

12.10.2023
Item No.8
gd/ssd

MAT/571/2023
IA NO: CAN/1/2023, CAN/2/2023
THE BOARD OF WAKFS AND ORS.
VS
SYED ALI RAZA HUSSAIN AND ORS.

Sk. Md. Galib,
Ms. Tanwishree Mukherjee
..for the Appellants.

Md. Sarwar Jahan,
Mr. Shahzad Noor Thander
..for the Respondent No.1.

Mr. Arif Ali,
Mr. Yusuf Ali Mirza
..for the Respondent Nos.5 to 8.

Re: CAN 2 of 2023

1. CAN 2 of 2023 has been filed by the appellants seeking condonation of delay of 220 days in filing this appeal.

2. Learned counsel for the appellants has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

3. We find that the delay in filing this appeal has been sufficiently explained and the appellants were prevented from filing the appeal within time on account of bona fide reason.

4. Hence, CAN 2 of 2023 is, accordingly, allowed.
The delay in filing the appeal is condoned.

Re: MAT 571 of 2023

5. This intra court appeal by the Board of Wakf, West Bengal and Others is directed against the order dated 20th June, 2022 in WPA 20682 of 2021.

6. The writ petition was filed for a direction on the appellant Board to take action in terms of the representation given by the writ petitioners in 2015 which relates to five Managing Committee Members of the Hooghly Imambarah where two of the Members died in the year 2020 and that the Managing Committee was functioning only with three Members for the last two years.

7. The writ petition was disposed of with the direction upon the Board of Wakfs, the appellants to take steps in terms of the representation dated 25.02.2021 made by the writ petitioners within four weeks from 10th July, 2022 when the Mutawalli Member is due to be inducted and the Board is said to be complete and functioning. The appellant Board was directed to take appropriate steps in terms of the representation and inform the writ petitioners of the manner in which the representation is to be disposed of by way of all communication to be made within two weeks by which the representation is disposed of.

8. The learned advocate for the appellants would submit that the order and direction passed by the learned writ court is contrary to the provisions of the Wakf Act, 1995.

9. Since the prayer sought for in the representation made by the writ petitioners for appointment of the Committee Members to Imambarah has to be moved before Wakf Tribunal and the writ petition is not maintainable.

10. In support of such contention the learned counsel for the appellants had relied upon several decisions of the Hon'ble Supreme Court.

11. There can be no quarrel to the proposition that the Wakf Act, 1995 is comprehensive legislation and a code by itself. Therefore, the writ court should seldom entertain pleas with regard to the aspects which are falling under the scope of the Wakf Act, 1995.

12. We find that the prayer sought for in the representation given by the writ petitioners would be in the exclusive domain of the Wakf Tribunal and the writ petition was not maintainable. Though this being the correct legal position, since the order and direction issued in the writ petition has worked itself out inasmuch as the representation has been considered and certain orders have been passed, the legal issue raised by the appellant which has been accepted by this court has become an academic exercise.

13. Therefore, while clarifying that the relief sought for in the representation ought to have been adjudicated before the Wakf Tribunal and not by way of a writ petition, since the representation has already

been disposed of, we are of the view that no further orders are required in this appeal except to observe that the prayer sought for in the representation would not have been made before the writ court but ought to have been placed before the Wakf Tribunal.

14. The learned advocate for the appellants submitted that contempt application has been filed by the writ petitioners and the matter is to be heard by the learned Single Bench.

15. The learned advocate appearing for the writ petitioners submitted that nothing further survive in the contempt application and the same will be not pressed.

16. In the event the writ petitioners are aggrieved by any of the decision taken by the Wakf Board, it will be open to the writ petitioners to approach the appropriate forum for appropriate reliefs.

17. In the light of the above observations, the direction issued in the writ petition shall not be treated as a precedent, more particularly when we have held that the writ petition was not maintainable.

18. With the above observations this appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)