

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI
WRIT PETITION No.20875 OF 2009

ORDER: *(per the Hon'ble Shri Justice Anil Kumar Jukanti)*

Mr. M. Rama Rao, learned counsel for the petitioners.

Mr. Abu Akram, learned Standing Counsel for respondent No.4 – Telangana State Waqf Board.

2. This writ petition is filed praying to grant the following relief:

“... to issue a proper writ order or orders, particularly one in the nature of Writ of Mandamus declaring that the Gazette Notification showing the suit lands being Sy.Nos.446(a), 449(a), 450(a), 458(a), 446(e), 449(e), 450(e), 458(e), 446, 448, 451, 450, 452, 449, 453, 454 and 455 total admeasuring to an extent of Ac.39.06 guntas published in Andhra Pradesh Nalgonda Gazette Supplement Part-I bearing No.7-A dated 15.02.1990 serial No.14029, Nalgonda District as a Waqf Land is arbitrary and illegal and against the principles of Natural Justice and the same

may be set aside and also issue a direction to treat the above said lands as private lands and to pass any other order or orders...”

3. Brief facts:

Petitioners aver that they purchased agricultural land vide registered sale deed, dated 13.02.2007 (as evident from Ex.P.16 at Page No.63), in various survey numbers to an extent of Acs.7.17½ guntas from Pochampally Sudhakar Rao, an extent of Acs.5.08½ guntas from Pochampally Gayatri Rao, an extent of Acs.5.08½ guntas from Pochampally Upender Rao, an extent of Acs.5.11 guntas from Pochampally Janardhan Rao and an extent of Acs.16.05 guntas from Pochampally Srinivasa Rao.

3.1. Petitioners claim to have verified the title of their vendors passbooks and title deeds issued under the Telangana Rights in Land and Pattadar Passbooks Act, 1971 (hereinafter referred to as ‘ROR Act’), link documents, Occupancy Rights Certificate (ORC) issued under Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955

(hereinafter referred to as 'Inams Act, 1955'). After purchase, the petitioners were issued pattadar passbooks and title deeds under the ROR Act. It is further averred that in encumbrance certificate maintained by the Registration and Stamps Department, petitioners names and their vendors names were incorporated as purchasers and that they verified the pahanies for years 1955-58 in which the subject lands were shown as Inam lands until ORCs were issued in the year 1987.

3.2. It is averred that their vendors vendor and their vendors names were shown as pattadars and occupants in Faisal Patti the year 1987-88 and was mentioned as Inam land. It is further averred that their vendors vendor namely Shaik Jamel Saheb obtained ORC under Section 10 of Inams Act, 1955, issued on 22.07.1987 in Survey Nos.446, 448 to 455 and 458 for an extent of Acs.5.25 guntas, Acs.8.16 guntas and Acs.5.24 guntas. The petitioners intended to sell a portion of the subject land. Respondent

No.2 (Sub-Registrar) refused to register the sale deed on the ground that the lands were waqf lands and cannot be alienated.

3.3. As per pleadings in the writ petition, a representation, dated 25.05.2009, was made to the Tahsildar by the petitioners who vide endorsement No.E/1029/2009, dated 28.05.2009, intimated the petitioners that subject lands for which ORCs were issued vide reference No.G/2439/1987, dated 22.07.1987, implemented in jamabandi, the A.P. Waqf Board made a claim over the lands through its office reference No.Waqf/RPT/14059/2007, dated 06.11.2007, and requested respondent No.2 not to allow any registration over the subject lands. It was further intimated to the petitioners that the Tahsildar is not the authority to decide the title and cancel the letter addressed by the Waqf Board to the Sub-Registrar. It is further averred that respondent No.5 - Inspector, Auditor Waqf, Nalgonda, informed the Tahsildar

vide letter, dated 12.11.2008, that the subject inam lands belong to Darga Hazarath Yaseen Sahib, situated at Iskilla Village and the subject lands were notified in Gazette as waqf lands vide serial No.14029 dated 15.02.1990.

3.4. It is also averred that representations were made to the Waqf authorities seeking information as to when the waqf was made and by whom it was made to ascertain whether waqf was made prior to grant of ORC or subsequent. It is averred that the Waqf authorities stated that the subject lands were published in Andhra Pradesh Gazette on 15.02.1990 in Nalgonda District, Gazette Supplement to Part-II No.7-A dated 15.02.1990 at serial No.14029 as waqf property. The grievance of the petitioners is that the Gazette does not reveal who made the waqf and when it was made, except showing the survey numbers, extents, village and mandal.

