

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No.897 of 2021

Pir Habib Abdullah-Al-Attas Muridan

Conference Committee of Gonima Jabia Sharif

At Mallickpur, South-24-Parganas, represented by

Janab Foroj Ali Molla, Secretary of the aforesaid

Committee.

Vs.

Board of Auqaf & Ors.

For the Petitioner :

Mr. Sofiulla Mondal, Adv.

For the Board of Auqaf.:

Mr. Sk. Md. Galib, Adv.,

Ms. Tanwishree Mukherjee, Adv.

Last Heard on:

: 26.06.2023

Judgment on:

: 19.07.2023

Partha Sarathi Sen, J. : –

1. The instant revisional application as filed under Article 227 of the Constitution of India arises out of the judgement dated November 18, 2020 as passed in Suit No. 47 of 2016 by the Learned Auqaf Tribunal, West Bengal whereby and whereunder the said Tribunal by the impugned judgement dismissed the aforementioned suit. The plaintiff of the said suit felt aggrieved and thus, preferred the instant revisional application.

2. For effective disposal of the instant revisional application the facts leading to filing of the Suit no.47 of 2016 before the said Tribunal is required to be dealt with in a nutshell.

3. It is the plaint case that one Murhum Pir Janab Habib Abdullah-Al-Attas had created Habib Abdullah Waqf Estate by a registered instrument and in terms of the said Waqf Deed, the Waqf Estate should have to be managed as per the Attasia Tarika in consultation with and in co-operation of the Murids of Murhum Pir Janab Habib Abdulla-Al-Attas. It is the further plaint case that the said Waqf Estate consists of 53 bighas of land and on account of mismanagement in administering the said Waqf estate by the then Mutwalli, the Waqf Board (hereinafter referred to as the said 'Board') had removed the then Mutwalli under Section 64 of the Wakf Act, 1995 (hereinafter referred to as the 'said Act in short') by a resolution of the said Board dated 17.06.2002 and that the said Board is still managing the said Waqf Estate. It is the further plaint case that after taking charge of the said estate, the said Board did not administer the said Estate as per the Waqf Deed and they are also not taking any advice or help of any Murid. It is the further plaint case that even after taking charge of the said Estate by the Board several thefts occurred in respect of the property of the said Estate and that the properties of the said Estate are not being looked after in an appropriate manner. It is the further allegation of the plaintiff before the said Tribunal that the said Board is also not taking any steps to recover the Waqf properties which is in possession of some illegal occupier. Finding the aforementioned illegality and irregularity, particulars of which are given in the plaint of the aforementioned suit, the plaintiff served a notice under

Section 89 of the said Act requesting the defendant-Board and its Chief Executive Officer to handover the management of the said Waqf Estate to the plaintiff and on their failure to comply with the requisition of the said notice the plaintiff after the expiry of the statutory period have filed the said suit with the following prayers:-

- “a. Leave under Order 1 Rule 8 of the Code of Civil Procedure to institute the instant suit together;*
- b. Declaration that the suit property is a Wakf-Al-Al-Aulad property having E.C No.2561 in the Register of Board of Auqaf, West Bengal;*
- c. Declaration that the Board of Auqaf, West Bengal , the defendant no.1 herein has no right to keep the said Wakf-Al-Al-Aulad Estate under Direct Management for indefinite period without handing over management to the lawful authority as per terms and conditions of the Deed of Waqf after the expiry of 5(five) years term as per Resolution dated 17.06.2002 without either further extending the term or appointing a new Mutwalli Committee after hearing all the interested parties related to the said Waqf Estate;*
- d. Direction upon the defendants to give accounts of income and expenses for the entire period of Direct Management under the Board since taking over charge in the year 2002 A.D. to the plaintiffs;*
- e. To release the charge of management of the said Waqf Estate within 3(three) months from the date of order by the Learned Waqf Tribunal;*
- f. Costs of the suit;*
- g. Any other appropriate order or orders as the Learned Tribunal may deem fit and proper.”*

4. The said Board and its Chief Executive Officer as defendants duly entered their appearance before the Learned Tribunal in the said suit and

filed their written statement denying each and every statements of the plaintiff. From the certified copy of the impugned judgement it reveals that the said Tribunal on the basis of the pleadings of parties framed the following ten issues namely:-

