

APHC010119142015



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3508]

MONDAY, THE FIFTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT APPEAL NO: 1083/2015

Between:

Smt. B. Rupalatha and Others

...APPELLANT(S)

AND

State Of Andhra Pradesh Rep By Its Principal Secretary and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.N SUBBA RAO

Counsel for the Respondent(S):

1.GP FOR ASSIGNMENT (AP)

2.GP FOR REVENUE (AP)

3.K RAMAKANTH REDDY

4.SHAIK KHAJA BASHA

The Court made the following Judgment:

(per Hon'ble Sri Justice R. Raghunandan Rao)

The appellants had purchased various plots in Sy.No.327 of Palamaner Village of Chittoor District and are said to have constructed their

houses in the said land. Some of the appellants sought to dispose of their property and approached the Sub-Registrar, Palamaner for ascertaining market value, of the plots, for calculation of stamp duty and registration charges. The 5th respondent, by way of endorsements, refused to furnish this information on the ground that he had received a letter of the Wakf Board, dated 12.10.2012, stating that the land is Wakf Land and no registration can take place in relation to that land. The appellants challenged the endorsements given by the 5th respondent, as well as the letter of the Wakf Board, dated 12.10.2012, by way of W.P.No.30916 of 2014.

2. The appellants had taken the stand that the land in question is private land on which various houses have been constructed after obtaining due permission from the Municipality and that the title to the land could be traced back to a sale deed, dated 10.10.1946, which was prior to the Wakf Act of 1954 coming into force. The appellants further contended that the possession and enjoyment over this land, by private individuals, had never been challenged for more than 68 years and as such title to the land is perfected. The appellants also contended the very same proceedings, relating to another piece of land situated in Sy.No.963/3 had been challenged in W.P.No.12412 and 12875 of 2017 and the same was allowed by the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, by an order, dated 18.07.2013.

3. The Wakf Board, took the stand that the land to an extent of Ac.2.04 cents in Sy.No.327 of Palamaner Town was Inam Land granted under title No.1979 under Towliath of Syed Hyder Saheb for service for an Ashurkhana, maintenance of tombs and Peerla Makhan. Sri Syed Hyder Saheb, was only a Manager of the property and had no right to alienate the property. However, the family members of Sri Syed Hyder Saheb appear to have sold away the land and such deeds of sale would not, in any manner, give title to the purchasers. The Wakf Board also took the stand that even if there is a dispute as to whether the land is Wakf land, alternative remedies are available and a petition under Article 226 would not be maintainable.

4. The survey, that is said to have been held under the 1954 Wakf Act, is said to have reported that Ac.2.04 cents of land in Sy.No.327 was granted as Inam, by title deed No.1979, for the purpose of celebration of Moharram and Sri Syed Hyder Saheb was appointed as Muthawali to ensure the celebration of Moharam. The report also recorded that the land was in the middle of dwelling houses and is not cultivable due to which no revenue was being generated.

5. The learned Single Judge, after noticing that a gazette notification had also been issued, on 28.06.1962, classifying the land as Wakf land, had held that there was sufficient material for holding that the property is prima facie Wakf property. The learned Single Judge also made it clear that the discussion in the Judgment would not come in the way of ascertaining their

title by due process of law. On this basis, the learned single judge, by a judgment, dated 20.02.2015, dismissed the writ petition. Aggrieved by this Judgment, the appellants have preferred the present Writ Appeal.

6. Sri N. Subba Rao, the learned Senior Counsel appearing for the appellants submits that the mere issuance of a notification under the Wakf Act declaring the land to be Wakf property, would not be binding on third parties. He would draw the attention of this Court to the observation of the learned Single Judge that no notice had been given to any of the persons, in possession, during the preliminary survey, said to have been conducted by the survey commissioner. The learned Senior Counsel would contend that in the absence of notice, none of the appellants would be bound by the said notification and such a notification is not sufficient to treat the land as Wakf land whereby the appellants are unable to exercise rights of ownership over the land, including the right of alienation of the land.