3.5. The Waqf Board through its letter, dated 31.08.2009, intimated that the particulars were not available as to when

and by whom the waqf was made. The petitioners also aver that at the time of issuance of ORC in the year 1987, the Revenue Divisional Officer (RDO) made an enquiry and issued notices to all the interested parties. Some shareholders, who were not in possession of property, addressed a letter to the Sub-Collector stating that they had no objection in granting ORC to petitioners' vendor's vendor. The grievance of the petitioners is that no notice was served on them at the time of survey, if at all conducted. Without giving any notice to the affected parties and treating the said lands to be waqf lands is arbitrary, illegal and violation of principles of natural justice.

4. It is submitted by learned counsel for the petitioners that the subject lands were purchased by the petitioners by way of registered sale deeds and that their vendors were issued pattadar passbooks and title deeds under the ROR Act and verified link documents like ORC under the Inams Act, 1955, and that the petitioners were issued passbooks

and title deeds under the ROR Act and their names were mutated in the revenue records. It is further submitted that nowhere in the revenue records, the subject lands are mentioned as waqf property. It is also submitted that in the month of August, 2008, the petitioners intended to sell a portion of the subject lands and approached the Sub-Registrar but the Sub-Registrar refused to register the sale deed(s) on the ground that the lands were waqf lands. It is contended that representations were made to the revenue authorities when it came to the knowledge of the petitioners through the office of the Sub-Registrar.

4.1. It is submitted that Waqf Board is now claiming the subject lands on the strength of notification issued in the year 1990 which is subsequent to the issue of ORCs i.e., 1987. It is contended that when a representation was made to the waqf authorities, the authorities except stating that the said lands are waqf lands by virtue of the Gazette

Notification of the year 1990, nothing was stated with regard to subject lands.

4.2. It is submitted that the respondents did not follow the procedure as required under the Waqf Act, 1954 (for short, 'the Act, 1954') before the survey and publication in the Gazette and therefore the notification is liable to be struck down for violating the procedure prescribed under the Act, 1954. It is further submitted that notification issued being subsequent to grant of ORCs is not valid, is illegal, arbitrary and the same is liable to be set aside.

4.3. It is submitted by learned counsel for the petitioners that Section 4 of the Act, 1954 mandates a survey, Section 5 mandates publication of list of auqaf and Section 37 contemplates that the board shall maintain a register of auqaf. It is further submitted that in the counter affidavit filed by the Chief Executive Officer of Waqf Board, no averments as to steps taken under the Act, 1954 are forthcoming, except stating that the Gazette publication was

issued in the year 1990. It is also submitted that there is an elaborate procedure prescribed under Section 4 of the Act, 1954 for preliminary survey. It is contended that the remedy available under Section 6 of the Act, 1954 is no bar to avail the remedy under the Article 226 of the Constitution of India in the facts of the case. It is submitted that it is not disputed that petitioners are in possession of the subject lands. In support of his contentions, learned counsel for the petitioners placed reliance upon the following decisions:

1. **The Telangana State Waqf Board, rep., by its Chief Executive Officer, Haj House, Opp: Public Garden, vs. M/s. Solithro Private Limited¹**
2. **The A.P. State Waqf Board, rep., by its Chief Executive Officer, Office at Haj House Building, Nampally, Hyderabad vs. Syed Amanullah Hussain and others²**
3. **Punjab Wakf Board, Ambala Cantt. vs. Capt. Mohar Singh and Others³**
4. **Mohd. Saber vs. Rafiunnisa Begum (Died) and Others⁴**

¹ W.A.No.1432 of 2016, dated 04.12.2023

² W.A.No.772 of 2007, dated 28.09.2007

³ AIR 1975 Supreme Court 1891

⁴ 2016 (4) ALD 308

5. It is submitted by the learned Standing Counsel for Telangana State Waqf Board that as per proviso to Section 4(1)(c) of the Inams Act, 1955 except charitable and religious institutions, no person shall be entitled to be registered as an occupant under Sections 5 to 8 of the Inams Act, 1955 and the institution alone shall be entitled to be registered as an occupant other than those specified in clauses (a) and (c). It is further submitted that steps are being initiated to remove the encroachers under the provisions of the Act, 1954. It is also submitted that provisions of Act, 1954 have been followed at the time of survey and notification issued is in accordance with the provisions of the Act, 1954. It is evident from a reading of the Sections 6, 83, 84 & 85 of the Act, 1954 that it is the Waqf Tribunal which alone has the jurisdiction. Reliance is placed on the following judgments for the proposition that Waqf Tribunal has got sufficient jurisdiction to try and decide the disputes relating to either a waqf or a waqf property.

