

SUPREME COURT OF INDIA

Mohammedia Coop. Building Society Ltd.

Vs.

Lakshmi S. Coop. Building Society Ltd.

C.A.No.3329 of 2008

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

06.05.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Application of the *Wakf Act, 1954* and the Rules framed by the State of Andhra Pradesh as regards a suit for specific performance of contract is in question in this appeal which arises out of a judgment and order dated 25.1.2007 passed by a Division Bench of the High Court of Judicature at Andhra Pradesh at Hyderabad in AS No.686 of 2005, 743/05 and 125/06.

3. The property in question indisputably is a wakf property. It admeasures Ac.35.20 cents pertaining to Survey No.63 of village Bhavanipuram in the town of Vijaywada. Vijaywada is one of the biggest commercial hubs in the State of Andhra Pradesh. There exists a Dargah known as Dargah of Hazrat Galib shaheed. Inter alia, on finding that the Mutwallis appointed for the said Dargah had not been performing their duties in a proper and efficient manner, the Andhra Pradesh Wakf Board appointed respondent Nos.2 to 9 as 'Mujavars' by an order dated 27.7.1973, stating:

"According to the enquiry report first cited, it is noted that the Dargah Hazrata Ghalab Shaheed at Bhavanipuram village, Talaq, Krishna District; is a notified Wakf in the A.P. Gazette Part II dated 28.6.1962. On page 710 and 711 at Serial No.747. The total extent of land notified in the Gazette is 116 acres 11 cents. The notified Mutavallies are (1) Sri Abdul Khuddus (2) Sri Abdur Rahman and (3) Sri Abdul Hakeem. Among them the first Mutavalli was residing in Guntur. The second died and the third was seriously laid down with paralysis and not in a position to move out. None of them were performing legitimate duties under Section 36 and rendering services to the said Dargah. Therefore, it was proposed to initiate enquiry under Section 45 and to take action under Section 43 against the two living Mutavallies No.(1) and (3). As per latest report of the I.A. fifth cited it is noted that the living Mutavallies also died. Automatically, the post of fell vacant and therefore the enquiry has become

fractious. In the circumstances, in view of the Resolution of D.W.C. Krishna third cited and recommendation of the president D.W.C. Krishna sixth cited, I, the Secretary, A.P. Wakf Board in exercise of the Powers conferred on me through Resolution No.14/69 of the Wakf Board vide A.P. Gazette notification Part II dated 24.2.1972 on page 205, under Section 43(2) of Wakf Act, hereby appoint the Managing Committee for management of affairs of the said Dargah consisting of the following persons with immediate effect :-

- | | | |
|----|---------------------|-----------|
| 1. | Sri Shaik Ibrahim | President |
| 2. | Sri Gulam Ali Akbar | Secretary |
| 3. | Sri Mohd. Ibranhim | Treasurer |
| 4. | Sri Abdul Jaleel | Member |
| 5. | Sri Mahd. Haneef | Member |
| 6. | Sri Abdus Salam | Member |
| 7. | Sri Abdul Waheed | Member" |

4. First respondent is a co-operative society. On or about 2.8.1982, the respondent Nos.2 to 9 allegedly entered into an agreement for sale with the first respondent herein agreeing to transfer the said 35 acres 20 cents of land at a price of Rs.70,000/- per acre.

5. Allegedly, a sum of Rs.4, 00,000/- in cash was paid as advance, a receipt wherefor is said to have been issued.

6. It is also not in dispute that the authority, if any, on the part of the Mujavars to sell the said lands, was subject to permission granted by the Wakf Board.

7. On or about 25.2.1982, a notification was issued inviting objections within one month from the date of the said notification subject to confirmation by the Government which reads as under:

"M/s. Srinivasa Cooperative Building Society (G.No.2705) Vijayawada, have offered to purchase an extent of Acres 35.20 cents of the land bearing Sy.No.63 situated Bhavanipuram Village Vijayawada Taluk, Krishna District, belonging to Dargah of Galib Shaheed Rs.70,000/- per acre. The full particulars of the land are shown below:-

I) Nature and purpose of the Sale for the Proposed transaction construction of the houses.

II) Amount of consideration

1) a) Price in case of sale Rs.24,64,000/-

b) Rental in case of lease

III) Current Description of Properties:

1) Agriculture Lands:

a) Rs. No. 63

b) Area: Acres 35.20 cents.

c) Land Revenue Assessment Rs.226.70

d) Boundaries:

i) North : Galib Shaheed Dargah and Mujawars Houses.

ii) Area : Housing Board Colony.

iii) East : Brahmin Ashram.

iv) West: Bhawanipuram village Vijayawada Taluk

IV) Any encumbrances to which the properties relating to the proposed transaction are subject to NIL

V) This sale will be subject to the following conditions:

1) That the sale is subject to the confirmation by the Government.

