

13. 02. 2023

BP
Sl.24
Court No. 12

CO 432 of 2019

Sadhan Saha & Ors.
Vs.
Baish Hazari Wakf Estate & Anr.

Mr. Nirmalendu Bera
Mr. Abhijit Sarkar
Mr. Raja Biswas
..for the petitioners

Mr. Tapan Kumar Mahapatra
..for the Opposite Party No.1

Sk. Md. Galib
Ms. Tanwishree Mukherjee
..for the Opposite Party No.2

The petitioners and the opposite party Nos. 1 and 2 are represented by their respective learned advocates.

I have heard the learned advocates for the petitioners, opposite party no. 1 and opposite party no.2 at length.

The instant revisional application is now taken up for passing appropriate order.

The instant revisional application under Article 227 of the Constitution of India arises out of an order dated 09.07.2018, passed by the learned Waqf Tribunal in Suit No. 22 of 2015, whereby and whereunder the said Tribunal decreed the said suit as filed by the plaintiff/ opposite party no.1, on contest against defendant nos.12

and 13 and ex parte against the rest. The defendants, against whom such ex parte decree was passed by the said Tribunal, felt aggrieved and preferred the instant revisional application.

In support of the instant revisional application, learned advocate for the revisionists at the very outset draws attention of this court to the certified copy of the impugned order. It is contended that on perusal of the impugned order, it would reveal that the present revisionists entered their appearance in the said suit before the said Tribunal and filed their written statement claiming, inter alia, the suit plots have been vested in the State and, therefore, the plaintiff/ opposite party no. 1 cannot get a decree as prayed for before the Tribunal. It is further contended that thereafter for some reason or other the present revisionists failed to appear before the Tribunal in the said suit and thus failed to substantiate their contention with regard to vesting of such land which is why an ex parte decree has been passed against them. It is contended on behalf of the revisionists that in the event the present revisionists may be given an opportunity to place their defence afresh in the said suit and to contest the said suit before the learned Tribunal by setting aside the impugned judgement, appropriate justice would be subserved to the present revisionists. Drawing attention to the annexures to the instant revisional

application, it is contended that the present petitioners' contention that the suit plot of land has been vested with the State is prima facie correct. It is thus argued that it is a fit case for setting aside the impugned order and for giving liberty to the present revisionists to contest the said suit before the learned trial court afresh.

Per contra, learned advocate for the opposite party no.2/ the Board of Wakf (hereinafter referred to as 'Board') submits before this court that on perusal of the certified copy of the impugned order, it would not reveal that the learned Tribunal while passing the impugned order caused any miscarriage of justice as against the present revisionists and thus, the instant revisional application is not maintainable.

Learned advocate for the Board, in course of his submission, draws attention of this court to the Section 83(9) of the Wakf Act, 1995. He also placed his reliance upon the two reported decisions namely, '**Kiran Devi vs. Bihar State Sunni Wakf Board and Others**' reported in **2021 SCC OnLine SC 280** and '**Celina Coelho Pereira (Ms) and Others vs. Ulhas Mahabaleshwar Kholkar and Others**' reported in **(2010) 1 SCC 217**. Placing his reliance to the aforesaid statutory provision and upon the aforesaid two reported decisions it has been contended by the learned advocate for the opposite party no.2/the Board that it is settled law that the jurisdiction of Article

227 of the Constitution of India should not be exercised as a cloak of an appeal in disguise and on the contrary the same is to be exercised very sparingly and only when it can be shown that serious miscarriage of justice has been occurred in passing the impugned judgement. It is contended that on bare perusal of the impugned order it would reveal that the learned Tribunal has passed a reasoned and justified order for which the exercise of power under article 227 cannot be called for.

Learned advocate for the plaintiff/opposite party no.1 practically echoed the versions of the learned advocate for the opposite party no.2/Board. It is further submitted by him that since before the learned trial court the present revisionist has failed to prove that the said plots of land are vested land, Learned Tribunal is very much justified in passing the impugned order.

This court has meticulously perused the entire materials as have been placed before this court including the impugned judgement. It reveals to this court that at the time of hearing on the point of admission practically an issue has been framed by a coordinate Bench of this court as to whether the instant matter could be remanded back to the Tribunal for a complete adjudication of the matter upon giving an opportunity by producing relevant documents and of hearing to the petitioners i.e. the revisionists herein.

Since at the time of hearing of the instant application learned advocates for the contesting parties have confined their arguments with that limited point only, this court shall propose dispose of the instant revisional application on the point as framed by a coordinate Bench of this court on February 25, 2019.

In doing so this court considers that a look to the provision of Section 83 of the Waqf Act, 1995 is necessary and the same is reproduced hereinbelow in verbatim.

“83. Constitution of Tribunals, etc.-

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....
- 6.....
- 7.....
- 8.....

9. No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for an examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.”

This court has also perused the reported decisions

Kiran Devi (supra) and **Celina Coelho Pereira** ((supra).

On perusal of the aforesaid legislative provision, it appears to this court that it is the mandate of the legislature that as against any decision or order whether interim or otherwise as passed by the Tribunal no appeal

shall lie. However, in the proviso of Section 83(9) of the said Act of 1995, it reveals that the Legislatures on their own wisdom have given a power to the High Court to call for and examine the records, either on its own motion or on the application of the Board or any person aggrieved relating to any dispute or question which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality and propriety of determination and in doing so the High Court may confirm, reverse or modify such determination or pass such other order as it thinks fit. This is pertinent to mention herein that in the proviso portion as referred to above the powers of the High Court i.e. with regard to confirmation, reversing, modifying and pass such other order have been made disjunctive with the word 'or'.

Such being the position, this court holds that if at the time of examining the records the High Court finds any illegality or irregularity in the order impugned it may either confirm or reverse or modify the said order and at the same time it may also pass such order as it thinks fit.

Coming to the factual aspects of this case, it appears to this court that before the learned Tribunal the present revisionists made their appearance and filed their written statement with a defence that the suit plots are the vested land. Admittedly, before the learned Tribunal the present revisionist thereafter did not appear for

reason best known to them and, thus, learned Tribunal found no other alternative but to pass an ex parte decree against the present revisionists.

However, considering the fact that the present revisionist before the learned Tribunal has taken a specific plea that the suit plots are the vested property and to substantiate such plea, some photocopies of the documents have been placed before this court, this court considers that justice would be subserved if the present revisionists are given an opportunity to contest the Suit No. 22 of 2015 on the basis of their written statement as already filed. This court further considers that if the present revisionists are given an opportunity to contest the said suit afresh on the basis of their written statement so filed, the real question of controversy would be adjudicated.

In view of such, the instant revisional application is hereby allowed on contest with cost of Rs. 20,000/-. As a result, the impugned order dated 09.07.2018 as passed by the learned Waqf Tribunal, West Bengal in Suit No. 22 of 2015 is hereby set aside. It is directed that out of cost of Rs. 20,000/-, Rs. 5,000/- is to be deposited with the Secretary, DLSA, Kolkata, Rs. 7,500/- with the opposite party no.1 and remaining Rs. 7,500/- with the opposite party no.2 i.e. Board within a week from the date of passing of this order.

It is further directed that after deposit of costs the present revisionists shall approach before the learned Tribunal along with the money receipts showing deposit of costs within a fortnight from the date of passing of this order and on such approach, learned Tribunal shall fix a date of appearance of both the parties in Suit No. 22 of 2015 and, thereafter, shall proceed with Suit No. 22 of 2015 in accordance with law without granting unnecessary adjournments to the either sides.

With the aforementioned observation, the instant revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given on priority basis.

(Partha Sarathi Sen, J.)