- 1. Board of Waqf, West Bengal and another vs. Anis Fatma Begum and another⁵**
- 2. Punjab Waqf Board vs. Sham Singh Harike⁶**
- 3. Rashid Wali Beg vs. Farid Pindari and others⁷**
- 4. Mumtaz Yarud Dowla Waqf vs. Badam Balakrishna Hotel Pvt. Ltd. and others⁸**

5.1. It is submitted that the petitioners approached the High Court by filing a writ petition in the year 2009 and Gazette Notification is of the year 1990. However, there is a long delay and on this ground alone, the writ petition is liable to be dismissed for delay and laches. Learned Standing Counsel has placed reliance on the following judgments of the Hon'ble Apex Court for delay and laches:

- 1. Karnataka Power Corporation Limited and another vs. K.Thangappan and another⁹**

⁵ (2010) 14 SCC 588

⁶ (2019) 4 SCC 698

⁷ (2022) 4 SCC 414

⁸ (2023) SCC OnLine SC 1378

⁹ (2006) 4 SCC 322

**2. Chennai Metropolitan Water Supply and Sewerage
Board and others Vs. T.T.Murali Babu¹⁰**

6. Heard learned counsels, perused the record.
7. It is evident from the record that the petitioners have purchased the property in the year 2007 and when they intended to sell a portion of the subject lands, an objection was raised by the Sub-Registrar on the ground that the subject lands are waqf property. It is not in dispute that the petitioners vendors were issued proceedings by the Sub-Collector, Bhongir, and the Division Administrative Officer, Sub-Collector's Office, Bhongir bearing proceedings Nos.G/2439/87, dated 22.07.1987, issued in Form-III (under sub-rule (3) of Rule 6) in accordance with Section 10 of the Inams Act, 1955 with respect to subject lands for various extents in Survey Nos.446, 448, 449, 450 to 455 and 458 of Iskilla Village to Shaik Janimiya, S/o.Bande Ali, to one Shaik Madar Sab, S/o. Ali Sab to one Mr. Shaik Jamal

¹⁰ (2017) 4 SCC 108

Sab, S/o. Ali Sab, to Shaik Moulana Sab, S/o. Ali Sab, to Shaik Madar Sab, S/o. Saheb Hussain stating that the said lands to the extents mentioned in the schedule to the proceedings issued shall be registered as occupants in respect of the lands. The issuance of these proceedings by the Sub-Collector of Bhongir is not disputed. It is also not in dispute that the notification under Act, 1954 was issued in the year 1990.

8. Whether the Waqf Tribunal is the only authority under Section 6(1) of the Act, 1954 to examine the validity of the impugned notification dated 15.02.1990 and the same cannot be examined in a proceeding under Article 226 of the Constitution of India is the issue, which arises for consideration.

9. A similar issue fell for consideration before the Division Bench of this Court in **M/s. Solithro Private Limited** (supra), to which one of us was a Member. The Division Bench after elaborate discussion held as follows:

“23. Before proceeding further, it is apposite to take note of Section 6 of the 1995 Act as it stood prior to Amendment by Amendment Act No.27 of 2013 dated 01.11.2013.

6. Disputes regarding Waqfs:-

(1) If any question arises whether a particular property specified as Waqf property in the list of Waqfs is waqf property or not or whether a Wakq specified in such list is a Shia Waqf or Sunni Waqf, the Board or the Mutawalli of the Waqf or any person interested therein 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 Waqfs:

Explanation:- For the purposes of this section and section 7, the expression “any person interested therein”, shall, in relation to any property specified as waqf property in the list of waqfs published after the commencement of this Act, shall include also every person who, though not interested in the waqf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under Section 4.

