

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

12.08.2022
Item No.24
Court No. 1
Aloke

**C.O 73 of 2021
With
CAN 1 of 2022**

Subhrajit Ghosh & Ors.
Versus
Sonaulla Wakf Estate & Anr.

Mr. Aniruddha Chatterjee,
Mr. Saikat Chatterjee

..... for the petitioner

Mr. Subhasish Misra,
Mr. Swarup Das
...for the O.P No.1

Mr. Momenur Rahman,
Mr. Ujjwal Luksom
... for the O.P No.2

This revisional application is directed against an order dated 17th June, 2021 (impugned order) passed in Suit No.10 of 2020 by the Learned Wakf Tribunal.

By the impugned order, the Learned Wakf Tribunal has passed an order of injunction, as prayed for by the plaintiff whereby, the defendant nos.1 to 3 have been restrained from carrying out any sort of construction over the suit premises in any manner whatsoever till the disposal of the suit.

The suit was filed inter-alia for a declaration that the subject premises be declared as a property of Wakf-Al-aulad Estate under E.C No.1464 and for consequential reliefs.

By the impugned order, the Learned Wakf Tribunal has, inter alia, held that the plaint lacks description of material facts.

It has also been held that the entire facts had not been penned down in the plaint. The question whether the subject premises was a public wakf or private wakf has also not been gone into by the learned Wakf Tribunal. This aspect of the matter was crucial to the reliefs claimed in the suit. Further, the aspect of the matter pertaining to whether the suit property is a wakf property or not and whether the dedication in favour of the plaintiffs as to the scope, purport and ambit of the decree passed in the Suit No.31 of 1954 has also not been adjudicated upon by the Trial Court. The question of whether the Deed of Wakf is legally correct or not has also not been decided by the Wakf Tribunal.

In my view, a perusal of the impugned order leaves no manner of doubt that the Wakf Tribunal in passing the impugned order has not arrived at a finding as to the “prima facie case” of the petitioners as to whether the property was a Wakf-al-aulad in view of the reliefs sought for in the suit. There are several issues highlighted in the impugned order which have been left for adjudication at the time of the final trial. There is also no prima facie satisfaction of the Tribunal. A prima facie case on behalf of the plaintiffs has simply not been arrived at in passing the impugned order.

Accordingly, the impugned order cannot be sustained. The impugned order is set aside. The matter is remanded back to the Learned Wakf Tribunal who shall dispose of the same after hearing all the parties within a period of four weeks from the date of communication of this order and after hearing all the parties.

With the aforesaid directions, C.O 73 of 2021 stands allowed.

Accordingly, the CAN 1 of 2022 is also disposed of.

There shall, however, be no order as to costs.

(Ravi Krishan Kapur, J.)