2) That the sale proceeds should be invested in a Scheduled or Nationalized Bank in interest yielding deposit.

3) That the sale deed should be executed at the expenses of the purchaser or purchasee.

4) That the sale proceeds should be utilized for the 1 objects of Wakf and for rebuilding the corpus affected by the transfer.

5) That the sale proceeds shall not be utilized for raising loans. Any person having any interest in or objection to the proposed transfer of Wakf property may file his or her representation to the Secretary, Andhra Pradesh Wakf Board within one month from the date of publication of this Notification in the State/District Gazette. No representation received after the expiry of the prescribed date will be entertained."

8. Allegedly, upon publication of the said advertisement, several co-operative societies made their respective offers. The offer made by the first respondent was said to have been accepted. It was communicated to the first respondent by a letter dated 20.6.1982 purported to have been written by Shaik Syed Hussain, IAS which is in the following terms:

"After careful consideration of the subject, the Board has been pleased to grant permission to the Mujavars Association Dargah of Hazrath Galib Shaheed Bhavanipuram, Vijayawada to enter into an agreement in written to sell the land of an extent of Ac.35-20 cents in R.S. No.63 situated at Bhavanipuram, Vijayawada to the Lakshmi Srinivas Cooperative Building Society Ltd. G. No.2705 at Vijayawada at Rs.70, 000/- per acre after taking an earnest money of not less than Rs.4, 00,000/-.The building Society may be addressed to come forth to enter into a written agreement on making payment of earnest money of Rs.4,00,000/- within a month. The agreement may be got drafted with usual terms and conditions of sale of wakf property. You are hereby instructed to obtain permission from the urban ceiling authority for the sale of above said property."

9. Only thereafter, the said agreement for sale dated 2.8.1982 was executed. It was, however, contended by the appellant as also the respondent Nos.2 to 9 that the said agreement was a forged document. It was furthermore contended that the said letter dated 30.6.1982 is also a forged document. Shaik Syed Hussain, IAS Officer examined himself before the learned Trial Judge as DW-6 the denied his signatures.

10. It, however, appears that the Wakf Board purported to have resolved in a meeting held on 19.8.1982 that the offer of Rs.70,000/- was too low. It intended to secure better offer, at least to the extent of Rs.100,000/- per acre in the following terms :

"Item: F.No.9134/H1/LA/KST/81

Proposal for the acquisition position of the Dargah land in R.S. No.10 Bhavanipuram for the purpose of class I employees and Harijans of Vijaywada Corporation-Reg.Resolution No.120/82The proposal for the sale of land belonging to Dargah Hazrat Ghalib Shaheed, at Bhavanipuram, Vijaywada to Srinivasa Co-operative House Building Society, Vijayawada and Mohammadia Co-operative House Building Society, Vijaywada @ Rs.70,000/- per acre was discussed Janab Sultan Saheb, Hon'ble Member informed the Board that the offer of Rs.70,000/- per acre was too low and that he was sure of getting better offer of not less than Rs.1,00,000/- per acre.

RESOLVED to request Janab R. Sultan Saheb, Hon'ble Member of the Board to visit Vijayawada to secure better offer as promised by him and place the same in the next Board meeting for consideration in respect of Sy.No.63 and Sy.No.10 of the land belonging to Dargah Hazarath Ghalib Shaheed Rn. Vijaywada."

11. One Noor Housing Society, made an offer at Rs.1,26,000/- per acre. Some correspondences had allegedly passed between the first respondent (plaintiff) and the Wakf Board whereby and whereunder the first respondent is said to have raised its offer from Rs.70,000/- to Rs.1,00,000/- by a letter dated 16.8.1982 and then to Rs.1,26,000/- by a letter dated 23.10.1982, stating :

"Our Society has given an offer to purchase the land belonging to Dargah Hazarat Ghalib Shaheed, Bhawanipuram, Vijayawada, O.S. No.63 to the extent of 35.20 acres at the rate of Rs.1,00,000/- (Rupees one lakh only) per acre. We also assure you that while allotting the plots to the members of our Society, we will give preference to Muslims. In this connection, I would like to submit that we are hereby revising our offer that is to say that our offer and make it Rs.1,26,000/- (Rupees one lakh twenty six thousand only) per acre. And, therefore, request you to please treat our offer as Rs.1, 26,000/- (Rupees one lakh twenty six thousand) per acre.

This offer is made without prejudices to our rights. Be pleased to consider."

12. Appellant herein also said to have initially made an offer of Rs.1, 26,000/-. A bid was conducted wherein the appellant offered the highest bid of Rs.1, 28,000/-.

