

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.

WPO 2327 of 2022

Sammiwara Begum

Vs

The Chairman, Board of Wakf (Auqaf) West Bengal And Ors.

For the Petitioner	:	Mr. Subir Sanyal, Adv. Mr. Sanat Kumar Biswas, Adv. Md. Karim Warsi, Adv.
For the Board of Auqaf	:	Sk. Md. Galilb, Sr. Adv. Ms. Tanwishee Mukherjee, Adv.
For the Respondent no. 3	:	Mr. Sumit Kumar Ray, Adv. Mr. Iftekar Munshi, Adv. Mr. Munshi Ashiq Elahi, Adv.
For the Respondent no. 4	:	Mr. Surajit Saha, Adv. Mr. Washim Ahmed, Adv.
Last Heard on	:	23.09.2022.
Delivered on	:	29.09.2022.

Moushumi Bhattacharya, J.

1. The petitioner has challenged a resolution of the Waqf Board dated 9.11.2021, confirmed on 29.12.2021 and seeks quashing of the same. The petitioner claims to be the erstwhile Mutawalli of the Waqf Estate. The petitioner and two other applicants being the respondent no. 3 and one Asraf Ali, sought for being appointed Mutawalli of the Waqf Estate. By the impugned resolution, the petitioner was removed from the post of Mutawalli and her claim for the said position was rejected on the ground of allegations made against the petitioner by one Azhar Sarkar and one Sabbir Ahmed.

2. The respondents before the Court are the Waqf Board, the respondent no. 3 who is the present Mutawalli and respondent no. 4, one Mobinul Haque who also claims to be affected by the Enquiry Report furnished to the Board before the impugned resolution.

3. The Board and the respondent no. 3 (the present Mutawalli) take a point of maintainability which is first being answered.

4. According to the answering respondents, the writ petition is not maintainable since the petitioner can avail of the efficacious alternative remedy of approaching the Tribunal as defined under section 3(q) of The Waqf Act, 1995. The second point raised is that the writ petition deserves to be dismissed since the petitioner had unsuccessfully claimed the same relief before a Co-ordinate Bench. Learned counsel appearing for the petitioner opposes the maintainability argument on the ground

that there has been a breach of the principles of natural justice and hence the doors of the Writ Court are open to the petitioner.

5. With regard to the first limb of the maintainability issue, section 83 (1) of the Waqf Act, 1995, may be referred to which empowers the State Government to constitute as many Tribunals as it may think fit for the determination of any dispute, question or other matter relating to a waqf or waqf property under this Act. Sub-section (2) of section 83 provides that any Mutawalli, person interested in a waqf or any other person aggrieved by an order made under this Act or rules framed under the Act may apply within the specified time or where no such time is specified, within prescribed time to the Tribunal for the determination of any dispute, question or other matter relating to the waqf. Under section 3(q), “Tribunal” means that which is constituted under section 83(1) having jurisdiction in relation to a particular area.

6. There is little doubt that the petitioner is aggrieved by orders of the Board passed under the 1995 Act by which the petitioner’s claim for Mutawalli-ship was rejected. Hence, the case of the petitioner is squarely covered by section 83 (2) of the Act. The question however, is whether the alleged breach of principles of natural justice in arriving at the impugned orders would enable the petitioner to invoke the extraordinary powers of the High Court under Article 226 of the Constitution of India.

7. The resolutions dated 28.10.2021 and 9.11.2021 were taken in meetings of the Waqf Board which the petitioner attended. The Minutes reflect that the petitioner was also represented by her lawyer on the first day; the petitioner personally attended the second day of the Meeting. Further, the petitioner was informed that an enquiry was conducted by one Jb. Abul Hasnat, OSD, Board of Auqaf, W.B. with regard to illegal construction in the waqf premises. The Minutes also refer to a second enquiry conducted by the OSD with regard to the present status of the waqf property. The Minutes record that an extended deliberation followed after reference to the enquiries and the parties were directed to furnish their affidavits before the Judicial Magistrate within 15 days from the date of receipt of the resolution showing their respective claims in the waqf estate.

8. The enquiries conducted by the OSD were again referred to along with the fact that the enquiries reflected illegal construction in the waqf premises. The Minutes also record that the Board considered the affidavit filed by the petitioner contesting the charge of misappropriation of waqf property. The Board also referred to an application filed by one Azhar Sarkar against the petitioner for illegal activities in respect of the waqf premises in connivance with the respondent no. 4, Md. Mobinul Haque and others. The Minutes further record that the Enquiry Report of the OSD was submitted to the Board for consideration. The Minutes thereafter record that deliberations and discussions were undertaken by the Board after which the impugned decision of rejecting the petitioner's claim for being appointed as the Mutawalli was taken.

