

September 21, 2022
AD 11
Court No.1
SG

FMA 1190 of 2022
with
CAN 1 of 2022
CAN 2 of 2022

Nazrul Mondal
vs.
The State of West Bengal and others

Mr. I. Munshi, Advocate
... for the appellant.

Mr. Amal Kumar Sen,
Ms. Ashima Das (Sil), Advocates
... for the State.

Affidavit of service filed by appellant is taken on record.

CAN 1 of 2022 has been filed by the appellant seeking condonation of delay of 19 days in filing this appeal.

Considering the plea taken in the application and submission of learned counsel for the parties and the fact that the delay is marginal, CAN 1 of 2022 is allowed and the delay is condoned.

This intra-court appeal is at the instance of the writ petitioner challenging the order of learned Single Judge dated 05.07.2022 whereby the writ petition being WPA 9504 of 2022 has been dismissed taking note of the fact that the appellant has remedy under the Waqf Act, 1995.

The record reflects that the appellant had filed the writ petition claiming that the ownership, rights on the subject property and questioning the communication dated 11.05.2022 whereby the Chief Executive Officer,

Board of Auqaf, West Bengal had conveyed to the other authorities that the land has been cultivated by some unauthorised persons. Learned Single Judge has taken note of Section 6 of the Waqf Act and has noted that under that provision aggrieved persons can approach the tribunal for a decision on any disputed question with regard to properties.

Placing reliance upon the Single Bench judgments of this Court in the matter of *Ameeruddin Ahmad v Board of Wakfs, West Bengal* reported in 2012 SCC OnLine Cal 13201 and in the matter of *Golam Mustapha and another v The Board of Wakf, West Bengal* reported in 2015 SCC OnLine Cal 10124.

Learned counsel for the appellant has submitted that the remedy before the Waqf Tribunal is not an efficacious remedy and writ should have been entertained.

The order of learned Single Judge has been supported by learned counsel for the respondents.

Having heard learned counsel for the parties and on perusal of the record, it is noticed that not only Section 6 of the Waqf Act, 1995 but Sections 83 and 84 of the Act of 1995 also make it clear that the appellant has remedy before the tribunal.

Hon'ble Supreme Court in the matter of *Board of Wakf, West Bengal v Anis Fatma Begum* reported in (2010) 14 SCC 588 has held that:

“7. The dispute in the present case relates to a wakf. In our opinion, all matters pertaining to wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the civil court or by the High Court straightway under Article 226 of the Constitution of India. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a Special Tribunal for deciding disputes relating to wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to wakfs were being filed in the courts in India and they were occupying a lot of time of all the courts in the country which resulted in increase in pendency of cases in the courts. Hence, a Special Tribunal has been constituted for deciding such matters.

x x x

10. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words “any dispute, question or other matters relating to a wakf or wakf property” are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal. The word “wakf” has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

11. Under Section 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the civil court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2-A of the Code of Civil Procedure, 1908 to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a wakf or wakf property.”

In view of the above judgement of Hon’ble Supreme Court, appellant is not entitled to the benefit of contrary judgements of learned Single Judge on which he is relying upon.

Hence, we do not find any error in the order of learned Single Judge in refusing to entertain the appeal

and permitting the appellant to avail the remedy before the tribunal. No ground for interference is made out.

We make it clear that if the appellant approaches the tribunal, then the tribunal will take the decision independently without being influenced by any observation made by learned Single Judge in the order.

Accordingly, the present appeal is dismissed.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]