

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

MONDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR



PRESENT

HONOURABLE MR. CHIEF JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
AND

HONOURABLE MR. JUSTICE R RAGHUNANDAN RAO

WRIT APPEAL NO: 298 OF 2024

Writ Appeal under Clause 15 of the Letters Patent preferred against the
order dated 27.02.2024 in WP No.25493/2023 on the file of the High Court.

Between:

- 1) Dara Prakash Rao S/o.Dara Narasaiah,
Aged about 73 years,
- 2) Bandi Venkata Ramana Reddy S/o.B.Venku Reddy
Aged about 72 years,
- 3) Syed Firoz W/o.Mabasha
Aged about 66 years,
- 4) Thota Nagendra, S/o.T.Subbaiah,
Aged about 45 years,
- 5) Sk.Badulla, S/o.Shaik Ameer,
Aged about 35 years,
- 6) Karra Yanadamma W/o.Narasaiah,
Aged about 67 years
- 7) Sk. Rahamatulla, S/o.Sk.Dastagiri Saheb,
Aged about 75 years,
- 8) Govindu Hazarataiah, S/o.Narayana,
Aged about 60 years,
- 9) Syed Hussain Bi, W/o. Dastagiri,
Aged about 77 years,
- 10) Sk. Firoz, W/o. Riyaz (late),
Aged about 45 years,

All are residents of Damaramadugu village,
Buchireddy palem Mandal,
SPSR Nellore District.

And

...Appellants/
Writ Petitioners

1. State of Andhra Pradesh
Minority Welfare Department
Secretariat, Velagapudi, Amaravathi,
Guntur District.
Rep. by its Principal Secretary.
2. The Andhra Pradesh Wakf board
Rep. by Chief Executive Officer,
5th floor, Imdadghar, Opp. Kaleswara Rao market,
Vijayawada, Krishna District.
3. The Inspector, Auditor Wakf Board
Collectorate Office,
SPSR Nellore District.
4. Mohiddinia Masjid Trust Committee,
Damalamadugu,
Buchireddypalem Mandal,
SPSR Nellore District,
Rep. by its President.
5. Shaik Kaleel S/o. Shaik Salam,
Aged about 37 years, Occ: Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
6. Sayyed Abdul Khayum S/o. Kadhar Basha,
Aged about 38 years, Occ: Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
7. Chinta Venkateswarlu S/o. Chinnaiah,
Aged about 54 years, Occ: Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
8. Shaik Riyaz S/o. Jamal Saheb,
Aged about 37 years, Occ: Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.

9. Duvvuru Venkateswarlu S/o. Aadi Sashaiah,
Aged about 45 years, occ: Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
10. Varadhi Mahesh S/o. Venkata Ramanaih,
Aged about 57 years, Occ: Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
11. Musali Satyanarayana S/o. Jaya Ramaiah,
Aged about 51 years, Occ: Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
12. Shaik Masthan Saheb S/o. Shaik Subahan,
Aged about 75 years, Occ; Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
13. Musali Sreehari Babu S/o. Jaya Ramaiah,
Aged about 35 years, Occ: Farmer,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
14. Sk. Khaleel S/o.Kalesha,
Aged about 42 years,
R/o. Damaramadugu village, Buchireddy palem Mandal,
SPSR Nellore District.
15. Dara Mahesh S/o.D.Nagaiah,
Aged about 39 years,
16. Yeluru Venkaiah S/o.Y.Sankaraih
Aged about 71 years,
17. I.V.Narayana S/o.Venkateswarlu
Aged about 32 years,
18. Bandi Venu Reddy S/o.Venku Reddy
Aged about 57 years,
19. Bandi Ramachandraiah S/o.Venku Reddy,
Aged about 60 years,

...Respondents/
Respondents

20. Eluru Srinivasulu, S/o.Sankaraiah,
Aged about 63 years,

21. Sk. Allabakshu, S/o. Amanulla,
Aged about 39 years,

22. Pati Padmamma, W/o. Subbaramayya,
Aged about 63 years,

...Respondents/
Writ petitioners 4, 5, 7, 9, 10, 11, 14, 15, 17.
(not necessary parties) 16/3

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings pursuant to the auction notice in F.No.59/Lease/NLR/2020, dt.21.09.2023 including granting of leases and handing over possession of the lands to the respondents No.5 to 13 by suspending the orders in W.P.No.25493 of 2023 dated 27.02.2024.

