

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 7530 of 2021

Between:

Mir Sajjad Ali

... Petitioner

And

Telangana State Waqf Board and another

... Respondents

JUDGMENT PRONOUNCED ON: 16.08.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 7530 of 2021**

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> Head Note:

! Counsel for the Petitioner : M/s Bharadwaj Associates

^ Standing Counsel for Respondents : Mr Abu Akram

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P. No. 7530 of 2021****ORDER:**

Heard Mr.Vedula Venkataramana, learned Senior Counsel appearing on behalf of petitioner and Mr.Abu Akram, learned Standing Counsel appearing on behalf of Respondent – Wakf Board.

2. This Writ Petition is filed praying to issue a Writ of Mandamus declaring that the action of the respondent in not executing MOU/lease in favour of the petitioner with respect to lease out the waqf property namely Hakeem Basheer Ahmed Waqf situated at H.No. 6-2-937, Main Road of Khairatabad, Opposite Shadan College, admeasuring 450 sq. yards situated at Hyderabad and failing to deliver possession of the same, after acceptance of the highest bid amount of Rs. 1,50,000/- per month and payment of Rs.54,00,000/- towards 36 months advance as security deposit, for the aggregate period of 30 years for commercial and development purpose, is arbitrary and illegal and direct the respondent to forthwith execute the MOU/lease deed in favour of the petitioner who is the highest bidder in terms of the tender notification dated 05.08.2020 and also

deliver possession of the said property to the petitioner so as to enable the petitioner to enjoy the leasehold rights effectively.

3. The case of the Petitioner in brief, is as follows:

a) The respondent - waqf board, functioning under the Waqf Act, 1995 had issued a tender notification dated 05.08.2020 calling for tenders for conducting auction to lease out the waqf property namely Hakeem Basheer Ahmed Waqf situated at 6-2-937, Main Road, Khairatabad, Opp: Shadan College, Hyderabad admeasuring 450 sq. yards for commercial and development purpose for a period of 30 years from the date of execution of MOU.

b) The tender notification was published in newspapers and in response to the same, the petitioner had participated in the same and submitted his tender at Rs. 1,50,000/- per month on rental basis and duly accepted the terms and conditions mentioned in the tender form of lease rules 2014.

c) In response to the same, the respondent, vide letter dated 17.08.2020 has called upon the petitioner to remit the amount of Rs.54,00,000/- towards 36 months advance as security deposit for the period of 30 years without interest, within 15 days from

the date of the said letter by way of demand draft drawn in favour of the Chief Executive Officer, Telangana State Waqf Board and in default the EMD amount of Rs. 10 lakhs paid by the petitioner would stand forfeited.

d) Subsequently, the petitioner had submitted the demand drafts/RTGS for a sum of Rs.54,00,000/- within the stipulated time (which includes the initial EMD amount of Rs.10,00,000/-), following which the respondent is obligated to enter into a lease deed and also deliver possession of the subject property to the petitioner. Despite payment of the highest bid amount i.e., Rs.54,00,000/-which is inclusive of the EMD amount of Rs. 10 lakhs, the respondent has not taken any steps for executing a lease deed in petitioner's favour and it has failed to deliver possession of the subject property.

e) On 20.02.2021, the petitioner has submitted a representation requesting the respondent to deliver possession, execute MOU/Lease Deed document and register lease deed. Having accepted the said amount of Rs.54,00,000/-, the respondent has failed to execute MOU/lease deed in the name of the petitioner for a period of 30 years.

f) Thus, the action of the respondent in retaining the amount and failing to deliver possession and failing to execute MOU/lease deed in petitioner's favour for a period of 30 years, is patently arbitrary and illegal. Hence this Writ Petition.

PERUSED THE RECORD.

4. Representation submitted by the petitioner dated 20.02.2021, in particular, relevant paras are extracted herein:

"I submit that there has been a Notification issued for conducting auction to lease out the Waqf Property namely Hakeem Basheer Ahmed Waqf Situated at House No.6-2-937, Main Road at Khairtabad, Opposite Shadan College, Hyderabad, admeasuring 452 Square Yards for commercial and development purpose for a period of (30) years from the date of execution of M.O.U.

I submit that as per the Reference cited above I have already made the payment for Rs.54,00,000/- towards 36 months advance as Security Deposit for a period of (30) Thirty years without interest (payment Slips enclosed for your reference)."

5. The letter dated 17.08.2020 of Chief Executive Officer vide F.No.28/Hakeem Basheer Ahmed/Dev/Hyd/18, reads as under:

"In pursuance to the reference 2nd cited, a Tender Notification issued for conducting auction to lease out the Waqf property namely Hakeem Basheer Ahmed Waqf situated at H.No.6-2-937, Main Road at Khairtabad opposite Shadan College, Hyderabad admeasuring of 452 Sq. Yds. for commercial and development purpose for a period of (30) years from the date of execution of M.O.U.

