

**SK. SAHABUDDIN VS. THE CHIEF
EXECUTIVE OFFICER, BOARD OF AUQAF, WEST
BENGAL.**

Mr. Tanmoy Mukherjee
Mr. Shah Jamal Hazra
Mr. Iftekar Munshi
..for the petitioner
Mr. Sk. Md. Galib
...for the Board of Auqaf

This revisional application has been filed by an alleged encroacher of a wakf property, being aggrieved by an order dated June 26, 2018 passed in Eviction Case No.2 of 2016 by the learned Wakf Tribunal, West Bengal.

By the order impugned, the learned Tribunal allowed the application under Section 54(3) of the Wakf Act, 1995 filed by the Board of Wakf, thereby confirming the order of the Chief Executive Officer Board of Wakf (in short C.E.O). The petitioner was held to be an encroacher and was directed to vacate the suit premises, which was a part and parcel of the wakf estate enrolled under E.C. No. 893 within three months from the date of the order, failing which the C.E.O. was at liberty to execute the order of eviction.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioner submits that the order impugned

suffers from several irregularities. First, that the learned Tribunal acted as an appellate authority and proceeded to decide the correctness of the order of the C.E.O, Board of Wakf, instead of itself proceeding as the forum for adjudicating an eviction proceeding on the basis of the opinion formed by the Chief Executive Officer, Board of Wakf. He further submitted that the learned Tribunal has mentioned three different dates of the order of the C.E.O at three different places in the order of the Board of Wakf. He further submits that the Chief Executive Officer of the Board of Wakf did not have any power to pass an order of eviction and the learned Tribunal simpliciter could not have sat as an appellate forum and confirm the order of the C.E.O without itself adjudicating the point of eviction on the basis of records and reports and documents etc., which were placed before the learned Tribunal by the respective parties. Reliance has placed on Section 54, Sub-Sections (3), (4) and (5) of the Wakf Act, 1995.

Mr. Galib, learned Advocate appearing on behalf of the Board of Wakf has handed over a copy of the order dated April 7, 2015 passed by the C.E.O, Board of Wakf, West Bengal. The Chief Executive Officer, Board of Wakf, West Bengal has ordered as follows:

“It is concluded after perusing the enquiry report and hearing the case that Sk. Shahbuddin son of late Sk. Nizamuddin is an encroacher and had trespassed and also illegally occupied one office room of the Mosque at 8, Bondal Road, Kolkata 700 019, under Maulvi Abdul Hakim & Ors. Waqf Estatem E.C. No. 893, I hereby draw proceeding U/s. 54 of the Waqf

Act, 1995 as amended by the Waqf(Amendment) Act, 2013 accordingly and submit this and make an application to the learned Waqf Tribunal for grant of order of eviction against the alleged encroacher, Sk. Shahbuddin son of late Sk. Nizamuddin from the scheduled room under reference.”

Mr. Galib further submits that the incorrect mention of the dates of the order at different places in the order impugned would not itself nullify the proceeding as the mistake was merely typographical. Mr. Galib further submitted that the learned Tribunal has proceeded on the basis of the amended provision of Section 54 and has also taken into consideration the documents and the wakf deed filed by the petitioner, to arrive at a conclusion that the petitioner was an encroacher and was liable to be evicted.

I have considered the rival contentions of the parties.

Section 54 of the Wakf Act, 1995 prior to the amendment of 2013 stated as follows:

“Removal of encroachment from wakf property:-

54. 1. whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned Mutuwalli.

2. The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

3. If, after considering the objections, received during the period specified in the notice, and after

conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and delivery possession of the land, building, space or other property encroached upon to the Mutawalli of the Wakf.

4.Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property;

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a licence or mortgage by the mutawalli of the wakf or by any other person authorised by him in this behalf.”

Subsequent to the amendment of 2013,

Section 54 reads as follows:

“Removal of encroachment from Waqf property-

(1)whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned *mutuwalli*.

2. The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

3. If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, make an application to the Tribunal for grant of order of eviction for removing such encroachment and deliver possession of land, building,

space or other property encroached upon to the *mutawalli* of the wakf.

4. The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

5. If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.”

The order handed over by Mr. Galib passed by the Chief Executive Officer appears to have been passed after the amendment of 2013, i.e., the provisions of law as applicable now to a proceeding under Section 54 have been applied.

I do not find that the C.E.O. had expressed an opinion with regard to eviction but has on the other hand recorded that the petitioner of a wakf property and an encroacher, the Board should approach the learned Tribunal for grant of an order of eviction. The learned Tribunal has recorded that the Board has proceeded in terms of Section 54 of the Wakf Act has filed the application for confirmation of the order. The learned Tribunal had also considered the propriety of the procedure followed by C.E.O. Thereafter, the learned

Tribunal went on to hold that neither the documents nor the wakf deed indicated that the petitioner was a descendent of the wakif. The learned Tribunal also held that no papers whatsoever in the nature was ever produced before the learned Tribunal to show that the petitioner was a descendent or a tenant.

Hence, the learned Tribunal confirmed the order of the C.E.O. and directed the petitioner to hand over the vacant possession of the premises in question, failing which the C.E.O. was given the power to initiate execution proceeding as per Section 54(5) of the Wakf Act, 1995.

In my opinion, the learned Tribunal has failed to apply its independent mind and views in the eviction proceeding in not considering the averments in the written objection and documents relied upon by the petitioner. The learned Tribunal proceeded as if the finding of facts by the C.E.O. were enough to hold that the petitioner was an encroacher and thereby passed an order of eviction as a matter of course, whereas, in an eviction proceeding under the amended provision of the Wakf Act, 1995 the learned Tribunal ought to have formed an independent opinion on the issues involved otherwise, the requirement of hearing and recording of reasons as contemplated under Section 54 (4) and its proviso would be rendered nugatory. A purposive interpretation of these provisions would mean a reasoned decision should be given by the learned Tribunal

while making an order of eviction.

In this case, the Board has not done its duty as envisaged under the law but the learned Tribunal proceeded as if the Board had decided on the issue of encroachment and the duty of the Tribunal was only to issue the order of eviction passed by the C.E.O. This is where the learned Tribunal has gone wrong.

Under such circumstances, the order dated June 26, 2018 is quashed and set aside. The matter is remanded back to the learned Tribunal for a fresh hearing on this eviction proceeding on its own merits.

The learned Tribunal should allow the petitioner to file documents in support of his contention if not already done by filing affidavits in addition to the objection and the documents which have already been filed before the learned Tribunal and the Board. Such affidavit to be filed within two weeks from date. A copy of the affidavit containing the additional documents shall be served upon the Board and the Board shall get an opportunity to controvert the same. The learned Tribunal will proceed independently and in accordance with law. The learned Tribunal will conclude the proceeding within a period of three months from date.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be

given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

