

OD 3

WPO/1309/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SRI GHULAM MUSTAFA
VS
BOARD OF AUQAF REP BY CHIEF
EXECUTIVE OFFICER AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 19th July, 2023.

Appearance:

Mr. Tanmoy Mukherjee, Adv.

Mr. Ittekar Munshi, Adv.

Mr. Sourik Das, Adv.

Mr. Rudranil Das, Adv.

Mr. Soumava Santra, Adv.

. . .for the petitioner.

Md. Nauroz Rahber, Adv.

Ms. Afreen Begum, Adv.

Mr. Muhammad Jawwad, Adv.

. . .for the respondent no.3.

Md. Salahuddin, Adv.

Md. Ahsanuzzaman, Adv.

Md. Raziuddin, Adv.

. . .for the Board of Auqaf.

The Court: Learned counsel for the petitioner argues that in view of an exceptional case having been made out by the petitioner in the writ petition, the same ought to be entertained in spite of availability of an alternative remedy in the form of a challenge before the Auqaf Tribunal.

It is contended that a suit is pending before the Wakf Tribunal at the behest of the mother-in-law and the wife of the private respondent, who has been appointed as a Mutawalli by the impugned order, claiming the disputed property to be a secular property, which is contrary to the interest of the Wakf Estate. In such suit, a status quo order was passed, on the basis of which the Auqaf Board initially restrained its hands from proceeding further in the matter.

However, subsequently, by taking a contrary stand, the impugned order was passed by appointing the private respondent as a Mutawalli, without taking into consideration the allegations as indicated above. In the process, the petitioner's application for renewal of Mutawalliship was rejected without any basis.

Learned counsel appearing for the respondents controverts the allegations made by the petitioner on facts. It is further submitted, at the outset, that the present writ petition is barred due to availability of an equally efficacious alternative remedy by way of a challenge before the Wakf Tribunal under the Wakf Act, 1995.

Although the petitioner might have made out an arguable case on merits, subject submissions which may be made by the respondents, merely making out an arguable case on fact and law does not entitle the petitioner to invoke the jurisdiction of the writ court.

Since the questions raised in the present writ petition are required to be adjudicated by looking into the previous orders of the Court and considering the legal effect of the stand taken by the relatives of the private respondent, it would

be appropriate if the said adjudication on fact as well as on law is undertaken by the appropriate Tribunal designated by the statute for such purpose.

Hence, this Court chooses not to entertain the present writ petition.

Accordingly, WPO 1309 of 2023 is dismissed as not maintainable, with liberty to the petitioner to urge all questions raised herein before the Wakf Tribunal by way of a competent application as envisaged under the Wakf Act, 1995. If so approached, the Tribunal shall decide all issues before it, without being influenced in any manner by any of the observations made herein, independently, in accordance with law and upon giving adequate opportunity of hearing to all interested parties.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

SP/