

(39)
01.03.2022
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

**(Via Video Conference)
CO No. 2880 of 2019**

**Abdul Roush Khan & ors.
-versus-
Md. Abul Khayer Khan & ors.**

Mr. Md. Mansoor Alam,
... for the petitioners.
Mr. Sk. Md. Galib,
Mr. Abu Siddique Mallik, ... for the Board of Waqf.

The petitioners filed an application before the Waqf Tribunal, West Bengal being O.A. No. 16 of 2017 under Section 94(2) of Waqf Act, 1995 praying for the following reliefs:

- “a) Leave under Order I Rule 8 of Civil Procedure Code;*
- b) Admit the instant application under Section 94(2) of the Waqf Act, 1995;*
- c) Direction upon the present Mutawalli/Respondent No. 1 herein to inform the present position of the said Waqf Estate of Mosaheb Khan and Awosaf Khan having E.C. No.11403 in respect of khas possession of total 61.36 acres of Waqf properties to the petitioners herein;*
- d) Direction upon the Respondent No.1 to allow these petitioners to take part in all religious functions of the said Waqf Estate and also to consult with them;*
- e) Any other order or orders as Your Honours may deem fit and proper.”*

The learned Tribunal by the impugned judgment and order dated May 23, 2019 has dismissed the said application with the following observations:

“There is no cogent and credential document to show misconduct on the part of present Mutawalli. There is no proof of mismanagement of Waqf Estate, transfer of Waqf properties in the name of his son as alleged and

there is no proof of digesting income of Waqf Estate for personal gain. Under section 70 of the Waqf Act, 1995 any interested person may make an application to the Board of Auqaf supported by evidence to institute an enquiry relating to mismanagement of Waqf Estate. Rule 22 of W.B.W. Rule, 2001 prescribes the manner of enquiry to be held in connection with Sections 70 and 71 of the Waqf Act, 1995. There is complaint dated 02.12.2016 made by Abdul Roph Khan to Chief Executive Officer, Board of Auqaf raising mismanagement and transfer of Waqf property in the name of his son of present Mutawalli. The complaint dated 02.12.2016 shows request of recording the name of Abdul Roph Khan as Mutawalli of 'Musabia Jumma Masjid Waqf Estate'. The complaint dated 02.12.2016 is not supported by any affidavit as required. The complaint dated 02.12.2016 is also not supported by any document. The complaint dated 02.12.2016 also not disclosing the ground of removal of recorded Mutawalli and appointing Abdul Roph Khan as Mutawalli of 'Musabia Jumma Masjid Waqf Estate'. The complaint dated 02.12.2016 does not show any basis for recording the name of Abdul Roph Khan as Mutawalli. The complaint dated 02.12.2016 seems to be well motivated to harass the present recorded Mutawalli and seems to be unnecessary interference with the functioning of Waqf Estate. It is also unnecessary interference with the power of Board for recording a competent descendent of Waqif as Mutawalli".

This Court, on scrutiny of record, is of the opinion that the learned Trial Judge is absolutely justified in arriving to the aforesaid conclusion.

The order impugned therefore does not call for any interference.

C.O. 2880 of 2019 is thus dismissed. There shall be no order as to costs.

However, this order will not prevent the petitioners from making an appropriate application before the Board under Section 70 of the Waqf Act, 1995 for inquiry relating to the administration of the said wakf.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)