- “1. Is the suit maintainable in its present form and prayer?*
- 2. Has the plaintiff got locus standi to sue?*
- 3. Is the Waqf in respect of 53 bighas of the land enrolled under E.C No.2561 as Waqf-ul-lillah or Waqf-al-al-Aulad in nature?*
- 4. Has the Waqf Estate been properly taken under direct management of the Board of Auqaf in accordance with law?*
- 5. Is the retention of the Waqf Estate under direct management of the Board of Auqaf even after the expiry of 5 years proper , legal and valid administration?*
- 6. Is the plaintiff entitled to administer the Waqf Estate?*
- 7. Is the Plaintiff entitled to account of the Waqf Estate?*
- 8. Is the Waqf Estate liable to be released from the direct management?*
- 9. Is the plaintiff entitled to have the decree as prayed for?*
- 10. To what other relief/reliefs, if any, is the plaintiff entitled?”*

5. On perusal of the certified copy of the impugned judgement it reveals further Learned Tribunal disposed of all the issues except issue nos. 5 and 8 against the plaintiff and thus dismissed of the said suit on contest.

6. In support of his contention learned advocate for the plaintiff-revisionist at the very outset submits before this Court that Learned Tribunal while passing the impugned judgement failed to consider the plaintiff case as well as the evidence of the plaintiff in its proper perspective and thus, misdirected himself in passing the impugned judgement which is not in accordance in law. It is argued that though before the learned Tribunal

sufficient evidence have been produced by the plaintiff to substantiate that the said Waqf Estate is administered not in accordance with the direction of the Waqif but the Tribunal has failed to visualize the same for the reason best known to it. Drawing attention to page nos. 17 and 18 of the impugned judgement it is submitted further that though the Tribunal has decided the issue nos.5 and 8 against the plaintiff holding that the defendant-Board cannot retain the Waqf Estate under their direct management after expiry of 5 years from the date of assumption of charge, in spite of that learned Tribunal for no reason whatsoever failed to pass a decree in favour of the plaintiff directing the defendant-Board to handover the direct management of the said Waqf Estate to the plaintiff and also failed to pass a decree for furnishing accounts of income and expenses to the plaintiff during the period of entire management under the defendant-Board. Learned advocate for the plaintiff-revisionist thus, submits that it is a fit case for allowing the instant revisional application by setting aside the impugned judgement.

7. Per contra, Learned advocate for the defendants-respondents at the very outset draws attention of this court to the different provisions of the said Act. It is submitted that since before the learned Tribunal the present plaintiff-petitioner has failed to establish that he is a “person interested in a Waqf” within the meaning of Section 3(k) of the ‘said Act’ Learned Tribunal is very much justified in holding that the present plaintiff-revisionist has no locus standi to institute the suit before the Tribunal. Drawing attention to the provision of Section 65 of the said Act it is submitted on behalf of the defendant-opposite party that the management of the said Waqf Estate was assumed by the said Board in view of Section 65(1) of the said Act and thus,

in the event the plaintiff felt aggrieved with such assumption of management, he has no other alternative but to approach the State Government under Section 65(2) of the said Act challenging the correctness, legality or propriety of the decision of the Board. It is thus, contended that in view of the provisions of Section 65 (2) of the said Act a suit challenging such assumption of charge by the defendant-opposite party-Board is not maintainable before the Tribunal. Drawing attention to Section 65(3) of the said Act it is contended that under the said provision of law after assumption of charge of a Waqf Estate the Board is duty bound to furnish detailed report inclusive report of accounts to the State Government only and therefore, Learned Tribunal is equally justified in refusing the prayer of the plaintiff-petitioner to furnish accounts of the said Estate to him. It is further submitted that in course of trial of the said suit Learned Tribunal rightly came to a favorable conclusion in favour of the said Board with regard to its power and function in administering the said Waqf Estate under Section 32 of the said Act and thus, there cannot be any justification to interfere with the impugned judgement. Learned advocate for the said Board-opposite party thus, submits that it is a fit case for dismissal of the instant revisional application.

8. In order to reach at a logical conclusion of the instant revisional application this Court proposes to look to the provision of Section 83 of the said Act which is reproduced hereunder in verbatim:-

“83. Constitution of Tribunals, etc.-

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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 and 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.”