13. At this stage, the State of Andhra Pradesh intervened. It issued a Government Order bearing No.773 on or about 4.5.1983 which reads as under:

"In the circumstances stated by the A.P. Wakf Board in the letters read above, Government have examined the matter carefully and they hereby accord permission to A.P. Wakf Board to sell the land Ac.35-20 cents belonging to Dargah Hazrath Galib Shaheed in S.No.63 of Bhavanipuram (v), Vijayawada Taluk, Krishna District to M/s. Mohammadia Co-operative Building Society, Vijayawada at Rs.1,28,000/- (Rupees one lakh twenty eight thousand only) per acre which is the highest bidder, subject to the following condition :

(1) That the sale proceeds should be invested through the Secretary, Wakf Board in a scheduled or estimated Bank in interest yielding deposit;

(2) That the sale deed should be executed at the expense of the purchaser or purchasers.

(3) That the sale proceeds should be utilized exclusively for the subjects of said Wakf institution and also for re-building the corpus effected by the transfer."

14. A notification pursuant thereto was purported to have been issued on 26.5.1983. Allegedly, however, no advertisement was issued prior thereto and, thus, no offer was called for. Yet, a purported sanction was granted. First Respondent questioned the said Government Order No.773 dated 4.5.1983 by filing a writ petition. The said writ petition was dismissed having become infructuous.

15. The Government, however, in the mean time, purported to have accorded sanction by issuing G.O. 773 dated 4.5.1983 to sell the said land in favour of the appellant society.

16. A deed of sale was thereafter executed by the respondents 2 to 9 as also the Wakf Board in favour of the appellant society. First Respondent contended that pursuant to the said purported agreement for sale dated 2.8.1982, it had been put in possession but it was threatened to be dispossessed. It, on the said premise, filed a suit for permanent injunction which was marked as O.S. No.200 of 1983. Allegedly, it was dispossessed. It filed a suit for specific performance of the contract. The said suit was marked as suit No.449 of 1984; the prayers made wherein were:

"a) For specific performance of the suit contract of sale dated 2.8.1982 against the defendant 1 to 9 and 13 directing them all or these when the Court finds necessary and proper to execute and register sale deed or deeds in favour of the plaintiff or its nominees at their expense for the plaint schedule property in whole or in parts as they choose, or in the alternative, if the defendant 1 to 9 and 13 refuse to do so, for a direction that the Court or any officer of the Court as directed by the Court do so execute and register the sale deed or sale deeds.

b) In the alternative for recovery of possession of the plaint schedule property, if the plaintiff is found not to be in possession Added as per order in I.A.6980/91 dated 24.6.1992.

c) For a permanent injunction contesting the defendants 1 to 10 and 13 interfering with the plaint schedule property and plaintiff possession thereof;and

For costs of the suit and such other orders as are deemed jut and necessary."

17. Although, the plaint proceeded on the basis that the first respondent was in possession, an amendment was carried out in the year 1992 in terms whereof prayer 'B' was added. Both the suits were consolidated."

18. Writ petition filed by Respondent No.1 was dismissed by a learned Single Judge by an order dated 28.8.1984. A writ appeal was preferred thereagainst wherein it was held that the issues were required to be decided by the Civil Court and, thus, it was not necessary to decide the same.

19. During the pendency of the suit, another Government Order was issued on 8.3.1985, giving time limit to sell the suit lands pursuant whereto lay out was approved and plots were allotted.

20. The learned Trial Judge by a judgment and order dated 19.10.2005 decreed the said OS No.449 of 1984, stating:

"In the result, the suit is decreed with costs holding that the plaintiff is entitled for the relief of the Specific Performance sale deed, dated 2.8.1982 on its depositing the balance sale consideration of Rs.20,64,000/- within ONE MONTH from this day and on such deposit D.10 to D.12 are directed to issue the necessary orders for execution of sale deed in favour of the plaintiff required under the Wakf Act and ULC Act within 30 days after the plaintiff depositing the balance sale consideration and on receipt of such orders from the defendants 10 to 12, the defendant No.1 represented by its Mujavars and D.13 to execute regular sale deed in favour of the plaintiff within ONE MONTH thereafter and deliver possession of the plaint schedule property to plaintiff and in default the plaintiff is at liberty to get the sale deed executed through the process of the Court. The D.1 and its Mujavars with permission of D.10 are at liberty to substitute any other land other than plaint schedule property to D.13 society."

OS No.200 of 1983 was dismissed holding that the same was not maintainable as the plaintiff had already prayed for grant of relief for recovery of possession along with a decree for specific performance of the contract.

21. Three appeals were preferred before the High Court thereagainst. They have been dismissed by reason of the impugned judgment.

22. Before us, not only three separate appeals have been filed; one by the society, the second by Dargah of Hazarth Galib Shaheed and the third by the Wakf Board but also a large number of applications have been filed for intervention and impleadment on behalf of the allottees. We may place on record that at one point of time, the first respondent filed an application for impleadment of the allottees who were about four hundred in number in the suit but the same was however, not pressed. Some of the allottees have allegedly purchased the land before 24.4.1984, i.e., prior to institution of the suit. Most of the applicants, however, have purchased thereafter, namely, during the pendency of the suit. Appellant society also allotted lands in favour of Mujjavardars and/or their relatives.