Accordingly, Tender has been conducted in the office of T.S. Wagf Board on 17-08-2020 and there are (07) bidders have been participated including Janab Mir Sajjad Ali S/o Late Mir Ameer Ali who offered highest bid i.e., for Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) per month on rental basis and also accepted all terms and conditions as mentioned guidelines in the Tender Form of Lease Rules-2014 as amended by the Central Government in their notification published on dt: 18-02-2020.

Therefore, Janab Mir Sajjad Ali S/o Late Mir Ameer Ali highest bidder is hereby directed to remit the amount of Rs.54,00,000/- (Rupees Fifty Four Lakhs only @ Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) towards 36 months advance as Security Deposit for a period of (30) years without interest, within a period of (15) working days from the date of issue of this Memo in shape of D.D. in favour of the Chief Executive Officer, Telangana State Waqf Board without fail. Further if the individual failed to remit the amount the Waqf Board is having all rights to cancel the Tender. The E.M.D. of Rs.10,00,000/- (Rs.Ten Lakhs only) deposited by the individual will be forfeited."

6. The counter affidavit filed by the respondent, in particular, paras 4, 5, 6 and 7 read as under:

(4) The law stipulates that as per the first proviso under section 56 of the Waqf Act 1995 read with Rule 17 of the Waqf Properties Lease Rules 2014, the execution of the Lease require the statutory approval of the State Government for period of (30) years, the relevant is extracted below:

56. Restriction on power to grant lease of (waqf) property - (1) [A lease for any period exceeding thirty years] of any immovable property which is [waqf] property, shall, notwithstanding anything contained in the deed or instrument of [waqf] or in any other law for the time being in force, be void and of no effect:

[Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government.

(5) Pursuant to the Telangana State Waqf Board Resolution bearing No. 922 dated 13.07.2020, the requisite exercise was under taken in accordance with law. The tender notification was issued on 5th August 2020 and the auction was conducted on 17th August 2020. Even as per the writ petitioner's averments who deposited the stipulated lease amount (partially), on receipt of the amount from the writ petitioner the answering respondent herein sought for approval from the Minorities Welfare

Department, Government State of Telangana on intimation of the process concluded by letters F.No.28/Hakeem Basheer Ahmed/Dev/Hyd/2018, dated 03.08.2020, 30.08.2020 and 12.10.2020.

(6) The State Government in turn while raising the queries on the tender process conducted by the answering respondent yet did not grant the statutory approval as sought for herein vide Govt. Memo No. 2152/ Est-1/2020-1, dated 28.09.2020 & 23.12.2020 Minorities Welfare (Estt-1)Department, Government of Telangana State for which the requisite replies were furnished as stated above. In view of the queries raised by the Government and consequential replies were submitted.

(7) The Government of Telangana State being the Competent Statutory Authority as per the first proviso under section 56 of the Waqf Act 1955, read with Rule 17 of the Waqf Properties Lease Rules 2014 the Government may not accord the sanction for approval of the lease and may cancel it also for non-following the norms and procedure as prescribed by it. In the light of above submission of facts, the question of executing MOU / Lease Deed and delivery of possession of the proposed lease Waqf property, as averred by the petitioner does not arise. The answering respondent might have to contingently refund the amount of security deposit remitted by the petitioner. The settled proposition of law position stated supra the tendering authority retains the right to revoke

the tender/auction the writ petitioner contentions are legally untenable.

7. FACTS NOT IN DISPUTE:

- (I) The respondent-waqf board functioning under the Waqf Act, 1995 had issued a tender notification dated 05.08.2020 calling for tenders for conducting auction to lease out the waqf property namely Hakeem Basheer Ahmed Waqf situated at House No.6-2-937, Main Road at Khairatabad, Opposite Shadan College, Hyderabad, admeasuring 452 square yards for commercial and development purpose for a period of (3) years from the date of execution of M.O.U.
- (II) In respect to the said tender notification, the petitioner had participated in the same and submitted petitioner's tender at Rs.1,50,000/- per month on rental basis duly accepting the terms and conditions mentioned in the tender form of lease rules, 2014.
- (III) The petitioner became the highest bidder of total number of seven (07) bidders.

