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21.03.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 3606 of 2019

Iftekhar Ahmed
-versus-
The Board of Auqaf & anr.

Mr. Sumit Kumar Ray,
Mr. Nayeemuddin Munshi,
Mr. Munshi Asiq Elahi, ... for the petitioner.

Mr. Sk. Md. Galib,
Mr. Abu Siddique, ... for the Board of Wakfs.

The revisional application under Article 227 of the Constitution of India is directed against the judgment and order dated July 29, 2019 passed by the Wakf Tribunal, West Bengal in OA No. 11 of 2018.

The Board by its resolution dated January 28, 2010 appointed Mohammad Mukhtar Hussain @ Mukhtar Ali, the father of the petitioner herein as the Mutawalli of the **Moulana Md. Sardar Ali Waqf Estate**. The said resolution was confirmed on February 25, 2010.

Shoaib Ahmed, the opposite party no. 2 herein, challenged the said resolution and confirmation thereof in O.A. No. 18 of 2010 before the Waqf Tribunal. The Tribunal set aside the resolution appointment of Mukhtar Hussain as the Mutawali as the said Waqf Estate.

The said Mukhtar Hussain again applied before the Board for his appointment as Mutawali of the said Waqf Estate. The Board by its resolution dated January 17, 2018 which was confirmed on February 15, 2018 appointed the opposite party no. 2 as Mutawalli of the said Waqf Estate and rejected the prayer of said Mukhtar Hussain on the grounds that he was removed from the office of the Mutawali being found guilty of misuse of Waqf revenue, misappropriation of Waqf property and he was also outsider.

The said Mukhtar Hussain challenged the said resolution of the Board before the Waqf Tribunal in the connected original application but he expired during the pendency of the said proceeding before the Tribunal and on his death his son, the petitioner herein was added in the said proceeding.

Mr. Galib learned advocate for the Board submits that on the death of Mukhtar Hussain the proceeding before the Tribunal was abated as such the petitioner cannot maintain the present revisional application.

Mr. Sumit Ray, learned advocate for the petitioner submits that Mukhtar Hussain not only applied for his appointment as Mutawali of the said Waqf Estate but also he challenged the appointment of opposite party no. 2 as Mutawali

on the ground that case of encroachment of Waqf property is pending against him but the Tribunal although has found that there are inconsistencies in the resolution appointing the opposite party no. 2 as Mutawali but did not deal with the said issue.

He further submits that the petitioner has already applied for his appointment as the Mutawali of the said Waqf Estate, he prays that in the event the petitioner is found to be not entitled to challenge impugned judgment and order of the Tribunal the Board may be directed to consider his said application.

Mr. Galib responding to the said submission of Mr. Ray submits that the prayer of the petitioner cannot be considered without compromising the pious wish of the Waqif which can be gather from the terms of the deed of Waqf and to substantiate his such submission Mr. Galib refers to the clauses of the said deed of Waqif.

Heard learned advocate for the parties and perused the materials on record.

The father of the petitioner applied for his appointment as Mutawali for the said Waqf Estate and being dissatisfied with the resolution of the Board rejecting his such prayer he approached the Tribunal.

It is rightly submitted by Mr. Galib that on the death of the father of the petitioner the proceedings

before the Tribunal gets abated, addition of the petitioner in the said proceeding is of no consequence.

The petitioner, therefore, cannot maintain the present revisional application.

However, the Board is obliged to dispose of the application pending before it filed by the petitioner for his appointment as Mutawali of the said Waqf Estate, consideration of the said application of the petitioner on merit is beyond the scope of the present revisional application.

The Board is directed to dispose of the said application of the petitioner appearing at page. 71 of the revisional application in accordance with law.

C.O. 3606 of 2019 is disposed of with the above terms, without any order as to costs.

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.)