23. The State of Andhra Pradesh, however, itself issued G.O. No.343 on or about 25th October, 1986 stating that there had been no advertisement and as such the requirements of law as envisaged under the Act had not been complied with on the basis of the purported complaints received by it from various quarters. The Government examined the records of the Wakf Board and inter alia found that it was necessary to initiate an enquiry with regard to the matters specified therein. It also took notice of the fact that an enquiry had been pending before the Special Officer and the Competent Authority, Urban Land Ceilings, Vijayawada as also the fact that the interim orders had been passed by the High Court in writ appeal No.3191 of 1984. It was directed:

"4. Pending further enquiries into the above irregularities noticed and the allegations, Government after careful consideration hereby order that all further proceedings in pursuance of the G.O.Ms.No.773, Revenue (Wakf) Department, at 4.5.1983 and

G.O.Ms. No.250 Revenue (UC-1) Department, dated 8.3.1985 are be and hereby stayed.

5. The Secretary, A.P.Wakf Board and the Secretary Jammāt-e-Mujavars Association of Hazrath Galib Shaheed Dargah, Vijayawada are directed to take immediate follow up action not to proceed further in pursuance of the above Government orders cited at 2nd and 3rd above, pending enquiry by the appropriate authorities into the irregularities and the allegations mentioned above, they will acknowledge the receipt of this memorandum by return of the post."

24. However, the Government by a communication dated 17.11.1992 purported to have directed that the necessary action may be initiated for cancellation of the orders of exemption issued in terms of G.O. No.250 dated 8.3.1985 stating that transactions are null and void in terms of the provisions of the *Urban Land (Ceiling and Acquisition) Act, 1976*. However, as noticed hereinbefore, admittedly, in the meantime, a deed of sale was executed on 20.4.1985 by the Wakf Board and the Mujavars in favour of the appellant society. Indisputably, the respondent No.1 herein in the said O.S. No.449 of 1984 although proceeded on the basis that it was in possession of the lands in question, a prayer for amendment was made in the year 1992 whereby and whereunder a decree for recovery of possession of the plaint schedule property was prayed for and allowed by order dated 24.6.1992.

25. The High Court in its judgment, inter alia, opined that as the fact that some of the Mujavars with their family members became members of the appellant society by itself indicates strong circumstances to hold that the majority of the Mujavars, the then Chairman of the Wakf Board and the President of the District Wakf Property have substantial interest in the plaint schedule property having been allotted plots not only for themselves but also for their family members and only for the said purpose the defendants tilted towards the appellants (defendant No.13 society). It was furthermore held that the Mujavars were parties to the agreements although they made attempts to deny or dispute the same.

"The contention that the permission granted by the Government stood cancelled upon taking into consideration GOMs No.343 staying the operation of GOMs No.773 wherein a large number of irregularities were recorded including the one that the Wakf Board did not follow the procedure laid down under Rule 12 of the Rules read with Section 36A of the Act was accepted. Deed of sale executed by the appellant society in favour of the allottees was also held to be hit by the doctrine of lis pendens. The sale transactions effected in favour of the appellant society were declared to be null and void and on the said premise, the contention that all transactions having already been completed, no further direction should be issued was furthermore rejected.

The High Court also took into consideration that exemptions had been granted in terms of Section 20 of the *Urban Land (Ceiling and Regulations) Act, 1976* to come to the conclusion:

"It is well known principle of law that the suit relief can be moulded appropriately in order to do complete and efficacious justice in appropriate cases. No doubt, as a general principle, the Courts shall not grant the relief, which was not specifically sought for. But, in peculiar and exceptional facts and circumstances, like the present case, it is justified and absolutely appropriate for the courts in order to do so substantial justice, while granting the required relief, to mould the relief appropriately, in the interest of justice."

The said appeals were dismissed on the aforementioned findings."

26. Learned counsel for the appellants in all the three appeals, inter alia, would submit:

“(i) The agreement of sale deed 2.8.1982 (Exh.A-31) was wholly illegal as Mujavars had no right, title or interest to execute the same in terms of the provisions of the Wakf Act, 1954 or otherwise.

(ii) The extended definition of 'Mujavars' as contained in Section 3(4) was not applicable in the instant case as the same had been brought into force by way of amendment in the year 1986 and, thus, they being not Mutwallis, could not have exercised the same power under the Act.

(iii) Section 36A of the Act postulates compliance of the requirements of obtaining previous sanction of the Board as regards the sale of wakf property, inter alia, on its satisfaction that:

i) It is necessary or beneficial to the wakf;

ii) The sale is consistent with the objects of the wakf; and

iii) The consideration is reasonable and adequate and the said requirements having not been complied with, the same was illegal.

