A TAMIL NADU WAKF BOARD

v.

HATHIJA AMMAL (DEAD) BY LRS. ETC. ETC.

AUGUST 31, 2001

B [S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Wakf Act, 1954 :

C *S. 5(2) and 27—Public Wakf—Property not included in Notification published under s.5(2)—Nor Wakf Board followed procedure laid down in s.27—Wakf Board filing suit for recovery of possession—Held, Wakf Board had no right to file such a suit—If Wakf Board has reason to believe that a particular property is a Wakf property, it can itself collect information and decide whether the property is a Wakf property or not and such decision of* D *Wakf Board shall be final unless reviewed or modified by civil court—It is only thereafter that suit for possession could have been filed by Wakf Board.*

The appellant-Wakf Board filed suits for recovery of possession of suit property on the ground that one 'KM' had dedicated under a registered deed the suit property for several charities named in the deed; that the founder E **appointed himself as Muthawalli and thereafter nominated his son and after him the head of his family to manage the properties and utilize its income only for charitable and religious purpose; that the deed also put restraint against alienation or transfer of the properties dedicated in favour of Thaikkal. The defendants contended, *inter alia,* that suit property was not covered by the notification issued by the Wakf Board under section 5(2) of the Wakf Act,** F **1954; that the suit property had been sold to the purchaser in revenue auction and as such the character of the suit property had changed. The trial court held that the suit property was a public wakf, but the notification under section 5(2) of the Act did not include the suit property and, therefore, the Wakf Board could not recover possession of the same. The appeals filed by the Wakf** G **Board were dismissed by the first appellate court and second appeals were dismissed by the High Court. Aggrieved, the Wakf Board filed the present appeals.**

Dismissing the appeals, the Court

H **HELD : 1. The High Court has rightly held that in view of the scheme**

of the Wakf Act, 1954, the Wakf Board had no right to institute a suit for declaration that any property is a wakf property. A finding of fact has been recorded by the trial court and affirmed in appeal that the suit properties are not included in the notification published under section 5(2) of the Act, and therefore, steps should have been taken as provided under section 27 of the Act. It is only thereafter that a suit for possession could have been filed by the appellant. [431-E; 432-A, B]

2. In the event any property has been omitted, by inadvertence or otherwise, then it is for the Wakf Board to take action as provided under section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any question arises whether a particular property is a wakf property or not it may, after making such enquiry as it may deem fit, decide the question and such decision of the Wakf Board shall be final unless revoked or modified by a Civil Court. Such action has not been taken by the Wakf Board in this case. [431-C, D]

Sayyed Ali and Ors. **v.** *A.P. Wakf Board, Hyderabad and Ors.*, **[1998] 2 SCC 642, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9768-9776 of 1995.

From the Judgment and Order dated 19.8.88 of the Madras High Court in S.A. Nos. 447, 448, 449, 450, 451, 1820, 1822 and 1823 of 1981.

Ms. Shobha and S.K. Mehta for the Appellant.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The appellant brought nine suits on the basis that one Kallakattu Bava Sahib Marcayar had dedicated under a registered deed the suit properties for several charities named in the deed; that the founder had constituted himself as the *Muthawalli* and thereafter appointed his son Dawood, Batch Mohideen and after him the Manager (heads) in his family to manage the properties and utilise its income only for charitable and religious purpose and not for personal benefit; that the deed also put restraint against alienation or transfer or otherwise of the properties dedicated in favour of Thaikkal by the defendants of the founder; that Batch Mohideen died in the year 1935 leaving behind two sons and three daughters, who partitioned

A the trust property among themselves; that Wakf Board, on being constituted in the year 1954, survey was made and a notification as provided under Section 5(2) of the Wakf Act, 1954 [hereinafter referred to as 'the Act'] was published in the gazette on 24.12.1958 that the suits were file by the appellant for recovery of possession of the suit property and for future *mesne* profits till delivery of possession with costs.

