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14.09.2026
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CO 4134 of 2025

**Rashid Ali Molla & Ors.
-versus-
Board of Wakf & Ors.**

**Mr. Gopal Ghosh, Sr. Adv.,
Mr. Debajyoti Mondal
Mr. Rajkrishna Mondal
Dr. Suravi Ghosh**

... for the petitioners.

1. An affidavit of service is filed in Court by the petitioners. Let that be taken on record. None appears for the opposite parties in spite of due service of copy of the present revisional application and all annexures. Hence, the revision is taken up for hearing and order in absence of the opposite party. Mr. Ghosh, learned senior advocate for the petitioners is present.
2. The petitioners are aggrieved with the order dated November 4, 2025, passed by the Wakf Tribunal, West Bengal in Suit No. 15 of 2012.
3. The petitioner being the plaintiff in the said suit has relied on an order of this Court dated May 2, 2019 in C.O. No. 466 of 2018 which is as follows:

“..... 79. Accordingly, C.O. 446 of 2018 is allowed on contest, thereby setting aside the impugned order and directing the tribunal to re-

hear Suit No. 15 of 2012, filed before it, afresh, by directing issuance of a commission to ascertain the exact extent of property out of the total property enrolled under E.C. No. 10339, which is covered by the wakf deed dated November 11, 1919, executed by Babujan Mallick, bearing Exhibit No. 2 in the suit and to re-adjudicate the suit on merits on the basis of such deed, giving proper evidentiary weightage to the entries in the CS records of rights and permitting the parties to adduce further evidence, if necessary, to assess whether the alteration in the RS records of rights had any foundation. The tribunal shall complete such fresh hearing in the light of the observations made above, as expeditiously as possible, preferably within six months from the date of communication of this order to the tribunal, without granting any unnecessary adjournment to either side”.

4. The Court had directed for rehearing of the suit by the Tribunal afresh, by directing issuance of a commission to ascertain the exact extent of property out of the total property enrolled under E.C. No. 10339, which is covered by the wakf deed dated November 11, 1919. The Court also directed for re-adjudication the suit on merits on the basis of such deed, giving proper evidentiary weightage to the entries in the CS records of rights and permitting the parties to adduce further evidence, if necessary, to assess whether the alteration in the RS records of rights had any foundation.

5. Since after such order of the Court the petitioners prayed before the learned Tribunal for appointment of Commissioner and learned advocate Commissioner was appointed to carry out the commission, as was directed by this Court.
6. The Commissioner submitted his report which, according to Mr. Gopal Ghosh learned Senior advocate for the petitioner, as inconclusive. He submits that on three occasions the advocate Commissioner visited the spot but could not ascertain in compliance with the direction of this Court as above, so as to file an appropriate report before the Tribunal in connection with the said suit; reason for the same is said to be heavy rain as well as that commission were not done in right and proper manner.
7. It is further submitted that the Commissioner's report was made over to Tribunal and the Commissioner was examined. The Commissioner's report was not accepted by the Tribunal finding the same as inconclusive.
8. The petitioner has further filed his application before the learned Tribunal, seeking afresh commission afresh, this time by a Survey-passed Commissioner, for the purpose as was directed by this Court vide its order dated May

2, 2019. By dint of the impugned order as mentioned above, the learned Tribunal has refused the petitioners' prayer for appointment of Survey-passed Commissioner afresh. Hence, this revision.

9. It transpires from record that with respect to the Wakf deed dated November 11, 1919 executed by one Babujan Mallick incorporated the suit property along with others, extent of which was directed to be ascertained by the Commissioner. CS and RS Records of Rights were also to be examined to ascertain the evidentiary weightage thereof. In such circumstances, undisputedly, the report of the advocate commissioner has not been able to throw light on the questions directed to be ascertained by the Court. The Tribunal itself has rejected the said report as not a conclusive one.
10. In such circumstances the relevant and necessary facts in order to facilitate proper adjudication of the suit by the Tribunal, have remained unascertained, ultimately jeopardizing the prospect of the suit itself.
11. Therefore, for the ends of justice and for the Tribunal come to a just, legal and proper finding in the suit pending before it and also to

ascertain the facts as directed by the Court by its order dated May 2, 2019, it is necessary that a fresh Commission be immediately carried out by a survey passed Commissioner, as has been prayed for by the petitioners, as to the queries formulated by the Court.

12. Accordingly, this Court finds that the learned Tribunal, while passing the impugned order, failed to properly appreciate that the earlier commission had not yielded the factual determination which was specifically directed by this Court and which remains indispensable for an effective adjudication of the suit. The question as to the exact extent and identity of the property covered by the wakf deed, in juxtaposition with the relevant entries in the CS and RS Records of Rights, involves an exercise of identification, measurement and correlation of the property on the ground with the corresponding survey and record-of-rights particulars. Such an exercise cannot be satisfactorily undertaken merely on the basis of oral evidence or an inconclusive inspection, particularly when the earlier Commissioner himself had failed to furnish a conclusive report and the Tribunal had declined to accept the same. In such circumstances, appointment of a

Survey-Passed Commissioner is not an exercise in enlargement of the scope of the earlier order, but a necessary procedural measure to effectively carry out the mandate already issued by this Court and to place before the Tribunal reliable factual material on the precise questions which require determination. Unless such factual ascertainment is undertaken by a person possessing the requisite surveying expertise, the Tribunal would be left to adjudicate upon an essential factual controversy without the benefit of the very exercise which this Court had considered necessary for its proper adjudication. The refusal to appoint a Survey-Passed Commissioner, therefore, has the effect of leaving the material controversy unresolved and may ultimately frustrate the purpose of the earlier order of this Court. The impugned order, on this aspect, therefore, cannot be sustained. Accordingly, this Court finds that on the impugned order the learned Tribunal has failed and erred to consider this aspect and hence passed a direction which is not sustainable.

13. Hence, this revision is allowed directing setting aside of the order of learned Tribunal in Suit No. 15 of 2012 dated November 4, 2025.

14. Let the Tribunal immediately issue order, appointing an empaneled Survey-Passed Commissioner, to carry out the commission as to the queries as determined by this Court in its earlier order dated May 2, 2019.
15. This exercise should be done by the learned Tribunal within a period of 15 days from the date of communication of this order. Let the Commissioner as above file his report in Tribunal, within a period as directed by the same.
16. With the directions as above, the present revisional application stands allowed and disposed of.

(Rai Chattopadhyay, J.)