**Counsel for the Appellant(s): SRI O. MANOHAR REDDY, SR. COUNSEL
REP ON BEHALF OF SRI. C SUBODH**

Counsel for the Respondent No.1: GP FOR SOCIAL WELFARE

**Counsel for the Respondent No.2: SRI MD. GAYASUDDIN, SC for WAQF
BOARD**

Counsel for the Respondent No.3: SRI SHAIK RAFI

Counsel for the Respondent No.4: SRI S.M. SUBHANI

Counsel for the Respondents 5 to 13: SRI G SURYAM

Counsel for the Respondents 14 to 22: --

The Court made the following: ORDER

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI
HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO
WRIT APPEAL No.298 of 2024

Between:

Dara Prakash Rao,
S/o. Dara Narasaiah, aged about 73 years,
R/o.Damaramadugu Village,
Buchireddy Palem Mandal,
SPSR Nellore District & 9 others.

...Appellants

Versus

The State of Andhra Pradesh
Minority Welfare Department
Secretariat, Velagapudi, Amaravathi,
Guntur District.
Rep. by its Principal Secretary & 21 others.

...Respondents

Counsel for the Appellants :Sri O. Manohar Reddy, the
learned Senior Counsel
represented on behalf of Sri C.
Subodh.

Counsel for respondent No.1 : G.P for Social Welfare
Counsel for Respondent No.2 : Sri Mohammad Gayasuddin
Counsel for Respondent No.3 :Sri Shaik Rafi
Counsel for Respondent No.4 : Sri S.M. Subhani
Counsel for Respondent Nos.5 to 13: Sri G. Suryam

JUDGMENT

Dt.: 01.04.2024

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

Heard Sri O. Manohar Reddy, learned Senior Counsel represented on behalf of Sri C. Subodh, learned counsel for appellants, the learned Government Pleader for Social Welfare, appearing for respondent No.1, Sri Mohammed Gayasuddein, learned counsel appearing for respondent No.2, Sri Shaik Rafi, learned counsel appearing for respondent No.3, Sri S.M. Subhani, learned counsel appearing for respondent No.4 and Sri Gannavarapu Suryam, learned counsel appearing for respondents 5 to 13.

2. It is the case of the appellants that they are tenants of land admeasuring Ac.32.20 cents in different survey numbers of Damaramadugu Village, Buchireddypalem Mandal, SPSR Nellore District belonging to Mohiddinia Masjid, Damaramadugu Village. It is contended that the ancestors of the petitioners and subsequently the petitioners have been cultivating these lands from the year 1970 onwards and have been paying rent to the Managing Committee of the said Masjid.

3. The District Wakf Officer proposed to conduct an auction of the leasehold rights of these lands through a notification dated 11.08.2021 and the same came to be challenged by the petitioners, in a writ petition. This writ petition was allowed vide

order dated 10.05.2023, after which a subsequent auction notice was again issued on 21.09.2023, proposing to conduct an auction on 28.09.2023, for the leasehold rights of the aforesaid lands.

