

Telangana High Court

G.Mecheal vs The State Of Telangana And 6 Others on 24 March, 2023

Bench: Ujjal Bhuyan, N.Tukaramji

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

Writ Appeal No.156 of 2023

ORDER: (Per the Hon'ble the Chief Justice Ujjal Bhuyan)

Heard Mr.V.R.Avula, learned senior counsel for the
appellant; Mr.Pasham Krishna Reddy, learned Government
Pleader for Revenue appearing on behalf of first respondent;

Mr.P.Ram Prasad, learned Government Pleader for Social Welfare appearing on behalf of respondent Nos.3 and 5; Mr.Agar Akram, learned Standing Counsel for Telangana State Wakf Board appearing on behalf fourth respondent; and Mr.Y.Yadava Reddy, learned Standing Counsel for Telangana State Education and Welfare Infrastructure Development Corporation appearing on behalf of sixth respondent.

2. This appeal is directed against the order dated 24.11.2022 passed by the learned Single Judge dismissing writ petition No.1074 of 2018 filed by the appellant and another.

3. Appellants had filed the related writ petition seeking the following relief:

"to issue any writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent No.3 in issuing wrong and misleading G.O.Rt.No.270 dated 22.11.2017 sanctioning the amounts Rs.20 Crores for 6000 sq.yds of land constructing proposed high school, junior college, and women empowerment centre with total built up area 96.840 sq.ft in the Wakf Institution situated at Riasathnagar, near old santosh nagar police station Opposite to Owaisi Hospital, Hyderabad encircling the petitioners land admeasuring 3240 sq.yds as illegal, arbitrary, in violation of principles of natural justice and in violation of Articles 14, 21 and 300-A of the Constitution of India and consequently direct the respondents by setting aside G.O.Rt.No.270 dated 22.11.2017 not to make any construction in the petitioners' land admeasuring 3,240 sq.yds situated at Riasathnagar, near old santosh nagar police station Opp to Owaisi Hospital, Hyderabad."

4. Learned Single Judge after hearing learned counsel for the parties came to the conclusion that it was purely a private dispute between appellant and the Wakf Board. Therefore, learned Single Judge relegated the parties to the forum of competent civil Court. Learned Single Judge held as follows:

"9. Having regard to the rival contentions and the material on record, this Court finds that the petitioners as well as the Wakf Board are claiming the subject land to be belonging to them. The petitioners are relying upon an unregistered agreement of sale and ULC proceedings, while the Wakf Board is relying upon a Khasra Pahani of the relevant survey number to claim it to be their land. Therefore, it is clearly a question of fact which can only be decided by a civil Court after examining the evidence and also the relevant parties.

10. The Hon'ble Supreme Court in the case of Joshi Technologies International Inc. Vs. Union of India and others (1 supra) has held that if the rights are purely of private character, no mandamus can be issued and even if the respondent is part of "State", the other condition which has to be satisfied for issuance of a writ of mandamus is the public duty and in a matter of private character or purely contractual field, no such public duty element is involved and thus, mandamus will not lie.

11. A Division Bench of the erstwhile Andhra Pradesh High Court in the case of Union of India and others Vs. S.M. Hussain Rasheed and others 4 has held that where there is a dispute as to whether a particular property vests or not, in the State or in any private individual, the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit and not in a proceeding under Article 226 of the Constitution of India. It was further observed that the remedy under Article 226 shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged and in such a case, the Court will issue appropriate direction to the authority concerned. It was also held that the High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available.

12. In view of these judgments and particularly that the dispute is with regard to the title and possession of the subject property, this Court is of the opinion that the same cannot be adjudicated in the Writ Petition and accordingly this Writ Petition is not maintainable and the appropriate remedy available to the petitioners is a suit in civil Court.

13. The Writ Petition is accordingly dismissed. However, the petitioners are given liberty to approach the civil court or any other appropriate forum which shall consider the case of the petitioners, if they so approached, on merits without being influenced by any of the findings of this Court in this Writ Petition. No order as to costs."

5. Before us learned senior counsel Mr.V.R.Avula, submits that appellant had challenged G.O.Rt.No.270 dated 22.11.2017 whereby Government of Telangana in the Minorities Welfare (Estt-I) Department had accorded administrative sanction for an amount of Rs.20 Crores to be paid to Telangana State Wakf Board. He submits that construction is being carried out by Telangana State Wakf Board without obtaining permission. Therefore, the Government ought not to have sanctioned the said amount in favour of Telangana State Wakf Board.

6. We have carefully perused the averments made in the writ affidavit.

7. The case projected by the appellant and another in the writ affidavit was that the property claimed by the Telangana State Wakf Board is a private property and that the subject land is only 3240

sq.yds. and not 6000 sq.yds as alleged in the G.O.Rt. Without conducting any survey and without following the due process of law, the G.O.Rt was issued. Telangana State Wakf Board was dumping the construction material in such a manner that land of the appellant was being encircled.

8. We therefore find that the argument that is being advanced was not at all pleaded in the writ affidavit. In the absence of pleading, that too, after learned Single Judge had passed an order on the basis of the pleadings, decision of the learned Single Judge cannot be faulted. That apart we find that State Government had sanctioned Rs.20 Crores grant-in-aid towards construction of High School and Junior College in 6000 sq.yds in the premises of Wakf Land at Dargah Hazrat Syed Khaja Hasan Barhana Shah Saheb Qibla (Rh.) at Riyasathnagar, Hyderabad.

9. If the appellant is of the view that the aforesaid land does not belong to the Wakf Board, he is at liberty to avail his remedy as observed by the learned Single Judge.

10. We therefore, find no merit in the appeal. Writ appeal is accordingly dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

----- UJJAL BHUYAN, CJ

N.TUKARAMJI, J 24.03.2023 MRM