

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present :-

Hon'ble Justice Partha Sarathi Sen

C.O. No. 129 of 2020

Sk. Rahmatullah.

-Versus-

The Board of Auqaf West Bengal and Anr.

For the Petitioner : **Mr. Md. Nauroz Rahber, Adv**
: **Mr. Mohammad Jawwad, Adv.**

For the Board of Auqaf : **Mr. Sk. Md. Galib, Adv.**
: **Ms. Tanwishree Mukherjee, Adv.**

For the Respondent no.3: **Mr. Sumit Kumar Ray, Adv.**
: **Mr. Munshi Ashiq Elahi, Adv.**

Heard on: : **07.11..2022**

Judgment on. : **10.11.2022**

PARTHA SARATHI SEN, J. : –

1. The present revisional application under Article 227 of the Constitution of India, read with Section 83(9) of the Waqf Act, 1995 (hereinafter referred to as the said Act), arises out of the Judgement dated 09.09.2019, as passed by Learned Waqf Tribunal, West Bengal in O.A. No. 4/2017 whereby and whereunder the said tribunal by the impugned judgement has been pleased to dismiss the petitioner's application under Section 83(2) of the said Act challenging the

Resolution dated 31.08.2016 as passed by Board of Auqaf. The petitioner felt aggrieved and thus, preferred the instant revisional application.

2. In order to dispose of the instant revisional application fairly and effectively the facts leading to filing of O.A No.4 of 2017 before the Learned Tribunal are required to be discussed in a nutshell.

3. By executing three deeds of Waqf, one Sk. Amanatullah of 34/1, Watgunge Street, P.S Watgunge, Khiderpore, Kolkata- 700 023 appointed himself as Mutawalli of the said Waqf and it was directed that after his death, his wife would be the Mutawalli and after the death of his wife, the eldest male member in the line of decedents born of womb of the said wife shall be the Mutawalli provided that person is competent and does not renounce Islam and/or become converted to other religion. It is undisputed that after the death of the Waqif as per rules of succession, Sk. Ashrafullah was appointed as Mutawalli and on his death the next surviving decedents viz. Zakir Hussain was appointed as Mutawalli. After the death of Zakir Hussain the present petitioner being the eldest male decedents have applied before the Board for recording his name as Mutawalli but since such request was disputed by the opposite party no.3 herein as well as the other brothers and sisters including step brothers and sisters of the present petitioner, an enquiry was conducted by the Board. On conclusion of the enquiry the Board by a resolution dated 31.08.2016, came to a finding that the present petitioner cannot be appointed as a Mutwalli on account of his immoral life and his proneness to liquor and by the self same resolution the Board also found that the present opposite party no.3 is eligible to be appointed as Mutawalli in respect of Sk. Amanatullah Waqf Estate.

4. Feeling aggrieved by the said finding of the Board dated 31.08.2016, the petitioner herein preferred an application under Section 83(2) of the said Act which was dismissed by the learned Tribunal by the impugned judgement.

5. In support of the instant revisional application learned advocate for the petitioner at the very outset draws attention of this Court to the photocopies of the three deeds of Waqf as have been annexed with the instant revisional application. It is contended that the Learned Tribunal while passing the impugned orders has miserably failed to appreciate that the Board while appointing a Mutawalli in respect of the aforementioned Waqf Estate has no other alternative but to follow the mandate of the three Waqf Deeds. It is further argued that the resolution of the Board dated 26.03.2015, ought to have been held by the Learned Tribunal as faulty since the said Board ought not to have direct a field enquiry on the basis of the affidavits sworn by the persons supporting the claim of the present opposite party no. 3. It is contented further that the learned tribunal while passing the impugned order ought to have hold that the field enquiry report dated 07.08.2015, has got no basis in the eye of law, since while conducting such enquiry the persons who are in favour of the present opposite party no.3 only were asked about the character or the petitioner. It is further argued that learned tribunal did not visualize that the enquiry report dated 07.08.2015, is not only one sided but also the same bears various dates which itself creates a confusion with regard to the genuineness of the same. It is contended further that since the aforesaid enquiry report is perverse, learned tribunal ought to have interfered with the resolution of the Waqf Board dated 31.08.2016, and in not doing so, a serious miscarriage of justice has been occurred which requires interference by this Court in exercise of its power under

Article 227 of the Constitution of India. It is further argued that while passing the impugned order Learned Tribunal ought to have held that the Board under the law is not authorized to conduct an enquiry as has been done in this case and in view of such, the impugned judgement may be set aside by directing the Board to conduct a fresh enquiry with regard to the candidature of the petitioner as Mutawalli in respect of the Waqf properties as involved in this case.

6. Learned Advocates for the opposite party nos. 1 and 2/Board while opposing the contention of the petitioner draws attention of this Court to the provisions of Sections 32, 63, 70, 71, 83 of the Waqf Act, 1954. Attention of this Court is also drawn to genealogical table as has been annexed with the written objection as filed before the Learned Tribunal in O.A No. 4/2017. It is contended that though as per line of decedents and as per the desire of Waqif, the present petitioner is entitled to be appointed as a Mutawalli but the Board as well as the Learned Tribunal committed no error of fact or of law in appointing the present opposite party no.3 as Mutawalli in view of the rightful objection as raised not only by the brothers and sisters of the present opposite party no.3, (step brothers and sisters of petitioner) but also by the full blooded brothers and sisters of the present petitioner by affirming separate affidavits.