4. This auction was again challenged, by way of W.P.No.25493 of 2023. The grounds on which the auction proceedings have been challenged are: under Section 32(2)(j) of the Wakf Act, only the Wakf Board is competent to sanction the lease of any immovable property of a Wakf; the present proposal to auction leasehold rights is by way of impugned auction notification, issued by the 4th respondent-Managing Committee which is incompetent to issue such a notification; the proceedings under which the 4th respondent sought to conduct the auction of leasehold rights is by way of a proceeding under Section 27 of the Wakf Act, issued by the Administrative Officer of the Wakf Board; such authorization, amounting to delegation of powers of the Board under Section 27 of the Act is impermissible as the Wakf Board can delegate its power only to Chair Person or any other member of the Wakf Board or the Chief Executive Officer and such delegation cannot be made to a committee; the Wakf lease Rules permit lease of lesser than one year to be given by Muthavalli or the Wakf Board whereas the lease was sought to be granted by the committee appointed by the Wakf Board and the same is not permissible; and

the notification was issued in the name of Secretary Masjid Managing Committee whereas the Managing Committee, appointed by the Wakf Board does not have any person designated as Secretary of the Masjid Committee and such notification would have to fail.

5. The learned Single Judge after hearing both sides had held that the Administrator of the Wakf Board, in the absence of any existing Wakf Board, would be entitled to authorize the auction of the leasehold rights of a Wakf institution and had dismissed the Writ Petition.

6. Aggrieved by the same, the appellants have moved this Court, by way of the present Writ Appeal.

7. Sri O. Manohar Reddy, the learned Senior Counsel appearing for Sri C. Subodh, learned counsel for the appellants would contend that the Wakf Board had ceased to exist and the Special Officer appointed for managing the affairs of the Wakf Board had also been removed by virtue of an order of this Court dated 21.08.2023 in W.P.Nos.9030 and 13875 of 2023. He would submit that the Administrator appointed under this order would not stand in the place of the Wakf Board and as such, cannot grant necessary approvals or permissions required under the Wakf Act, for auction of the leasehold rights of the immovable property of a Wakf

Institution. He would further submit that, assuming without admitting that such an Administrator has the authority to exercise the powers and functions of the Wakf Boards, the Managing Committee of the 4th respondent Institution cannot grant lease of the Wakf lands as such lease can be granted only by a Muthavalli or the Wakf Board; the Wakf Board is required to give previous sanction for the grant of any lease, under Section 52 of the Wakf Act and no such previous sanction has already been given for grant of lease hold rights in the present case. Due to which, the Managing Committee of the 4th respondent-Institution is incompetent to undertake any exercise of grant of lease hold rights.

8. The relevant provisions, for the purpose of this case are Sections 32(2)(j) and Section 56 of the Wakf Act read with Rules 4 & 5 of Wakf Properties Lease Rules, 2014. Section 32(2)(j) of the Wakf Act empowers the Wakf Board to sanction lease of any immovable property of a Wakf Institution in accordance with the provisions of the Wakf Act and the Rules made there under. Section 56 of the Act imposes restrictions on the grant of lease of Wakf property. Under this provision, leases of any immovable property of a Wakf Institution, exceeding 30 years, is void. Similarly, lease of any immovable Wakf property which is an agricultural land, for a period exceeding three years is void. Section 56(2) of the Wakf Act

permits a lease of immovable property between the periods of one year to 30 years, if such is granted with the previous sanction of the board. This provision, by implication permits the grant of lease of Wakf property, which is either agricultural or non agricultural, for a period of less than one year without the previous sanction of the board. Rules 4 & 5 of the Wakf Property Lease Rules, 2014 also direct that a Muthavalli or the Wakf Board can give on lease, Wakf property for any period less than one year. However, any lease beyond one year and not exceeding 30 years has to be given only after appropriate publicity for grant of such lease is given by publication in regional or local news papers setting out the details of the property which is sought to be leased out.

Consideration of the Court:

9. In the present case, the 4th respondent-Managing Committee has been constituted by the existing Wakf Board on 11.10.2022 and consequential proceedings dated 14.10.2022 have been issued by the Chief Executive Officer of the Wakf Board, stipulating the terms and conditions under which the Managing Committee was to carry out its duties.

10. It is the contention of the appellants that the Managing Committee-4th respondent Trust could not have conducted auction of the leasehold rights as necessary previous sanction required

under Section 56 of the Wakf Act had not been obtained by the Committee and in any event the Committee, even if such approval is given, is incompetent to undertake this exercise.

