

AD. 4.
July 26, 2021.
MNS.

C. O. No. 641 of 2021
(Via video conference)

Sk. Samsur Rahaman @ Sk. Shumsur
Rahaman

Vs.

The Board of Wakf and others

Mr. Shamim Ahmed,
Ms. Salma Sultana Shah

... for the petitioner.

Mr. Iftekar Munshi

...for the opposite party
nos. 2 to 12, 14 and 16.

Supplementary affidavit filed in Court today, on leave being granted by Court, be kept on record.

The dispute raised by the petitioner in the present application under Article 227 of the Constitution of India is that, despite a Tauliyatnama having conferred powers on the Mutwali to function in such capacity, the Advisory Committee, also appointed by the same Tauliyatnama, is not cooperating with the petitioner in such regard.

That apart, the petitioner, it is alleged, has been ousted from the room which was allotted to him in respect of the waqf property.

Learned counsel, by placing reliance on the Tauliyatnama, categorically submits that the mode of devolution of interest or perpetuation of the Advisory Committee has not been clarified in the deed at all. Hence, it is contended by the petitioner that the appointment of the current Advisory Committee was illegal.

That apart, it has been contended by the petitioner before the Tribunal as well as before this Court that the ouster of the petitioner was illegal as well, even in terms of the Tauliyatnama.

Learned counsel appearing for the opposite party nos. 2 to 12, 14 and 16 disputes such contentions and, by placing reliance on the Tauliyatnama itself, stresses that the Mutwali is to function in such capacity under the aegis of the Advisory Committee and under the control of such committee.

It is further submitted that the Advisory Committee is, at present, cooperating with the Mutwali, irrespective of the fact that several applications for removal of the Mutwali are already pending.

Upon going through the records as well as the order impugned herein, it is evident that the said order is well reasoned and discloses

sufficient bases to come to the conclusions that led to the refusal of the injunction sought by the plaintiff-petitioner.

It was rightly recorded by the Tribunal that though there is stipulation of Advisory Committee in Tauliyatnama, it is not clear whether the Advisory Committee was intended to be perpetuated generation after generation. Since the appointment of the present Advisory Committee is factually and legally in dispute in the suit itself, it would be premature for the tribunal, at this early stage, to grant a mandatory injunction reinstating the petitioner to the room from which the petitioner was allegedly ousted.

However, since the appointment of the Mutwali is not under challenge, mere pendency of removal applications is not sufficient to terminate the functioning of the Mutwali altogether prematurely.

However, since it is contended by learned counsel for the opposite party nos. 2 to 12, 14 and 16 that no hindrance is being caused to the petitioner in acting as Mutwali, in the absence of cogent evidence to contradict such contention on the part of the petitioner, the appellate court was justified in holding that the balance of

convenience was in favour of refusal of the injunction. There is, admittedly, a doubt as to the appointment of the Advisory Committee, raised by the petitioner, which is yet to be decided in the suit. However, primacy has been conferred on the Advisory Committee, as per the Tauliyatnama itself, which specifically provides that the Mutwali shall function on the advice of the Advisory Committee and under their control.

Hence, unless it is finally decided in the suit, upon taking appropriate evidence, that the appointment of the Advisory Committee was illegal, it would be premature to grant injunction as prayed for by the Mutwali.

It is expected that the parties shall adhere to the provisions of the Tauliyatnama in their functioning and shall cooperate with each other. However, there is no scope for interference with the order of the Tribunal under Article 227 of the constitution of India for the reasons as given above.

Accordingly, C. O. No. 641 of 2021 is disposed of without interfering with the impugned order, in the light of the observations made above.

It is made clear that the observations made herein shall not influence the Tribunal and/or the Wakf Board while deciding the applications pending before it in connection with the wakf-in-question in any manner whatsoever, in so far as their respective contentions in the suit are concerned, and the Tribunal shall proceed independently to adjudicate the suit on its own merits.

It is further clarified that the above findings were rendered for the limited purpose of adjudicating the present revisional application and are only tentative in nature, as per the adjudication of the suit is concerned.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)