7. It is contended further that on 21.02.2015, when the present opposite party no.3 made an application before the Board for appointing him as Mutawalli by issuing a letter dated 21.01.2013, in such letter the petitioner, his full blooded brothers and sisters, as well as the opposite party no. 3's full blooded brothers and sisters also put their signatures as witnesses. It is further contended on behalf of the opposite party nos.1 and 2 that the finding of the Board dated 31.08.2016, that the present petitioner is not entitled to become the Mutawalli

on account of his immoral life is not perverse since in course of field enquiry not only several people stated adverse against the character of the present petitioner but also from the successive affidavits as submitted before the Board it would reveal that the full blooded brothers and sisters of the petitioner stated it categorically that the present petitioner is a drunkard and resides with a widow and that he has left his residence 15 years back. It is contended further on behalf of the opposite party nos. 1 and 2 that from the recitals of the three Waqf Deeds, it would reveal that while executing the said three deeds, it was the desire of the Waqif that a certain portion of the earnings of the Waqf property shall also be spent for the benefits of his own family members in accordance with their respective shares. It is thus, argued that since in the case in hand all the family members of the present petitioner as well as the opposite party no.3 have categorically stated before the Board that on account of characterlessness of the present petitioner, he cannot be appointed as a Mutawalli and on the contrary the opposite party no.3 be appointed as a Mutawalli and thus the Board as well as the Learned Tribunal committed no irregularity or illegality by appointing the present opposite party no.3 as a Mutawalli denying the claim of the petitioner. It is thus, submitted that it is a fit case for dismissal of the instant revisional application.

8. Learned advocate for the opposite party no.3 in course of his argument adopted the argument as advanced by the learned advocate for the opposite party nos.1 and 2. It is further contended on behalf of the opposite party no.3 that learned tribunal while passing the impugned judgement duly examined the Lower Court Record i.e. the case record of the Waqf Board. It is further contended that since the petitioner has miserably failed to raise any objection

with regard to the field enquiry report dated 07.08.2015, learned tribunal has rightly held that the finding of the Board dated 31.08.2016 does not require any interference. In support of his contention learned advocate for the opposite party no.3 places his reliance upon the following two reported decisions:- ***Faqrudin (Dead) Through LRS. Vs. Tajuddin (dead) Through LRS. Reported in (2008) 8 SCC 12 and Hammad Ahmed vs. Abdul Majeed & Ors. (2019) 14 SCC1.*** It is contended by him that in the aforesaid two reported decisions the Hon'ble Supreme Court has clearly held that the office of Mutawalli is a spiritual *office and therefore it has to be held by a wise person and he must be fit for holding the post.* It is thus, argued that before the Board, it has been established beyond doubt that present opposite party no.3 is a fit person for holding the post of a Mutawalli and on the contrary a good number of materials has been placed before the Board to come to a finding that the present petitioner is not only a drunkard and at the same time he does not possesses a good character for being appointed as a Mutawalli. It is thus, argued that Learned Tribunal is very justified in upholding the finding of the Board dated 31.08.2016 thereby appointing the present opposite party no.3 as a Mutawalli to the Waqf as created by Sk. Amanatullah and therefore, the present revisional application may be dismissed.

9. This Court has meticulously gone through the entire materials as placed before this Court including the impugned judgement. This Court has given its anxious consideration over the submissions of the learned advocates of both the sides. In considered view of this Court for effective disposal of the instant application, a look to the provisions of Section 83 of the Waqf Act, 1995 is required and the same is reproduced as under:-

“Section 83 in The Wakf Act, 1995

83. Constitution of Tribunals, etc.—

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf.

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9.No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit”.

10. From the aforesaid provision of law it is thus found that an order under Section 83(2) of the aforesaid Act is not appealable however, such order can be challenged in revision under the proviso clause of sub-section 9 of the said Section.

11. It is a settled position of law that scope of a revision is quite distinguishable from that of an appeal and therefore, the finding of facts in detail ought not to be interfered by a revisional court as has been usually done by a court of Appeal.

12. On perusal of the entire file of papers it appears to this court that while passing the impugned judgement, learned tribunal duly considered all the materials as placed before the Board prior to taking resolution dated 31.08.2016 and at the same time, learned tribunal noticed that the board committed no error in coming to a finding that the present petitioner is not entitled to be appointed as a Mutawalli on account of his drinking habit as well as charecterlessness. It appears that the Learned Tribunal has rightly assessed that while conducting enquiry the Board has given due consideration and weightage not only to the versions of the persons of the locality as well as to the versions of the brothers and sisters of the petitioner as well as of the step brothers and sisters of the petitioner who by way of swearing affidavit categorically stated that on account of bad character and drinking habit of the present petitioner ought not to be appointed as a Mutawalli and on the contrary the opposite party no.3 on account of his soberness, gentle behaviour and good character should be appointed as Mutawalli. As rightly pointed out by learned advocate for the opposite party no. 3 that since before the Board the present petitioner has not filed any objection with regard to the field enquiry report dated 07.08.2015 and therefore he should not be permitted to raise the question of correctness of the said enquiry report either before the Tribunal or before this Court.

13. The argument of the learned advocate for the opposite party no.3 that the character certificates as has been relied upon by the petitioner before the learned tribunal has been rightly discarded by the learned tribunal since those certificates have been procured after conclusion of the enquiry by the Board is quite convincing since at the time of enquiry before the Board the petitioner has failed to bring any cogent evidence to substantiate that the allegations as made

against him by his own brothers and sisters as well as by his step brothers and sisters and the persons of the neighbourhood are false.

14. In view of the discussion made herein above this court thus, finds that there is no merit in the instant revisional application and the instant revisional application is thus, liable to be dismissed. As a result the present revisional application fails. The impugned judgement dated 09.09.2017 as passed in O.A 4 of 2017 by the Learned Waqf Tribunal , West Bengal is hereby upheld.

15. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)