(iv) Section 36A of the Act and Rule 12 of the Wakf Rules being imperative in character, no deed of sale could have been executed in violation thereof and in that view of the matter; the impugned judgment cannot be sustained.

(v) The purported letter dated 30.6.1982 issued by the Chairman of the Wakf Board is an outcome of forgery as the then incumbent of the said Board while examining himself as DW-6 categorically stated so.

(vi) The purported order dated 30.6.1982 (Exhibit A-49) is fabricated document and was not in existence on the date of the agreement of sale dated 2.8.1982, as :

(1) No reference thereto was made in the agreement for sale;

(2) The stamp papers were purchased on 2.12.1981, i.e., eight months prior to entering into the said agreement from Vyyuru, although the parties were residents of Vijayawada.

(vii) Both the courts below have committed a serious illegality insofar as they failed to take into consideration the question as regards the validity of agreement (Exh.A-13), inter alia, in the light of Section 17 of the Specific Relief Act, 1963

(viii) The courts below should have held that the agreement was executed under suspicious circumstances and in that view of the matter the relief of specific performance being a discretionary relief should not have been granted.

(ix) From various correspondences passed between the parties, it was evident that the plaintiff society also offered a bid of Rs.1,26,000/- per acre and on the said premise the courts below should have held that the first respondent was estopped and precluded from contending contra.

(x) No action having been taken pursuant to the purported notification dated 25.10.1986 as regards the irregularities in the proceedings of Wakf Board; the same could not have been formed the basis for passing the impugned judgments, as G.O. No.773 was passed on wrong premises.

(xi) In view of the resolution of the Wakf Board dated 19.8.1982 that the offer of Rs.70,000/- was too low and bid was invited to secure a better offer, the High Court should have allowed the application for adduction of additional evidence.

(xii) As the allottees were not parties to the suit, no decree for specific performance against them could have been granted.

(xii) There are intrinsic evidences on record to show that the purported agreement for sale was a forged document and no advance for a sum of Rs.4, 00,000/- have been or could have been paid by the plaintiff.”

27. Mr. Andhyarujina, learned senior counsel appearing on behalf of the plaintiff-respondent, on the other hand, urged:

“(1) The property being belonging to a Dargah, the Mujavars had the requisite authority to negotiate with the plaintiff for the purpose of entering into an agreement to sell which met the approval of the Wakf Board. It is only after the agreement of sale dated 2.8.1982 was executed, the Mujavars and the Wakf Board took side with the appellant society; and the Mujavars started negotiating with appellant.

(2) The Government of Andhra Pradesh having no jurisdiction to pass any order under the Wakf Act could not have passed the order dated 4.5.1983 as contained in G.O. 773 and, thus, the same was per se illegal.

(3) The purported notification dated 25.6.1983 having been issued without any advertisement and without inviting any objection therefor but despite such illegalities, a sale deed was executed on 2.8.1982 by the Mujavars in favour of the appellant society and only in that view of the matter when the same having come to the notice of the Government; GO No.343 dated 25.10.1986 was issued in terms whereof not only the notification dated 26.5.1984 was found to be bad in law but also the order of exemption from the operation of the Urban Land Ceiling Act the order granting sanction was cancelled; the purported deed of sale in favour of the appellant is bad in law.

(4) OS No.200 of 1983 was filed only when attempts were made by the appellant to dispossess the plaintiff but after issuance of the notification dated 26.5.1983, the plaintiff had no other option but to file a suit for specific performance of contract as also a writ petition questioning the validity thereof and, thus, the same was maintainable.”

28. The property is a Wakf property. Its control and management in terms of the provisions of the *Wakf Act, 1954 (the Act)* vested in the Wakf Board. The administration of the property, indisputably, was required to be made in terms of the provisions thereof, in view of the fact that the Act was enacted to provide for the better administration and supervision of the wakf.

The term 'Mutawalli' is defined in Section 3(f) of the Act as under:

"3. Definitions: In this Act, unless the context otherwise requires

(f) 'Mutawalli' means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a competent authority to be the mutawalli of a wakf and includes any person who is a mutawalli or a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and, save as otherwise provided in this Act, any person or Committee or Corporation for the time being managing or administering any wakf or wakf property;

Provided that no member of a Committee or Corporation shall be deemed to be mutawalli unless such member is an office bearer of such Committee or Corporation."

29. However, Mujavars also have been brought within the purview of the said definition of Section 3 of Act 69 of 1984. A Mutawalli, however, must be appointed to perform the duties as prescribed which includes, as would appear from the said definition, a person or a Committee appointed for the time being managing or administering any wakf or wakf property. Whether the office of Mujavars, as per the said definition, stood on a different footing from the office of Mutawalli and Sajjadnashin and merely a person whose main duty was to take care of the shrine could act as a Mutawalli, is the question.