7. The learned Senior Counsel, would draw the attention of this Court to the observation of the learned Single Judge, in para No.14 of his Judgment, that Moharram is celebrated on the land. The learned Senior Counsel would submit that the land is covered by houses and the question of observing Moharram would not arise. For this purpose, the learned Senior Counsel would also draw the attention of this Court to the report of the Tahsildar filed in

I.A.No.1 of 2016 wherein the Tahsildar had stated that Moharram was not being celebrated in the said land.

8. The learned Senior Counsel, submits that the notification itself is not in accordance with law as it had been issued without enquiry and without any details of dedication. The learned Senior Counsel would submit that the revenue records show the lands to be private patta land and that the land had always been treated as private land which can be seen from the acquisition of Ac.0.90 cents of land by the government and payment of compensation to the persons claiming ownership over the land.

9. The learned Senior Counsel also relied upon the Judgment of the Hon'ble Supreme Court in the case of **The Board of Muslim Wakfs, Rajsthan vs. Radha Krishna and Others**¹.

10. Sri P. Veera Reddy, the learned Senior Counsel appearing for the Wakf Board contends that the Judgment of the Hon'ble Supreme Court, would not be applicable in view of the change in the language of relevant sections of the Wakf Act.

11. Sri P. Veera Reddy, the learned Senior Counsel would also contend that the appellants have not chosen to challenge the gazette notification of 28.06.1962, which included the subject land as Wakf property. He would submit that the proceedings under challenge, are consequential to the gazette

¹ AIR 1979 SC 289

notification of 1962 and in the absence of a challenge to this notification, there can be no challenge to the consequential proceedings.

12. In the case cited above, the inclusion of a disputed property in the list of Auqaf was challenged before the Hon'ble Supreme Court. The defense of the Wakf Board was that a notification had been issued in terms of Section 5 of the Wakf Act, 1954 and the same would be binding on the persons challenging the said notification.

A) Section 5 and Section 6 of the Wakf Act, 1954 read as follows:

"5.(1) On receipt of a report under sub-section (3) of Section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-sec. (1) and publish, in the Official Gazette, a list of wakfs existing in the State, or as the case may be, the part of the State to which the report relates, and containing such particulars as may be prescribed."

"6 (1) If any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of Section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final;

Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of Section 5.

13. The Hon'ble Supreme Court, after noticing the language of Sections 5 and 6 of the Wakf Act, 1954, had held that notifications issued under Section 5 of the Wakf Act would be binding only on persons who were interested in the Wakf and such notifications would not be binding on third parties.

39. It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub-section (1) of Sec.6 is not applicable to him. In other words, the list published by the Board of Wakfs under sub-section(2) of Section 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises”.

14. The Wakf Act, 1954 has been replaced with the Wakf Act, 1995. Section 5 and 6 of the Wakf Act, 1995 read as follows:

5. Publication of list of Auqaf.—

(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and [forward it back to the Government within a period of six months for publication in the Official Gazette] a list of Sunni Auqaf or Shia Auqaf in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.]

6. Disputes regarding Auqaf.—(1) If any question arises whether a particular property specified as Waqf property in the list of Auqaf is Waqf property or not or whether a Waqf specified in such list is a Shia Waqf or Sunni Waqf, the Board or the mutawalli of the Waqf or [any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of Auqaf:

15. Section 6 of the Wakf Act, 1995 also stipulates that no suit can be filed before the Tribunal after the expiry of one year from the date of publication of list of Auqaf. The difference in language between Section 6 of the Wakf Act, 1954 and Section 6 of the Wakf Act, 1995 is relied upon by Sri P. Veera Reddy, the learned Senior Counsel to contend that even persons, who are not interested in the Wakf would be bound by the declaration and publication in the gazette. This Court is unable to accede to this contention. The publication and the notification, in the gazette, relating to this property was made under the provisions of the Wakf Act, 1954. The aforesaid Judgment of the Hon'ble Supreme Court, in terms of the language set out in the Wakf Act, 1954, had held that a stranger to a Wakf is not required to file any suit for declaration of his title in as much as the proviso to sub section (1) of Section 6, is not applicable to such a stranger.

16. The same principles would continue to hold even after the Wakf Act, 1955 has been brought into force. It may also be noticed that it would always be open to the appellants to file a suit challenging the said notification treating the land as Wakf property. Apart from this, it would also be open to the appellants to raise such other grounds, as may be thought fit.