9. On perusal of the proviso clause of Section 83 (9) of the said Act it thus reveals that the legislatures on their own wisdom made it clear that as against the decision of the Tribunal whether interim or final; no appeal shall lie however a revisional application challenging an order of the tribunal before the High Court is maintainable. In view of such legislative provision this court has got no hesitation to hold that the scope of the revisionist-plaintiff while challenging the impugned judgement in this revisional application has become narrower than that of an appeal.

10. On perusal of the entire materials as placed before this Court including the certified copy of the impugned judgement and after hearing the learned advocates for the contending parties it reveals to this Court that so far as the issue of maintainability and entertainability of the suit is concerned the Learned Tribunal adopted correct proposition of law in

deciding the said issue and, therefore, this Court sitting in a revisional jurisdiction do not find any material to interfere with the same.

11. So far as issue no.2 i.e. the locus standi of the plaintiff-revisionist herein to institute the said suit is concerned this court finds that before the learned Tribunal the plaintiff has miserably failed to establish that he is a “person interested in a Waqf” within the meaning of Section 3(k) of the said Act and, therefore, this Court does not interfere with the said finding. So far as issue no.3 of the said suit is concerned it reveals that such issue no.3 was disposed of on factual findings of the said Tribunal and in absence on any material that the said Tribunal while disposing issue no.3 has violated the settled principle of law, this court holds that the finding of issue no.3 is not required to be touched and/or altered.

12. It further reveals to this court that Learned Tribunal while disposing issue nos. 4 and 5 found necessary compliance of Section 65(1) of the said Act on the part of the said Board-Opposite Party while assuming the charge of the said Waqf Estate and at the same time the said Tribunal came to a finding that the said Board is not entitled to keep the management of the said Waqf Estate for a period not exceeding 5 years in aggregate. In this regard learned advocate for the petitioner vividly argued that inspite of such finding learned Tribunal in the impugned judgement passed no direction for handing over the charge of the said Waqf Estate to the plaintiff for acting as Mutwalli of the said Estate. In course of hearing, pursuant to an order dated 31.08.2021 as passed in this case the opposite party no.2 being the Chief Executive Officer of the said Board has submitted a status report under cover of his letter dated 02.09.2021 from which it reveals that pursuant to

the resolution dated 12.10.2020 as taken by the said Board a Management Committee consists of:-

1. *S.D.O, Baruipur, 24 Pgs(s), Chairman, Habib Abdulah Waqf Estate Management Committee,*
2. *Hon'ble M.L.A , Baruipur Constituency, 24-Pgs.(s), Member , Habib Abdulah Waqf Estate Management,*
3. *Dy. Chief Executive Officer, Board Auqaf, W.B Member & Convener, Habib Abdulah Waqf Estate Management Committee,*
4. *Karmadhakya Baruipur Panchayet Samity, 24-Pgs (S), Member, Habib Abdulah Waqf Estate Management Committee,*
5. *The B.D.O , Baruipur , 24-Pgs.(S),*
6. *The Officer-In-Charge, Baruipur Police Station, 24 Pgs.(s),*
7. *Kazi. Md. Ali.*

have been constituted under the supervision of the said Board in view of Section 67 of the said Act. Such being the position, it thus appears to this Court that the adverse finding of the said Tribunal in respect of issue nos. 5 and 8 has been taken due care of by the present opposite party-Board by handing over the charge of administration of the Estate to a duly constituted committee and not keeping the same under their direct control. In view of such this Court finds no cogent reason for interfering with the findings of the said Tribunal in respect of issue nos. 5 and 8.

13. So far as issue no.6 of the said suit i.e. with regard to the entitlement of the plaintiff to administer the said Waqf Estate is concerned it reveals that in the prayer portion of the plaint of the said suit, the plaintiff has made no such prayer and thus in considered view of this Court the issue no.6 has become redundant.

14. In further considered view of this Court, Learned Tribunal is equally justified in deciding issue no.7 i.e. entitlement of the plaintiff to get accounts of the Waqf Estate, against the plaintiff in view of the fact that under Section 65(3) of the said Act the said Board is duty bound to submit the reports including report of accounts to the State Government only and to no others.

15. In view of the discussion made hereinabove, this court thus finds no merit in the instant revisional application and accordingly the instant revisional application is dismissed.

16. As a result the impugned judgement dated November 8, 2020 as passed by learned Waqf Tribunal, West Bengal in Suit no.47 of 2016 is hereby affirmed.

17. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)