

29.09.2023
Item No.40
Court No.6.
S. De

**M.A.T. 1617 of 2023
with
I.A. No. CAN/1/2023**

**The Board of Auqaf & Anr.
Vs
Gajanand Marwari @ Agarwal & Ors.**

Sk. Md. Galib,
Ms. Tanushree Mukherjee,
...for the appellants.
Mr. Alok Ghosh,
Ms. Tasushree Dasgupta,
...for the K.M.C.

By consent of the parties the appeal and the connected application are taken up together for hearing.

Read order dated September 22, 2023.

From the affidavit-of-service filed in Court today, it appears that the writ petitioners have been served with notice of this appeal. However, the writ petitioners are not represented even in the second call.

As recorded in our order dated September 22, 2023, the property in question being premises no.57, Manoranjan Roy Chaudhury Road, Kolkata 700017 stands recorded in the name of the Mutwalis of the "Ayesha Khatoon Auqaf Estate". By the impugned order, the learned Single Judge directed that property to be mutated in the names of the writ petitioners.

Being aggrieved, the Board of Auqaf has come up by way of this appeal.

On the last day, we had granted leave to appeal to the Board of Auqaf, West Bengal. We had also condoned the delay of 48 days in presenting the appeal.

We are of the view that since the property in question stands recorded in the names of the Mutwalis of the aforesaid Auqaf Estate, in the records of Kolkata Municipal Corporation as well as in the records of the Board of Auqaf, the appellants should be heard before any order is passed touching the said property.

Accordingly, we set aside the order under appeal and remand the matter to the learned Single Judge having determination to hear the writ petition, for fresh consideration upon hearing all concerned parties including the present appellants.

We add the present appellants as party respondents in the writ petition. The advocate-on-record of the writ petitioners is directed to amend the cause title of the writ petition by adding the present appellants as party respondents. Thereafter, let service be effected on the added respondents in the writ petition. The learned Single Judge is requested to decide the writ petition afresh, if necessary, upon exchange of affidavits.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

MAT 1617 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)