“The Legislature, however, is entitled to expand the definition. Mujavars or a person or the Committee was included in the definition of Mutawalli only by reason of Act 69 of 1984. Mujavars, by reason of the said provisions, therefore, could not have, on the terms of their appointment, been held to be entitled to enter into an agreement for sale in favour of a third party.

Section 36 of the Act provides for the duties of Mutawalli, which are as under:

"36. Duties of mutwallis: It shall be the duty of mutawalli

(a) To carry out the directions made by

(i) The Board; or

(ii) The Wakf Commissioner:

In accordance with the provisions of this Act or of any rule or order made thereunder' shall be substituted;

(b) To furnish such returns and supply such information or particulars as may from time to time be required by the Board or the Wakf Commissioner, as the case may be, in accordance with the provisions of this Act or of any rule or orders made thereunder.

(c) To allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;

(d) To discharge all public dues; and

(e) To do any other act which he is lawfully required to do by or under this Act."

30. Section 36A which was inserted by Act 34 of 1964 provided for prior sanction of the Board before a wakf property is transferred. By Act 69 of 1984 such alienations are to be void. When an application for grant of sanction to transfer the Wakf property is filed by a Mutawalli, it is required to publish the particulars relating to transaction in the official Gazette and invite objections and suggestions in regard thereto and on receipt of such objections and suggestions, as also upon consideration thereof only, sanction could be accorded upon formation of the opinion that such transactions fulfill the criteria as laid down in clauses (i) to (iii) of sub-section (2) of Section 36 of the Wakf Act. It is only when a sanction is granted, the sale is to be held by public auction. Such public auction shall also be subject to confirmation by the Board.

“We are, however, not oblivious of the fact that the Board for reasons to be recorded in writing may permit sale otherwise than by public auction if it is of the opinion that

it is necessary so to do in the interest of the wakf. A Mutawalli may have personal interest in the property. His power of transfer of the Wakf property would depend upon the terms of appointment. Once, however, the intervention of the Board becomes necessary in terms of the provisions of the Act, no sale transaction can take place unless the statutory requirements are complied with.

There appears to be something more than which meets the eye in the matter of grant of sanction for the agreement for sale dated 2.8.1982. The agreement for sale is titled 'Sale Deed cum Handed Over Possession Agreement'. We will assume that the said title to the transaction was thought of as purported possession was to be handed over in favour of the plaintiff society. It, however, appears that the name of Mujavars and, in particular, the name of Mujavar Gulam Ali Akbar is not the same as described in the cause title of the plaint. The number of Mujavars who were parties to the agreement and number of mujavars-defendants are different.”

31. The witnesses examined on behalf of the Mujavars, Gulam Ali Akbar categorically denied and disputed that the agreement of sale was entered into after obtaining permission of the Wakf Board or possession of the major appeared to have received the entire consideration in cash. Why in a transaction which was governed by a statute, such a huge amount was handed over in cash gives rise to a suspicion. There are documents on record to show that all the members of the plaintiff society deposited a huge amount by cash only on a single date, namely 2.8.1982. The stamp paper for agreement for sale was purchased from Vyyuru on 2.12.1981 in favour of the President of the Plaintiff society. The agreement refers to an application filed by the Committee before the Board dated 2.5.1981 and the rate offered by the plaintiff having been found to be the highest, statutory formalities were stated to have been gone through and the Wakf Board purported to have accorded permission to sell the properties described in the schedule appended thereto, in favour of the plaintiff-society.

32. The State of Andhra Pradesh, admittedly, framed Rules in exercise of its power conferred upon it under Section 67 of the Act. Rule 12 provides for the conditions and restrictions subject to which the Board may transfer a wakf property. Sub-rule (1) provides for an application by the Mutawalli before the Board in terms of Section 36A of the Act stating the particulars as specified therein. Clause (6) of sub-rule (1) of Rule 12 of the Rules provides that "if the proposal is for sale or lease, the probable price or the rental as the case may be, that is expected" should be disclosed. Sub-rule (2) of Rule 12 provides for publication of the proposed transaction in the Andhra Pradesh Gazette as also the District Gazette in which the property is situated.

“The notice in terms of sub-rule (2) of Rule 12 was to contain sufficient details of the transaction and furthermore a reasonable time not being less than 30 days is to be specified from the date of publication of notice within which objections, claims or suggestions may be sent. Only upon receipt of such suggestions and, objections, an order sanctioning an exchange, sale or mortgage or lease for a term exceeding three years, in addition should be communicated to the person(s) concerned. The same is

required to be published in the manner laid down in sub-rule (2) meaning thereby in the Andhra Pradesh Gazette as also the District Gazette.”

33. It is beyond any doubt or dispute that the purported sanction has not been published in the Andhra Pradesh Gazette or the District Gazette. The purported order of sanction is in the form of a letter purported to have been issued by the then Chairman of the Wakf Board. Ex facie, the said letter does not satisfy the statutory requirements.

