

HE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.5779 of 1997

Date: 18.12.2007

Between:

K.Mohan Lal and others.

....Petitioners

And

The District Collector and others.

....Respondents

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.5779 of 1997

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ORDER:

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The petitioners are the sons of one late K.Makkaji. It is stated that Makkaji purchased an extent of Ac.10.24 guntas of land in Survey Nos.3, 4 and 5 of Sultan Bagh Village, under two different sale deeds from the original owner by name Smt Kaneez Ummatul Jabbar Fatima, in the years 1961 and 1965. One Syed Bahadur Shah filed O.S.No.412 of 1974 in the Court of II Additional Judge, City Civil Court, Hyderabad, pleading that the land in Survey No.4 belongs to him. On coming to know about the suit, Makkaji got himself impleaded and ultimately, the suit was dismissed. C.C.C.A.No.72 of 1977 filed against the same in this Court was also dismissed.

Subsequently, Syed Bahadur Shah is said to have filed O.S.No.446 of 1986 in the Court of V Additional Judge, City Civil Court, Hyderabad, for the relief for declaration of title and recovery of possession of the land in Survey No.4, corresponding to new Survey Nos.7 and 8, without impleading Makkaji. On the basis of an *ex parte* decree obtained therein, Bahadur Shah took steps to get the delivery of possession of the land and filed E.P.No.59

of 1990.

The father of the petitioners filed E.A.No.146 of 1990 pleading that he is the owner and possessor of the suit schedule property and made reference to the earlier litigation. Thereafter, Makkaji died. The petitioners are said to have come on record as legal representatives. The grievance of the petitioners is that even while their claim in E.A.No.146 of 1990 is pending, the respondents herein tried to fence an extent of Ac.2.25 guntas of land in Survey No.5 corresponding to T.S.No.30, Block "G", Sultan Bagh. They claim prohibitory relief against the respondents.

On behalf of the respondents, a counter affidavit is filed, narrating the various proceedings that ensued in respect of the land. It is ultimately pleaded that being the custodians of the Government land, including the Endowments and Wakf properties, they have got every right to inspect and take preventive measures to safeguard the same from illegal encroachments. It is also stated that according to the TSLR, the property belongs to a Wakf.

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue.

It has already been pointed out that the father of the petitioners purchased the land and a suit filed by Syed

Bahadur Shah against him was dismissed. Bahadur Shah filed another suit without impleading the father of the petitioners and obtained an *ex parte* decree. When he sought to execute the *ex parte* decree, E.A.No.146 of 1990 was filed; and it is now stated that the claim of the petitioners was upheld by the executing Court.

The only basis pleaded by the respondents in support of their attempted action is to protect the Wakf property. In O.S.No.412 of 1974, the Court of II Additional Judge, City Civil Court held that the land does not belong to Wakf or to the plaintiff therein. The claim of the father of the petitioners was upheld. The execution of an *ex parte* decree obtained in O.S.No.446 of 1986 was also virtually nullified, with the order passed by the Court of V Additional Judge, City Civil Court, Hyderabad, in E.A.No.146 of 1990 in E.P.No.59 of 1990. It is represented that the order passed in the E.A. was also confirmed by this Court.

Basically, it is for the Wakf Board to take necessary steps to protect its properties. Wide range of powers are conferred upon it under Sections 53 and 54 of the Wakf Act. Whatever be the justification for the Government to take steps to protect the properties that belong to Wakf and Endowments, *de hors* the conferment of powers under Sections 53 and 54 of the Wakf Act on the Wakf Board, there cannot be any justification to encroach into the rights of the petitioners, once the Civil Courts have affirmed that the land does not belong to Wakf.

Hence, the Writ Petition is allowed and the respondents are restrained from interfering with the rights of the petitioners over the land in Survey No.5, Sultan Bagh Village, Hyderabad. There shall be no order as to costs.

18.12.2007

JSU