

Markaz Constructions

Vs

Sugra Humayun Mirza Wakf and others

Special Leave Petn. (C) Nos. 2370-2371 of 1996

(CJI A. M. Ahmadi, Sujata V. Manohar, K. Venkataswami JJ)

20.08.1996

ORDER

1. These petitions are in respect of a proposed lease of Sugra Humayun Mirza Wakf property for development to the petitioner. The Mutawalli of the said Wakf sent to the Wakf Board for approval a proposal for giving on lease the said Wakf and for development to one Vallabh Leasing & Finance Private Limited. The Wakf Board, however, decided to grant a lease for development to the petitioner. This was challenged in separate writ petitions by the Mutawalli of the said Wakf and Vallabh Leasing & Finance Private Limited. The writ petitions were allowed. In separate appeals filed by the petitioners as well as the Wakf Board which were heard together, the Division Bench of the Andhra Pradesh High Court has given certain directions to the Mutawalli, asking him, inter alia, to invite fresh offers. The petitioners have filed these petitions for special leave from the judgment and order of the Division Bench.

2. Under Section 36-A of all Wakf Act, notwithstanding anything contained in the Wakf Deed, no transfer of any immovable property of the Wakf by way, inter alia, of a lease for a period exceeding one year in the case of non-agricultural land or building, shall be valid without the previous sanction of the Wakf Board. Rule 12 of the Andhra Pradesh Wakf Rules, 1974 requires that an application for sanction under Section 36-A shall be submitted by the Mutawalli to the Wakf Board and shall contain the particulars set out therein. The Board shall on receipt of the application from the Mutawalli, publish in the Andhara Pradesh Gazette and the District Gazette of the district, if any, in which the property is situate, a notice of the proposed transaction. The notice published shall contain sufficient details of the transaction and shall specify a reasonable time, not being less than 30 days from the date of the publication of the notice, within which objections, claims or suggestions may be sent. These shall be duly considered by the Board before passing orders thereon and if deemed necessary, after holding an enquiry, in which case a notice of no less 7 full days shall be given to the parties concerned. These provisions are designed to ensure that a property belonging to the Wakf is used in the best interest of the Wakf and any disposal of this property by the Mutawalli is required to be sanctioned by the Wakf Board after following the procedure under Rule 12 thus ensuring that there is a proper examination of the proposal in the light of the objections, claims or suggestions received. These have to be considered by the Board, if necessary, after holding an enquiry, Mutawalli, who is in charge of the management of the Wakf property would, in such circumstances, be a party concerned with the disposal of the Wakf property and the notice would have to be given to him by the Wakf Board under the provision of sub-rule (4) of Rule 12. We do into see why the objections, claims and suggestions which may be received by the Wakf Board should exclude any fresh offers in respect of the said property also. Rule 12 does not prevent the Wakf Board from examining such proposals received as per that Rule. The Wakf Board, however, must consider the views of the Mutawalli on such proposals. Looking to the scheme of the

provisions, the Division Bench of the Andhra Pradesh High Court has rightly come to the conclusion that in the transaction of the kind in question, where a long term lease for construction of a commercial complex on the Wakf property is proposed to be issued, the Mutawalli must be given an opportunity to express his views on the choice of a contractor and the Wakf Board cannot decide the question on its own.

3. The Division Bench has directed the Mutawalli to advertise the proposal of the petitioner and to invite fresh offers and place before the Wakf Board for sanction the offer that he may consider to be in the best interests of the Wakf. In the facts and circumstances of this case, the High Court as directed petitioner to hand over the possession of the Wakf property to the Mutawalli and has directed that the fact that the petitioner had obtained vacant possession of the property will not be considered to give an edge to the petitioner while choosing the appropriate contractor. Looking to all the circumstances, we do not consider this a matter where intervention under Article 126 is required.

4. The special leave petitions are, therefore, dismissed. In the circumstances, there will be no order as to costs. Petition dismissed.