030 Sq. yards i.e., Acs.1.253/4 and consequent delivery of possession to Andhra Pradesh State Wakf Board. In the said suit, he alleged that total extent of land admeasuring Acs. 14.34 guntas in survey No. 90 is notified in Andhra Pradesh Gazette dated 09.2.1987 as Wakf belonging to Dargah Hazrath Malang Shah and Mosque. Petitioners however contend that same is not registered Wakf and the same is not entered as such in any register maintained by the Office of Commissioner of Wakfs u/s 25 of the Wakf Act 1954 or u/s 37 of the Wakf Act, 1995 (the Act). Therefore it is contended by petitioners that suit is barred u/s 87 of the Act as the property is private property of the petitioner.

3. This Court heard Senior Counsel for petitioners and the Standing Counsel for Wakf Board.

4. The submission that the suit is barred under Sections 6 and 87 of the Act, cannot be gone into in this writ petition. Third respondent as person interested filed a suit seeking eviction of petitioners in respect of the entire property of Acs. 14.34 guntas. Petitioners who claim a right under registered agreement of sale-cum-GPA in respect of the property cannot prohibit a statutory Tribunal from dealing with the suit. The Tribunal shall be deemed to be a Civil Court and shall have all powers under Code of Civil Procedure, 1908, while trying a suit or executing decree. Therefore petitioners can as well file application praying the Tribunal to decide the question of jurisdiction as preliminary issue. If any adverse order is passed, they can file revision u/s 83(9) of the Act. When the Tribunal does not suffer from inherent lack of jurisdiction, it cannot be prohibited from entertaining the suit.

5. Insofar as the question that the Wakfs being unregistered a suit is barred is concerned, a reference may be made to the decision of Division Bench of this Court in Allauddin Charities and Zakath Wakf Vs. Hameed Ali and Others, wherein it was observed as under.

A writ of prohibition can be issued only when three conditions are satisfied, namely, (1) that the authority against whom it is sought is about to exercise judicial or quasi judicial power, (2) that the exercise of such power is unauthorised by law and (3) that it will result in injury for which no other adequate remedy exists. It is provided for an extraordinary remedy and can be issued only in cases of extreme necessity. Before such writ is issued, the Court must arrive at a finding that the party aggrieved had applied in vain to the inferior Tribunal for relief. It is also trite that a writ of prohibition is not to be claimed as a matter of right but the same is granted to do justice and the same must be based on sound judicial discretion depending upon the facts" and circumstances of each case. In U.P. Sales Tax Services Association Vs. Taxation Bar Association, Agra and others, the apex Court observed that a writ or order of prohibition cannot be issued prohibiting a quasi-judicial or statutory authority

from discharging its statutory functions or transferring those functions to another jurisdiction. Exercise of such power, the Supreme Court held, generates its rippling effect on the subordinate judiciary and statutory functionaries.

6. A reference may also be made to the decision of Madras High Court in *I. Salam Khan Vs. The Tamil Nadu Wakf Board and Others*, wherein it was held.

Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word "Wakf has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal. It is not proper for this Court to straight away entertain writ petitions relating to a Wakf or Wakf property when there is a special Tribunal constituted for this purpose.... We may, further, clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he is aggrieved. It may be mentioned that Sections 83(1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83(2) refers to the orders passed under the Act, but, in our opinion, Sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a Wakf or Wakf property, as the plain language of Sections 83(1) and 84 indicate. We are further of the opinion that even if an order has been passed prior to the commencement of the Wakf Act, 1995, or a dispute, question or matter has arisen before the commencement of the said Act, the Wakf Tribunal can adjudicate such issues or questions or the correctness of such an order, because the intention of Parliament in enacting Wakf Act, 1995 is that any dispute or matter pertaining to Wakf should go before the Wakf Tribunal.

7. In view of the above, this Court is not inclined to entertain the writ petition. The writ petition is accordingly dismissed.