34. Mr. Andhayarujina, however, submitted that publication of the order of sanction in the Gazette is not mandatory but only directory. We are unable to agree. By reason of the provisions of Section 36A of the Act, a prior sanction is imperative for effecting a sale transaction. Furthermore, Rule 12 specifies the manner in which such sanction is to be granted. Keeping in view the nature and purport for which the said provisions have been made, clearly goes to show that the Rules are imperative in character.

35. A mutwalli is a manager or trustee of the property. Mujavars were not even that. Mujavars, prior to the amendment of the Act, were not even authorized to enter into the agreement for sale. That was not the purpose for which they were appointed. They were appointed as the Dargah in question was not being properly looked after and the then surviving Mutawallis failed and/or neglected to perform their statutory duties. The functions of the Mutwalli and/or Mujavars in the light of the provisions of the Wakf Act and the Rules framed thereunder must be viewed in the context of the statute and on the basis of the common concept. Mutwallis have no ownership right or estate in the Wakf property unless the deed of wakf says so. [See *Bibi Saddiqa Fatima v. Saiyed Mohammad Mahmood Hasan*¹ and *Nawab Zain Yar Jung (since deceased) & Ors. v. Director of Endowments & Anr.*²].

Furthermore, when a procedure is laid down for performance of a statutory function, the same must be done in the manner laid down therein. Sub-rule (3) of Rule 12 lays down that minimum 30 days time should be given for receipt of objection.

36. The learned trial judge as also the High Court, thus, committed a serious error in holding that as within a period of 30 days, objections had not been received the notification issued under sub-rule (2) of Rule 12 became final. Furthermore, the then Chairman of the Wakf Board, Sheikh Sayed Hussain examined himself as DW-6. He, in no uncertain terms, stated that he was not the author of the letter dated 30.6.1982 (Exhibit A-49).

“The issue required serious considerations at the hands of the courts below keeping in view the fact that the suit filed by the plaintiffs was one for specific performance of contract. In any event, as the said purported letter dated 30.6.1982 was neither published in the Gazette nor was issued upon receipt of objections and offers from the other societies, the same could not have been treated to be a final order as envisaged under sub-rule (4) Rule 12 of the Rules. Furthermore, there are some intrinsic evidences to suggest that the said purported letter dated 30.6.1982 was not in existence when the agreement for sale dated 2.8.1982 was entered into. In ordinary course when the said letter had been issued, there was absolutely no reason as to why

the mention of the same would not be made in the agreement of sale dated 2.8.1982. Even at an interlocutory stage of the proceeding before the learned trial judge, the Chairman, Wakf Board affirmed an affidavit to that effect, which was marked as Exhibit B-6. No sufficient explanation has been offered by the first respondent as to why the stamp papers were purchased on 2.12.1981 when the agreement for sale was not even under contemplation.”

37. The High Court, furthermore, committed a serious error in premising its judgment on the basis of statement of DW 4, which read thus:

"It is true to suggest that after obtaining permission from the Wakf Board, we entered agreement with plaintiff under Ex.A31 to sell the property. It contains our signatures"

We have been taken through the deposition of Gulam Ali Akbar, DW-4. His statement before the trial court reads as under:

"It is not true to suggest that after obtaining the permission from the Wakf Board, we entered into an agreement with the plaintiff under Exhibit A.31 to sell the property. It contains our signatures."

38. It is possible, as contended by the learned counsel, that the words 'it contained our signatures' were in continuation of the suggestion. The entire paragraph deals with suggestions only and, thus, it might not have been correct for the High Court to opine that there was an admission on the part of DW-4 that the agreement contained his and other Mujavars' signatures.

39. It is also of some significance to note that the plaintiff society filed a writ petition before the Andhra Pradesh High Court for issuance of a writ of or in the nature of mandamus directing the Wakf Board not to accord any sanction to the Dargah Jamat-e-Mujavar of the Dargah-e-Shareef of Hazrath Galib Saheed Dargah for sale of the land in favour of the respondent.

“First respondent was, thus, aware of the provisions of the Act and the Rules and effect of non-compliance thereof. It would, therefore, not be correct in the aforementioned situation to opine that the said purported letter dated 30.6.1982 meet the requirements of law.”

40. Section 17 of the *Specific Relief Act, 1963* reads as under:

"17. Contract to sell or let property by one who has no title, not specifically enforceable.(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor

(a) Who, knowing not to have any title to the property, has contracted to sell or let the property;

(b) Who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply as far as may be, to contracts for the sale or hire of movable property."

41. If Mujavars have no authority to sell the property, the agreement of sale could not have been directed to be specifically performed. In any event, as no permission had been granted by the Wakf Board, the Courts below had committed a serious error in passing the impugned judgment.

