

17.09.2021
Item No.9
Ct. No.7
CHC
(Disposed of)

**C.O.1623 of 2021
(Physical Hearing)**

**Md. Shakil
Vs.
J. B. Naushed Ali & ors.**

Mr. Syed Nurul Arefin,
Mr. Rajesh Shaw,
Ms. Saswati Chatterjee,
Mr. Rahul Singh
...for the petitioner

Mr. Gour Baran Sau
...for the plaintiffs/opposite party nos.1 and 2

Mr. Sk. Md. Galib
...for the Board of Waqf
opposite party no.7

Mr. M. A. Samad,
Ms. Nayaab Mulla
...for the proforma defendant no.10

Parties are represented by their learned advocates,
names of whom are shown at the beginning of this
ordersheet.

The subject-matter of challenge is against the order
dated 10th August, 2021 passed by learned Chairman
of Waqf Tribunal, in Suit No.28 of 2019 allowing local
investigation.

By the order impugned, the prayer for local
investigation under Order VI Rule 9 C.P.C. read with

Section 151 C.P.C. filed by the plaintiffs on 25th March, 2021 was allowed.

Simultaneously, another application filed by defendant no.9 under Order VI Rule 9 C.P.C. was also allowed on the same date.

Learned advocate for the petitioner/defendant no.1 adverting to order passed in W.P.9347 (W) of 2019, submits that on the prayer of the opposite parties/plaintiffs, the concerned police authorities were directed to furnish report as to whether any construction work was being carried at the property concerned or not, and upon being so directed by the Court, the police authorities submitted a report stating *inter alia*, that there had been no construction at the locale at the present.

It is contended by the learned advocate for the petitioner that even after obtaining such police report revealing no existence of any construction being carried at the locale, plaintiffs filed a separate application under Order VI Rule 9 read with Section 151 C.p.C. praying for local investigation in order to ascertain whether there had been any construction illegally over the Waqf property mentioned in the Schedule 'B' to the plaint. Similarly, it is also contended by the learned advocate for the petitioner that defendant no.9 filed a separate application under

Section 26 Rule 9 read with Section 151 C.P.C. which was simultaneously allowed.

According to the petitioner both the petitions filed by the plaintiffs and defendant no.9 respectively under Order VI Rule 9 read with Section 151 C.P.C. are harassive, simply to cause delay in the disposal of the pending suit.

Learned advocate for the petitioner, however, candidly submits that investigation is a must to resolve the matter in controversy between the parties which, however, should not be held by taking help of Officer-in-Charge of Karaya Police Station.

Per contra, learned advocate representing opposite parties/plaintiffs supporting the order of the Waqf Tribunal submits that there has been no illegality committed by the Waqf Tribunal in allowing the local investigation for the purpose of ascertaining whether defendant nos.1 to 4 have been making any illegal construction in the Waqf property or not, and it is, thus, absolutely necessary to address the real controversy between the parties surfaced over Waqf land.

Learned advocate representing the Board of Waqf, West Bengal submits that neither of the parties would suffer any prejudice in any manner whatsoever for the local investigation being allowed.

It is further submitted by the learned advocate for the Waqf Board that tomorrow is the date fixed for holding local investigation of the learned Commissioner taking help of Officer-in-Charge of concerned police station.

The concerned learned advocate for the private proforma defendant/proforma opposite party draws attention of the Court to the relevant application filed by proforma defendant no.9 under Order VI Rule 9 read with Section 151 C.P.C. praying for appointment of an appropriate authority to cause local inspection of the subject land and submit a report accordingly.

Responding to such petition, by the order impugned the Waqf Tribunal has passed an order directing DG (Building), K.M.C. Kolkata, to make inspection of the site along with learned advocate Commissioner and submit report directly to the Tribunal after holding such inspection.

It is, thus, apparent from the submissions advanced by both the parties to this case including the Board, that the grievance of the petitioner, as expressed before the court, is against the local investigation being allowed to be conducted taking help of Officer-in-Charge of Karaya Police Station. Petitioner is not annoyed with the local investigation, if permitted to be held independently by learned

Advocate Commissioner appointed already for the purpose, but not with the assistance of the police.

That being the position, the instant revisional application may be disposed of right now doing little modification of the order mentioned as hereinbelow, which will not cause any prejudice to either of the parties to this case.

Learned Advocate Commissioner already appointed for the purpose will hold investigation in terms of the prayer of the plaintiffs incorporated in their application under Order VI Rule 9 read with Section 151 C.P.C. independently, without taking any assistance of concerned police station, mentioned in the impugned order.

It is, however, clarified that if the learned Investigation Commissioner experiences any inconvenience in conducting the proposed local investigation, being an officer of the court, learned Commissioner may bring it to the notice of the concerned Waqf Tribunal, and upon such intimation being furnished by the learned Commissioner, the same shall be duly redressed to by the Waqf Tribunal, as the exigency of the circumstances would demand, after providing an opportunity of hearing to either of the parties to this case.

The other portion of the order, will, however remain unchanged. The impugned order is thus modified to the extent mentioned hereinabove.

With this direction/observation, the revisional application stands disposed of.

Parties are accordingly directed to make necessary communication to the learned Advocate Commissioner, supposed to hold local investigation on the date stipulated.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)