(2) Notwithstanding anything contained in subsection (1), no proceeding under this Act in respect of any waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him 32 in respect of anything which is in good faith done or

intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of Waqfs shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

24. Thus, it is evident that dispute whether or not property is a waqf property in the list of waqfs and whether the same belongs to Shia or Sunni waqf, the Board or the Mutawalli of the waqf or any person interested therein may institute a suit in a Tribunal for adjudication of the aforesaid question. Section 6 has to be read with Section 3(k) of the Act which defines the expression 'person interested in a waqf' and reads as under:

3 (k) "person interested in a waqf" means any person who is entitled to receive any pecuniary or other benefit from the waqf and includes-

(i) any person who has a right to workship or to perform any religious rite in a mosque, idgah, imambara, dargah, khanqah, peerkhana and karbala, maqbara, graveyard or any other religious institution connected with the waqf or to participate in any religious or charitable institution under the waqf;

(ii) the wakif and any descendant of the waqf and the Mutawalli;

25. Thus, if provisions of Section 6 and 3(k) of the Waqf Act, 1995, prior to its Amendment, are read in conjunction, it is evident that a person interested in the waqf alone could have resorted to the remedy under Section 6 of the 1995 Act. However, subsequently by Amendment Act No.27 of

2013 dated 01.11.2013, the words 'any person interested' had been substituted by 'any person aggrieved'. The Supreme Court in Rashid Wali Beg (supra) dealt with the issue whether suit seeking the relief of perpetual and mandatory injunction in respect of a property admitted to be the waqf property before the civil court is maintainable. The aforesaid issue was answered in the negative and in paragraph 47 and 68, it was held as under:

“47. The upshot of the above discussion is that the basis of Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] now stands removed through Amendment Act 27 of 2013. In fact, when Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] was decided, Sections 6(1) and 7(1) enabled only three categories of persons to approach the Waqf Tribunal for relief. They are, (i) the Board; (ii) the mutawalli of the waqf; or (iii) any person interested therein. However, the Explanation under Section 6(1) clarified that the expression “any person interested therein” shall include every person, who, though not interested in the waqf, is interested in the property. But by Act 27 of 2013 the words, “any person interested” were substituted by the words, “any person aggrieved”, meaning thereby that even a non-Muslim is entitled to invoke the jurisdiction of the Tribunal. Due to the substitution of the words “any person aggrieved”, Act 27 of 2013 has deleted the Explanation under 6(1). This amendment has also addressed the concern expressed in Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] (in para 21 of the SCC report) whether a non-Muslim could be put to jeopardy by the bar of jurisdiction, merely because the property is included in the list of waqfs. We must point out at this stage that the Explanation under sub-section (1) of Section 6, as it stood at the time when Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726 : (2010) 3

SCC (Civ) 553] was decided, already took care of this contingency, but was omitted to be brought to the notice of this Court.

68. The dichotomy created in some decisions of this Court, between the properties which are admitted to be waqf properties and properties which are disputed to be so, is on account of the misapplication of the two limited questions in Sections 6(1) and 7(1) to the whole of the Act including Section 83. At the cost of repetition we should point out that Section 83(1) provides for the determination of any dispute, question or any other matter, (i) relating to a waqf and (ii) relating to a waqf property. This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and 7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property.

26. The decision in Rashid Wali Beg (supra) was considered by the Supreme Court in State of Andhra Pradesh (Now State of Telangana vs. Andhra Pradesh State Waqf Board [2022 SCC OnLine SC 159]. The relevant extract of paragraph 105 reads as under:

“105. In Rashid Wali Beg, this Court examined all the previous judgments on the question as to whether any property is a waqf property or not is triable exclusively by the Waqf Tribunal but the judgments discussed therein pertained to the invocation of the jurisdiction of the Civil Court or of the Waqf Tribunal. None of the judgments dealt with the invocation of the jurisdiction of the writ court. Board of Waqf, West Bengal vs. Anis Fatma Begum ((2010) 14 SCC 588) is again not a judgment arising out of a writ petition filed before the High Court. It was a case of a suit filed before the Civil Court, though in para 7, there is an observation that all matters pertaining to waqf should be filed in the first instance before the Tribunal and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution. The

observation made by this Court in respect of invocation of the jurisdiction of the writ court is clearly obiter as that was not the question arising for consideration.”

Thus, it is evident that the decision of Supreme Court in Rashid Wali Beg (supra) does not deal with the invocation of jurisdiction of a writ court.