- (IV) The petitioner received letter dated 17.08.2020 of the Chief Executive Officer addressed to the petitioner herein, the petitioner was declared as the highest bidder and the petitioner was directed to remit an amount of Rs.54,00,000/- @ Rs.1,50,000/- towards 36 months of advance as security deposit for a period of (30) years without interest within a period of (15) working days from the date of issue of the said memo in the shape of D.D. in favour of the Chief Executive Officer, Telangana State Waqf Board without fail.
- (V) The said letter dated 17.08.2020 also stipulates that if the petitioner failed to remit the amount the Waqf Board is having all rights to cancel the tender and also forfeit the E.M.D. of Rs.10,00,000/- deposited by the individual.
- (VI) In response to the said letter, the petitioner submitted a Demand Drafts/RTGS for a sum of Rs.54,00,000/- within the stipulated time which includes the initial EMD amount of Rs.10,00,000/- as well. However, the respondent did not take any steps for executing a lease deed in favour of the

petitioner and failed to deliver possession of the subject property.

- (VII) The petitioner submitted representations dated 20.02.2021 and 31.08.2020 to deliver possession and execute a registered lease deed for a period of (30) years for commercial and development purpose of the subject property i.e., 452 square years situated at House No.6-2-937, Main Road, Khairatabad, Opposite Shadan College, Hyderabad and requested the respondent – waqf board to execute MOU/Lease Deed document and deliver possession of the property. But however, the petitioner has not received any reply to the said representation of the petitioner dated 20.02.2021.

DISCUSSION AND CONCLUSION:

8. A bare perusal of the material documents filed by the petitioner in support of the present writ petition clearly indicates that the representation dated 31.08.2020 of the petitioner addressed to the 1st respondent herein clearly referred to the proceedings of the 1st respondent dated 17.08.2020 vide F.No.28/Hakeem Basheer Ahmed/Dev/Hyd/18 calling upon the petitioner to remit the amount of Rs.54,00,000/- towards (36)

months advance as security deposit for a period of 30 years without interest i.e., @ Rs.1,50,000/- within a period of 15 working days from the date of issue of the said Memo dated 17.08.2020 in shape of D.D. in favour of the Chief Executive Officer, Telangana State Waqf Board without fail. Further, the petitioner in response to the said proceedings dated 17.08.2020 had paid the refundable security deposited amount favouring Chief Executive Officer, Telangana State Waqf Board, Hyderabad for Rs.54,00,000/- specifying the details of the said amounts as under:

- (i) Rs.10,00,000/- (Rupees Ten Lakhs only) through D.D.No.417196, Dated: 14.08.2020, Drawn on Axis Bank Ltd., Nampally Branch, Hyderabad.
- (ii) Rs.34,00,000/- (Rupees Thirty Four Lakhs only) through RTGS No.SBINR52020082600103631, Dated 26.08.2020.
- (iii) Rs.10,00,000/- (Rupees Ten Lakhs only) through RTGS No. SBINR52020083100131977, Dated 31.08.2020.

9. The petitioner further requested the 1st respondent herein to execute the MOU and to deliver the possession of the Waqf property namely Hakeem Basheer Ahmed situated at Khairatabad, Hyderabad. The petitioner had in fact responded to the said Memo dated 17.08.2020 promptly which also clearly

stipulated that if the petitioner failed to remit the amount within a period of 15 working days from the date of issuance of the memo in shape of D.D., in favour of Chief Executive Officer, Telangana State Waqf Board, without fail the Waqf Board had the rights to cancel the tender and also to forfeit the EMD amount of Rs.10,00,000/- deposited by the petitioner. It is the specific case of the petitioner that since August, 2020 however, the petitioner's amount to a tune of Rs.54,00,000/- had been in the custody of the 1st respondent herein. But however, neither the MOU was executed nor the possession delivered to the petitioner with respect to the said waqf property.

10. A bare perusal of the counter affidavit filed by the respondent clearly indicates acceptance of all the facts as averred by the petitioner in the affidavit filed in support of the present writ petition. The fact of the petitioner being a highest bidder and the fact of the letter dated 17.08.2020 issued to the petitioner and also the fact of the petitioner having deposited Rs.54,00,000/- as per the letter dated 17.08.2020. But however respondent No.1 takes the plea that certain queries had been submitted by the 1st respondent to the Government. But however, in view of the fact that the statutory approval had not been

received as on date therefore, the 1st respondent is helpless in the matter.

11. A bare perusal of contents of para 7 of the counter affidavit further indicate curiously the plea of the respondent board that Government may not accord the sanction for approval of the lease and may cancel it also and further that the question of executing MOU/Lease deed and delivery of possession of the proposed lease waqf property does not arise and the 1st respondent might have to contingently refund the amount of security deposit remitted by the petitioner in view of the fact that the tendering authority retains the right to revoke the tender/auction.