17. The learned Senior Counsel for the Wakf Board, also relies upon a full bench Judgment of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **Vinjamuru Rajagopala Chary vs. State of Andhra Pradesh and Others**² and more specifically paragraphs 156 ((ix) (xii) & (xv) to contend that a redressal mechanism has been set out under the said judgment and that would be the appropriate method of ascertaining title to the land.

18. The Full Bench, in **Vinjamuru Rajagopala Chary vs. State of Andhra Pradesh and Others**, considered the question of the power to prohibit registration of certain documents under Section 22-A of the registration Act, 1908. Section 22-A provided for prohibition of registration of certain documents falling within the sub categories set out in 22-A(1)(A) to E. Documents relating to Wakf properties fell in Section 22-A(1)(C). The full bench after considering the law and the submissions made by learned counsel, had summarized its conclusions in paragraph No.156 of the said judgment. Paragraphs 156 ((ix) (xii) & (xv) reads as follows:

² 2016(2) ALD 236 (FB)

156. We, thus, summarize our conclusions and issue directions as follows:-

(ix) It is open to the parties to a document, if the relevant property/land finds place in the list of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, to apply for its deletion from the list or modification thereof, to the concerned authorities as provided for in the guidelines. The concerned authorities are obliged to consider the request in proper perspective and pass appropriate order within six weeks from the date of receipt of the application and make its copy available to the concerned party.

(xii) The directions issued by learned single Judges in six judgments referred to above or any other judgments dealing with the provisions of Section 22-A, if are inconsistent with the observations made or directions issued in this judgment, it is made clear that the observations made and directions issued in this judgment shall prevail and would be binding on the parties including the registering authorities under the Registration Act or Government officials or the officials under the Endowments Act, Wakf Act and Ceiling Acts.

(xv) Mere registration of a document shall not confer title on the vendee/alienee, if the property is otherwise covered by clauses (a) to (e), but did not find place in the lists furnished by the concerned authorities to the registering officers. In such cases, the only remedy available to the authorities under clauses (a) to (e) of sub-section (1) of Section 22-A is to approach appropriate forums for appropriate relief.

19. These guidelines, as far as this case is concerned, would mean that the appellants herein would be entitled to move the Wakf Board for deletion of their property from the prohibitory list maintained under Section 22-A(c) of the Registration Act.

20. However, as pointed out by the learned Senior Counsel, the appellants have not chosen to challenge the publication of this property in the gazette as Wakf property. The appellants would need to challenge the said notification, by way of a suit, in accordance with the provisions of the Wakf Act, 1995.

21. As pointed out by the Hon'ble Supreme Court, in the aforesaid mentioned case, the limitation of one year for challenging the inclusion of the property in the gazette notification and the declaration that the property is Wakf property would not apply in the present case.

22. This Court has also seen the copy of the Inam Fair Register under which title No.1979 is said to have been issued. However, this Court does not wish to go into the details of the Inam Fair Register etc., in as much as any finding given by the Court would amount to a finding which would bind both sides in the proceedings of the suit, if any, filed by the appellants.

23. In that view of the matter, this Writ Appeal is disposed of leaving it open to the appellants to initiate an appropriate suit/proceeding, before the appropriate forum, for a declaration that the inclusion of the property in the occupation of the appellants, as Wakf property, in the gazette notification is incorrect and for setting aside the declaration that the property is Wakf property. Needless to say, a question of limitation would not arise, as the appellants have been agitating their rights before this Court since the date of their knowledge of inclusion of their property in the Wakf register and by way of publication in the gazette. For this purpose, the appellants are given 3 months time, to file their suit/proceeding, before the appropriate forum. To enable such filing, the present status quo will be maintained for a period of three months. In the event of such a suit being filed within the aforesaid time,

the status quo existing, as on today, shall be maintained till the disposal of the said suit/proceeding.

24. Accordingly, this Writ Appeal is disposed of. There shall be no order as to costs.

As a sequel miscellaneous applications, if any, shall stand closed.

R RAGHUNANDAN RAO, J

MAHESWARA RAO KUNCHEAM, J

RJS

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO
AND
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT APPEAL No.1083 of 2015

(per Hon'ble Sri Justice R Raghunandan Rao)

05.05.2025

RJS