42. We may, at this stage, also notice the reliefs prayed for in the plaint:

"a) for specific performance of the suit contract of sale dated 2.8.1982 against the defendant 1 to 9 and 13 directing them all or these when the Court finds necessary and proper to execute and register sale deed or deeds in favour of the plaintiff or its nominees at their expense for the plaint schedule property in whole or in parts as they choose, or in the alternative, if the defendant 1 to 9 and 13 refuse to do so, for a direction that the Court or any officer of the Court as directed by the Court do so executed and register the sale deed or sale deeds.

b) In the alternative of the plaint schedule property, if the plaintiff is found not to be in possession Added as per order in IA 6980/91 dated 24.6.1992.

c) For a permanent injunction contesting the defendants 1 to 10 and 13 interfering with the plaint schedule property and plaintiff possession thereof."

43. However, the learned trial Judge in its judgment directed the defendant Nos. 10 to 12 to execute the deed of sale.

"There is a serious doubt as to whether the agreement dated 2.8.1982 as also the purported order dated 30.6.1986 or the agreement were the genuine documents. In that view of the matter, the suit for specific performance of contract should not have been decreed. In the suit, GOMs dated 26.5.1982 and 4.5.1983 were not under challenge. They might have been brought under animated suspension by GOMs No.343 dated 25.10.1986 but prior thereto, the suit had already been filed.

Furthermore, it is neither in doubt nor in dispute that rightly or wrongly allotments have been made in favour of a large number of allottees. Some of the allottees may be the Mujavars themselves or their nominees but it is stated that at least eight deeds of sale were executed prior to the institution of the Civil Suit, namely, 24.4.1984. All deeds of sale, therefore, were not hit by the doctrine of lis pendens. Even otherwise while exercising a discretionary jurisdiction as envisaged under Section 20 of the

Specific Relief Act, the same fact should have been taken into consideration. Grant of a decree for specific performance of contract is a discretionary relief. There cannot be any doubt whatsoever that the discretion has to be exercised judiciously and not arbitrarily. But for the said purpose, the conduct of the plaintiff plays an important role. The Courts ordinarily would not grant any relief in favour of the person who approaches the court with a pair of dirty hands. It was also not a matter of total insignificance that the plaintiff society offered a bid of Rs.1, 26,000/-. It was proved by Exhibit B-I dated 23.10.1982. The said bid by the plaintiff, in absence of any finding that the same were forged and fabricated documents, could not have been ignored particularly when the difference between the rate offered by the plaintiff and that of the appellant was substantial.

Keeping in view the peculiar facts and circumstances of the case, we are of the opinion that the impugned judgment cannot be sustained. They are set aside accordingly.”

44. We, however, would be failing in our duties if we do not make any observations in regard to the manner in which the Government and the Wakf Board as also the Mujavars acted. The Government of Andhra Pradesh had issued GOMs No.343 as also the memo dated 25.10.1986. On what basis and under what provisions of law, it interfered with the functioning of the Wakf Board is not known. The manner in which the purported transactions were entered into by and between the Mujavars and the plaintiff society, depict a sordid state of affairs.

“More reprehensive is the conduct of the State as, despite issuance of GOMs No.343 and memo dated 25.10.1986, no action has yet been taken. The State's jurisdiction in the matter is supervisory in nature. The AP Wakf Board is a statutory body. It is the duty of the State to oversee its functions. The property belonging to a wakf cannot be permitted to be withered away at the instance of the office bearers of the Board or those in charge of the wakf. They being the trustees should act like trustees. Why for 22 years, no enquiry was conducted and why no action had been taken pursuant to the said GOMs dated 25.10.1986 is a matter of serious concern to all concerned including the general public. Arguments had been advanced before us that the said notification was illegal. We do not and cannot go into the said question. Our jurisdiction in this behalf is limited but the very fact that not only the trial Court but also the Division Bench of the High Court had adverse comments to offer as regards the Government Andhra Pradesh, A.P. Wakf Board as also Dargah are not matters which should be allowed to be given a decent burial. The Government should have taken the purport of its orders and memos issued by it to their logical conclusion. They failed to do so. We, therefore, are of the opinion that the Government of Andhra Pradesh would be well advised to cause an enquiry to be made into the entire affairs of the Andhra Pradesh Wakf Board and others concerned vis-à-vis the transactions carried out in the matter, albeit after giving an opportunity of hearing to the parties. We expect that the Government of Andhra Pradesh would initiate appropriate proceedings and take such

action or actions against all concerned including its own officers as also those of the Board and Dargah as also the allottees in the event they are found guilty.”

45. In view of the findings aforementioned, it is not necessary to pass any separate orders on the IAs for impleadment filed by the allottees.

46. Appeals are, thus, allowed with no order as to costs.

¹[(1978) 3 SCC 299]

²[AIR 1963 SC 985]