9. The ground for rejection is also recorded, namely, that allegations have been made against the petitioner for causing illegal activities in the waqf premises with the connivance of some tenants.

10. After perusing the Minutes of the meetings leading to the impugned resolution, this Court is unable to accept the contention of the petitioner that there has been any breach of the principles of natural justice or that the petitioner suffered prejudice as a result of the same. By no means can the impugned decision be held to be non-transparent or made in the absence of the petitioner or without her knowledge. The Minutes also make it clear that the petitioner was informed of the substance of the enquiry reports and the allegations made against her, namely, causing illegal construction and activities in the waqf premises and misappropriation of waqf property with the connivance of the respondent no. 4 and some other tenants. The Minutes also reflect that the petitioner was present and participated in the deliberations before the impugned decision was taken. The petitioner was also represented by her lawyer on the first day i.e. 28.10.2021. Hence, contrary, to the stand taken by the petitioner there has not been any breach of the right to an opportunity of hearing and the petitioner was in the know of all relevant matters at the relevant point of time.

11. It is also pertinent to state that the petitioner had filed an earlier writ petition being WPO 1194 of 2021 seeking the same relief against the resolutions dated 28.10.2021 and 9.11.2021. The substance of the relief would appear from the first line of the order of the Co-ordinate Bench dated 22.12.2021.

12. After considering the factual matters, the Co-ordinate Bench was of the specific view that the petitioner's remedy lay under section 83(2) of the Waqf Act, 1995 and that the petitioner has not been able to demonstrate any violation of natural justice or of statutory procedure calling for interference by the Writ Court. Notably, not only has the petitioner approached this Court with the same relief, the petitioner has also not shown any materials that came to the knowledge of the petitioner subsequent to the order of the Co-ordinate Bench which would persuade this Court to come to a different conclusion. In the absence of any such material this Court does not find any compelling reason to take a different view of the matter.

13. Although this Court is not inclined to accept the charge of forum shopping made by the respondents against the petitioner or the particular facts in *Indore Development Authority vs. Manohar Lal*; (2020) 6 SCC 304 to be applicable to the present case, the decision of the Supreme Court in *Board of Wakf, West Bengal vs. Anis Fatma Begum*; (2010) 14 SCC 588 applies squarely to the facts of the present case. The Supreme Court in that decision was of the view that all matters pertaining to waqf should be filed in the first instance before the Waqf Tribunal constituted under section 83 of the Waqf Act, 1995 and should not be entertained by the Civil Courts or by the High Courts under Article 226 of the Constitution of India. In a decision of the Supreme Court in *Rashid Wali Beg vs. Farid Pindari in Civil Appeal No. 6336 of 2021* pronounced on 28.10.2021, the dispute as to the nature of waqf and/or whether the plaintiff is a beneficiary of the waqf was also

relegated to the jurisdictional Waqf Tribunal under section 83(2) of the Act. The decision of a learned Single Judge of this Court in *Khoja Sunnat Jamat vs. Board of Waqf, West Bengal*; (2016) 4 CHN Cal 64 is also pertinent to the issue of alternative remedy where the learned Judge was of the view that the jurisdiction of a Writ Court under Article 226 of the Constitution should be exercised sparingly only in fit cases and not where the general laws or a special law provide an efficacious and speedy remedy. In *Alagaapuram R. Mohanraj vs. Tamil Nadu Legislative Assembly Rep. by its Secretary*; (2016) 6 SCC 82, the Supreme Court was of the view that the video recording in the course of the case played an important role in the conclusions arrived at by the Privilege Committee and that the petitioners had not been granted an opportunity to see the video recording which was a clear violation of natural justice. In *Harbanslal Sahnia vs. Indian Oil Corporation Ltd.*; (2003) 2 SCC 107, the Supreme Court outlined that recourse to arbitration would not deny the petitioners an opportunity to urge their case before the Writ Court provided the exceptions to the alternative remedy rule existed. There can be no second view on this well settled principle. However, since this Court has specifically found that the petitioner cannot complain of violation of the principles of natural justice in the particular facts of the case, the exceptions to the bar of invoking writ jurisdiction despite the existence of an alternative remedy will not apply in the present case.

14. Since the objection to the point of maintainability has been answered in favour of the Waqf Board and the respondent no. 3, the other issue with regard to the alleged apprehension of bias is not being gone into.

15. WPO 2327 of 2022 is accordingly dismissed on the ground of maintainability and without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)