12. This Court opines that there is no difficulty in understanding the settled proposition of law that the tendering authority retains the right to revoke the tender/auction, however, this Court is of the firm opinion that the said plea cannot be taken at this length of time in the year 2023 August, after having called upon the petitioner to remit an amount of Rs.54,00,000/- within 15 days from the date of receipt of Memo dated 17.08.2020, with a clear stipulation that if the petitioner failed to remit

the said amount to the waqf board within the period of 15 working days from the date of issue of the said Memo dated 17.08.2020 the waqf board had all the rights to cancel the tender and forfeit the amount of Rs.10,00,000/- deposited by the petitioner towards EMD.

13. A bare perusal of the material documents dated 28.09.2020 vide Memo No.2152/ESTT.I/2020-1 of the Secretary to Government addressed to the 1st respondent herein calling upon the 1st respondent to furnish certain information and the 1st respondent in response to the said Memo dated 29.09.2020 had in fact submitted a detailed clarification as sought for to the 2nd respondent i.e., the Secretary, Minority Welfare Department, this Court opines that as borne on record the clarification as sought for by the Secretary to Government, Minority Welfare Department, Government of Telangana, vide its letter dated 28.09.2020 vide Memo No.2152/ESTT.I/2020-1 had been furnished by the 1st respondent to the 2nd respondent authority way back on 12.10.2020 itself. However, no steps had been initiated in delivering the possession of the subject property and executing lease deed in respect of the subject property namely Hakeem Basheer Ahmed situated at Khairatabad, Hyderabad for a period of 30 years. The record also evidences the fact that the

petitioner's representation dated 20.02.2021 seeking delivery of possession of the subject property namely Hakeem Basheer Ahmed situated at Khairatabad, Hyderabad, for a period of 30 years and for execution of lease deed in respect of the said subject property had been acknowledged by the 1st respondent on 20.02.2021 itself, however, 1st respondent had not responded till as on date.

14. A bare perusal of the material document dated 12.10.2020 of the Chief Executive Officer, Telangana State Waqf Board, Hyderabad addressed to the Secretary to Government, Minority Welfare Department, BRK Bhavan, 3rd Floor, Hyderabad, Telangana State, clearly indicates the fact that the clarifications as sought for by the Government were communicated by the 1st respondent herein way back on 12.10.2020 and in turn approval of the Government was sought for leasing out the subject waqf property for 30 years, and though the said proceedings dated 12.10.2020 had been acknowledged in October, 2020 itself as per the seal evident on the said proceedings dated 12.10.2020, no action as on date has been initiated for sanction of the approval. This Court opines that the said action is totally arbitrary and uncalled for.

15. A bare perusal of the counter affidavit Paras 5, 6 and 7 also indicate the facts as contended by the petitioner in support of petitioner's case of having not been disputed, but however, a strange plea at para 7 of the counter affidavit is taken contending that the answering respondent might have to contingently return the security deposit remitted by the petitioner since the Government of Telangana State being the competent statutory authority as per the first proviso under Section 56 of the Waqf Act, 1955 may not accord the sanction for approval of the lease and may cancel it. This Court opines that the power vested in the State Government cannot be exercised arbitrarily, irrationally and at this length of time after the petitioner having deposited Rs.54,00,000/- way back in August, 2020 in response to the proceedings of the 1st respondent dated 17.08.2020 calling upon the petitioner to remit the amount of Rs.54,00,000/- towards 36 months advance with the 1st respondent Board and more so when the clarification as sought for by the 2nd respondent was furnished by the 1st respondent way back on 12.10.2020 itself.

16. Taking into consideration of the above referred facts and circumstances of the case and further considering the petitioner's representation dated 20.02.2021 addressed to

the 1st respondent herein seeking delivery of possession of the subject waqf property namely Hakeem Basheer Ahmed Waqf situated at House No.6-2-937, Main Road at Khairatabad, Opposite Shadan College, Hyderabad, admeasuring 452 square yards for commercial and development purpose for a period of (3) years from the date of execution of M.O.U., duly executing the lease deed with respect to the subject property in favour of the petitioner by the 1st respondent herein having been acknowledged by the 1st respondent on 20.02.2021 itself, the Writ Petition is disposed of directing the 2nd respondent to take a decision in pursuance to the letter dated 12.10.2020 of the 1st respondent addressed to the 2nd respondent and further initiate the required steps for obtaining the approval of the Government of Telangana State as stipulated under the first proviso under Section 56 of the Waqf Act, 1995 within a period of two (02) weeks from the date of receipt of a copy of the order and further execute MoU/lease deed in favour of the petitioner with respect to lease of the waqf property namely Hakeem Basheer Ahmed Waqf situated at H.No.6-2-937, Main Road of Khairatabad, Opp. Shadana College admeasuring 450

sq. yards situated at Hyderabad duly delivering possession of the same to the petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

MRS.JUSTICE SUREPALLI NANDA

Date: 16.08.2023

Note: L.R. copy to be marked.
(B/o) *Yvkr*