

January 24, 2023
Sl. No.23
Court No.1
s.biswas

WPA (P) 508 of 2022
With
CAN 1 of 2023

Anjuman Yadgar-e-Hussainee
Vs.
The State of West Bengal and others

Mr. Sarwar Jahan,
Mr. Jayanta Samanta,
Mr. Maidul islam Kayal, Advocates
... for the petitioner

Md. Galib,
Mr. Sutanu Chakrabarti, Advocates
... for the State

Mr. Dhiraj Trivedi, DSGI
Mr. Shailendra Mishra, Advocate
... for the CBI

Md. Salahuddin,
Md. A. Zaman, Advocates
... for the respondent Nos.8 to 10

Mr. Ayan Dutta,
Mr. Md. Zohaib Rauf, Advocates
... for the respondent No.17

Mr. Siddharth Chatterjee,
Mr. Amit Sharma,
Mr. Varun Kothari,
Mr. Hamidul Haque, Advocates
... for the respondent No.19

Mr. Alak Kr. Ghosh,
Ms. Era Ghose, Advocates
... for the KMC

In this public interest petition the allegation of the petitioner is in respect of illegal and unauthorized construction over a plot of land situated at Premises No.1, Circus Avenue which is a part of Mirza Kader Beg Wakf Estate. The petitioner has also raised certain issues relating to irregularities in transfer of rights.

It is undisputed that similar issue of unauthorized construction over the aforesaid property had come up before the Single Bench of this Court in WPA No.1631 of 2022 which was disposed

of by order dated 01.03.2022 by issuing following directions:

“The writ petition is disposed of by directing the competent authority of the corporation to act and proceed in accordance with law by adhering to the following procedure:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioners, the wakf board and the respondent no. 8.
- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioners, the wakf board and the respondent no. 8.
- d) A hearing shall be given to the petitioners, the wakf board and the respondent no. 8. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.
- e) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute.
- f) The parties will be entitled to be supplied with the relevant documents which shall be placed by each other in the proceeding before the corporation.

The court has not gone into the merit of the claims and counter-claims of the parties and the issues shall be decided independently.”

Hence, the issue of unauthorized construction which the petitioner has raised in this public interest petition is already covered by the aforesaid directions.

So far as the other issue in respect of irregularities in transfer of right is concerned the petitioner has a remedy by approaching Wakf

Tribunal in terms of Section 83 of the Wakf Act, 1995. The Hon'ble Supreme Court in the matter of **Board of Wakf, West Bengal and another vs. Anis Fatma Begum and another** reported in **(2010) 14 SCC 588** considering the scope of Section 83 has held as follows:

“7. The dispute in the present case relates to a wakf. In our opinion, all matters pertaining to wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the civil court or by the High Court straightaway under Article 226 of the Constitution of India. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a Special Tribunal for deciding disputes relating to wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to wakfs were being filed in the courts in India and they were occupying a lot of time of all the courts in the country which resulted in increase in pendency of cases in the courts. Hence, a Special Tribunal has been constituted for deciding such matters.

10. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words “any dispute, question or other matters relating to a wakf or wakf property” are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal. The word “wakf” has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

11. Under Section 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the civil court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2-A of the Code of Civil Procedure, 1908 to grant temporary

injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a wakf or wakf property.

12. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83(1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83(2) refers to the orders passed under the Act, but, in our opinion, Sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a wakf or wakf property, as the plain language of Sections 83(1) and 84 indicates.”

Hence, we are opinion that at this stage no case is made out to entertain the present public interest petition.

Hence, the petition is dismissed, however with liberty to the petitioner to avail such other remedies as are available in law.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)