

Jakir Hossain Khan & Ors.
Versus
Raojahan Ali Khan & Anr.

(Through Video Conference)

Mr. Iftekar Munshi, Adv.
...for the petitioners

Mr. Uday Narayan Betal, Adv.
Sk. Toslim Ali, Adv.
...for the opposite parties

This revisional application has been filed against an order dated 10th December, 2020 passed by the learned Additional District Judge, 1st Court at Uluberia in Misc. Appeal No. 29 of 2020 arising out an order dated 7th December, 2020 passed by the learned Civil Judge (Junior Division) at Amta in Title Suit No. 103 of 2020.

The petitioners are aggrieved by an order of status quo passed by the learned Appeal Court. It is the contention of Mr. Munshi, learned Advocate for the petitioners that any dispute with regard to whether a property was a Wakf property or not, was triable in a suit to be filed before the leaned Wakf Tribunal and the learned Civil Court did not have the jurisdiction to entertain such suit and the suit was barred under the provisions of Section 85 of the Wakf Act, 1995. According to Mr. Munshi, the learned Trial Judge rightly rejected the prayer for ad-interim injunction in the absence of proof of prima facie case. He submitted that the learned lower Appellate Court ought to have taken into consideration

this aspect and not granted an order of ad-interim injunction when the suit itself was not maintainable.

Mr. Betal, learned Advocate appears on behalf of the opposite parties and submits that the case of the plaintiff was that the suit property was wrongly enrolled as Wakf property and as such, the Civil Court had the jurisdiction to decide the issue. The learned Lower Appellate Court, on the basis of a report filed by the Advocate Commissioner, came to a conclusion that the construction work was going on over the suit property and granted an order of status quo till the next date of hearing. The said order of status quo was extended but the Misc. appeal is pending.

I have gone through the averments in the plaint. It appears from a specific pleading in the plaint (paragraph 8) that although, 'A' schedule property was recorded as Wakf property, the said property was secular property as per a deed of settlement and a decision of the High Court. I have also heard the learned Advocates for the respective parties. It appears that the petitioners have already filed an application for rejection of the plaint on the ground of lack of jurisdiction which is pending. It appears that the learned Trial Judge has not yet disposed of the application for temporary injunction either. The injunction application is required to be heard. The order impugned before this Court is an ad-interim order of injunction passed by the learned Lower Appellate Court. In my opinion, in this case the application for temporary injunction should be decided expeditiously. As nothing remains in the appeal. The Misc. Appeal No. 29 of 2020 is disposed of with the consent of the parties.

The learned Civil Judge (Junior Division) at Amta is directed to dispose of the application for temporary injunction within a period of one

month from the date of communication of this order upon considering the plaint, the application for temporary injunction, written objection filed thereto by the petitioners and the documents relied on by the respective parties in order to arrive at a decision by considering the prima facie case, including the maintainability, balance of convenience and inconvenience and irreparable loss and injury. The petitioners will file the written objection to the application for temporary injunction within a week. An advance copy of the same along with the documents shall be served upon the learned Advocate-on-Record for the plaintiff within a week from date. Liberty is granted to the petitioner to pray for expeditious disposal of the application under Order 7 Rule 11 within two months thereafter. The parties are directed to maintain status quo till the disposal of the application for temporary injunction. The time limit fixed hereinabove is mandatory in nature.

Accordingly, this revisional application is disposed of.

There will be, however, no order as to costs.

This Court has not gone into the merits of the claim of the petitioners. The learned Court below shall proceed with the hearing of the injunction application in accordance with law.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)