B

On behalf of the respondents it was contended that the Wakf Board is not the legal representative of the founder; that the charity in question is not a public wakf, a very small amount was required to be spent for charities and rest of the income was intended for benefits of the heris only; that the C notification issued under Section 5(2) of the Act is illegal and invalid; that the suit property is not covered by the notification issued under Section 5(2) of the Act; that the suit property had been sold to the purchaser in the revenue auction and, therefore, the character of the suit property had changed; that they had perfected the title by way of adverse possession; and that the suits is hopelessly barred by time.

D

By a common judgment and decree, the Trial Court held that the suit property is a public wakf and not a private wakf and the notification dated 24.12.1958 issued under Section 5(2) of the Act did not include the suit property and hence the appellant cannot recover the possession of the suit property. The First Appellate Court affirmed this common judgment and E decree. The First Appellate Court held that in the absence of proper notification under Section 5(2) of the Act that the suit properties are wakf properties, the appellant cannot succeed in the suit for recovery of possession on the ground that the suit properties have been notified as wakf properties under Section 5(2) of the Act and that notification has become final.

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The High Court dismissed the second appeal filed against the said order made by the First Appellate Court. In the High Court, a question was raised as to whether the suit properties had retained the character of public wakf properties inasmuch as the wakf was created as early as in 1879. The appellant's case itself was that the heirs of the dedicator had executed sale G deed in respect of the suit properties in favour of strangers and some properties had been brought to sale in the revenue auction and the defendants had also pleaded prescription of title by adverse possession. In this background, the High Court felt that unless procedure under the Act is not followed the right of the appellant for possession cannot be given.

H Let us now examine the provisions of the Act. Under Section 5(2) of

the Act after a property is notified to be wakf property, a determination is made by a Civil Court whenever any dispute arises after the notification is published by the Wakf Board as to whether a particular property specified as wakf property in a list published is a wakf property or not. Section 6 further provides that the Civil Court shall not entertain any such suit after the expiry of one year after the date of publication of the list by the Board. Such a suit cannot be at the instance of the Wakf Board. Again, the Board may itself collect information regarding any property as provided under Section 27 of the Act and decide whether a particular property is wakf property or not and that decision is final unless it is revoked or modified by a Civil Court.

In the event, any property has been omitted by inadvertence or otherwise, then it is for Wakf Board to take action as provided under Section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any question arises whether a particular property is a wakf property or not it may, after making such enquiry as it may deem fit decide the question and such decision of the Wakf Board shall be final unless revoked or modified by a Civil Court. Such action has not been taken by the Wakf Board in this case.

The High Court is justified in holding that the Wakf Board had no right to institute suit for declaration that any property is a wakf property as the scheme of the Act clearly indicates. The High Court further found that as far as the appellant is concerned with regard to title of any property, it must comply with the requirements of Sections 4,5 and 6 or 27 of the Act, which means that if any property is not published as wakf property as required under Section 5(2) of the Act or the Board has not invoked the special power under Section 27, the Wakf Board cannot file a suit for declaration and possession and on that basis upheld the order made by the Trial Court as affirmed by the First Appellate Court.

Ms. Shobha, learned counsel for the appellant, drew our attention to the decision of this Court in *Sayyed Ali and Ors.* v. *A.P. Wakf Board, Hyderabad and Ors.*, [1998] 2 SCC 642; to contend that wakf property can never lose its character as wakf property once it is shown that it is a permanent dedication of property and once a wakf, it will always be a wakf. The point urged in this Case is that the suit property is a wakf property and hence sought for possession. What was pointed out by the Trial Court, the First Appellate Court and the High Court concurrently is that before filing the suit as provided in law, the Wakf Board should have followed the procedure as required

A under Section 4,5 and 6 or 27 of the Act. A finding of fact has been recorded by the Trial Court, and affirmed in appeal, is that the suit properties are not included in the notification published under Section 5(2) of the Act and therefore, steps should have been taken as provided under Section 27 of the Act. It is only thereafter a suit for possession could have been filed by the appellant. There is no answer to this finding.

B

We think there is no good reason for us to interfere with the order made by the High Court. These appeals shall stand dismissed accordingly. No costs.

C R.P. Appeals dismissed.