27. However, the alternative remedy has been held by Supreme Court not to operate as a bar in at least three contingencies, namely (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged (see Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Harbanslal Sahnia vs. Indian Oil Corporation). The Supreme Court in Radha Krishan Industries vs. State of Himachal Pradesh [(2021) 6 SCC 770], while dealing with exercise of jurisdiction under Article 226 of the Constitution, when an alternative remedy is available to a party, held as under:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

The aforesaid view was reiterated with approval in Maharashtra State Board of Waqfs (supra).”

10. In the present case, the notification issued by the Waqf Board is on 15.02.1990, much after the petitioners vendors were registered as occupants by proceedings of the Sub-Collector, Bhongir, No.G/2439/87, dated 22.07.1987. Once the vendors of petitioners have been registered as occupants by proceedings of appropriate authority, the title of the subject lands vests with the petitioners vendors.

A notification issued by the Waqf Board cannot nullify the proceedings issued by the Sub-Collector. In the facts and circumstances of this case, we do not find any merit in the contention of the learned counsel for the respondents that the petitioners should avail the alternative remedy of approaching the Waqf Tribunal.

11. We may now examine whether writ petition suffers from delay and laches. It is evident that petitioners purchased the subject lands in the year 2007 vide registered sale deed dated 13.02.2007 and in the month of August, 2008, the petitioners approached the Sub-Registrar with an intention to sell a portion of the subject lands and the Sub-Registrar refused to register the sale deed on the ground that the subject lands were waqf property. The petitioners made representations to the revenue authorities and also to the Waqf authorities seeking redressal of the grievance. Reply was received from the Tahsildar, Ramannapet, to the representations vide proceedings No.E/1029/2009, dated

28.05.2009. The petitioners filed the writ petition in the month of September, 2009. Therefore, in the facts and circumstances of the case, we hold that the writ petition does not suffer from delay and laches disentitling the petitioners to invoke the jurisdiction under Article 226 of the Constitution of India.

12. It is pertinent to note that in the counter affidavit filed by the Chief Executive Officer of the Waqf Board, except stating that the lands purchased by the petitioners fall under the limits of waqf property under Dargah Hazarath Syed Yaseen Shah Saheeb Rh situated at Iskilla Village, Ramanapet, no material is placed on record. The Gazette Notification was published under Section 5 of the Act, 1954 in the month of February, 1990 and the same can be challenged within one year from the date of its publication. No averment is forthcoming in the counter affidavit as to the dates or particulars with regard to the notices issued to the petitioners vendors before notification as required under the

Act, 1954. It is also pertinent to note that no record whatsoever has been placed before this Court to arrive at a conclusion/finding that the said extents of lands in various survey numbers were waqf property. Neither a copy of register of the waqfs (as required to be maintained under Section 37 of the Act, 1954) has been placed before this Court nor a copy of the survey report of the authorities (as required under Section 4 of the Act, 1954) has been placed.

13. It is not even averred in the counter affidavit about the details of the enquiry conducted, the date(s) on which the survey was conducted and the details as to the number of witnesses summoned and examined, the nature of documents examined, if any produced, nor requisitioning of any public record from any Court or office nor issuing of summons for examination of any witness or accounts, carrying out any local inspection or local investigation, nor any such other steps initiated during such enquiry as to whether the particular property is waqf property, as

prescribed under Section 4 of the Act, 1954. Without there being any such details forthcoming in the counter affidavit nor the record being produced, the learned Standing Counsel for the respondent – Waqf Board submitted that once a Gazette publication is issued, the property vests with the Waqf Board and any dispute is to be decided only by the Waqf Tribunal. We are afraid that in peculiar facts of the case such a submission cannot be accepted. The very notification issued is under a cloud as no record has been placed to dispel the contentions of the petitioners.

14. It is the bounden duty of the respondents to produce the record to validate the claim of the Waqf Board that subject lands are waqf property. By no stretch of imagination, such submissions can advance the cause of the respondent No.4 without any material being placed to atleast countenance the claim of the respondents. None of the provisions of the Act, 1954 seem to have been adhered to, for no material is placed before us to substantiate the claim that

provisions of the Act, 1954 have been adhered to before issuance of notification.

15. For the reasons stated supra, notification dated 15.02.1990 is set aside. Accordingly, the Writ Petition is allowed.

Miscellaneous applications pending, if any, shall stand closed.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

Date: 25.04.2024

KRR