11. The appellants contend that the previous sanction, said to have been given on 14.09.2023, vide Memo F.No.59/Lease/NLR/2020 is an invalid authorization as the said authorization is being given by the Administrator of Andhra Pradesh State Wakf Board and not the Wakf Board itself. It is contended that there is no existing Wakf Board today and the Administrator appointed in the place of the Andhra Pradesh State Wakf Board cannot be equated with the Wakf Board, for the purpose of Section 56 of the Wakf Act.

12. Sri S.M. Subhani, the learned counsel appearing for 4th respondent would submit that the auction of the leasehold rights of the land in question is only for a period of 11 months and consequently permission or previous sanction of the Wakf Board is not required as such sanction is required only when the lease is given for a period of exceeding one year. Apart from this, he would also submit that a Special Officer had been appointed in exercise of powers under Section 99 of the Wakf Act, 1995 in the place of the defunct Wakf Board. This appointment was challenged in W.P.No.9030 and 13875 of 2023. A learned Single Judge of this

Court had upheld the said challenge and had set aside the appointment of the Special Officer. However, the learned Single Judge of this Court had in the very same order, appointed the Principal Secretary, Government of Andhra Pradesh, Department of Minority Welfare as the Administrator of the Wakf Board to manage day to day affairs of the Board, till the Wakf Board is constituted. He would submit that in such circumstances, the Administrator appointed by the learned Single Judge, would be empowered to grant necessary sanction for grant of lease.

13. The lease in question is for a period of less than one year. In such circumstances, the requirement of previous sanction from the Wakf Board under Section 56 does not arise. Rule 4 of the Wakf Lease Rules, stipulate that even a Muthavalli is entitled to grant leases of less than one year. Section 3(i) of the Wakf Act defines Muthavalli to include any Person, Committee, or Corporation for the time being Managing or administrating any Wakf property. As the Managing Committee of the 4th respondent has been appointed by the Wakf Board for such purpose, the said Managing Committee would be deemed to be the Muthavalli of the 4th respondent and would be entitled to grant leases below one year.

14. Sri O. Manohar Reddy, the learned Senior Counsel had also pointed out that the Managing Committee of the 4th

respondent-Wakf Institution had been appointed with the clear restriction that the Managing Committee should not grant any lease without previous permission of the Wakf Board. The proceedings of 14.09.2023, which have been impugned in the Writ Petition, record that the Administrator of the Wakf Board had passed orders authorizing the Managing Committee to go for fresh auction for a period of 11 months. This authorization is, in principle, a sanction to the managing Committee to give a lease of less than one year to the successful auction bidder. It would only be hairsplitting to contend that the authorization cannot be equated to sanction. The grant of authorization is itself a recognition by the Administrator of the Wakf Board that the Managing Committee intends to lease out the agricultural lands of the 4th respondent-Masjid for a period of 11 months and grant of authorization would have to be treated as previous permission given to the managing Committee to grant lease of the property for 11 months.

15. For all the aforesaid reasons, we do not find any reason to interfere with the directions of the learned Single Judge.

16. Accordingly, the Writ Appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

SD/- V DIWAKAR
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. One CC to SRI C SUBODH Advocate [OPUC]
2. One CC to SRI SHAIK RAFI Advocate [OPUC]
3. One CC to SRI S.M. SUBHANI Advocate [OPUC]
4. One CC to SRI G SURYAM Advocate [OPUC]
5. Two CCs to GP for SOCIAL WELFARE, High Court of Andhra Pradesh.
[OUT]
6. One CC to SRI SHAIK KARIMULLAH, SC for WAQF BOARD [OPUC]
7. Three CD Copies

Madhu

MBT

A.D. Fauzi

HIGH COURT

DATED: 01/04/2024

ORDER

WA.No.298 of 2024



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**DISMISSING THE WA
WITHOUT COSTS**