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Ct-08

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MAT 793 of 2024

The Board of Wakfs West Bengal & Anr.

Vs.

Niloy Chowdhury & Ors.

with

MAT 49 of 2024

Niloy Chowdhury

Vs.

State of West Bengal & Ors.

with

IA No. CAN 1 of 2024

Sk. Md. Galib

Mr. Abu Siddique Mallik

... For the Board of Wakf

Mr. Shyamal Sarkar, Sr. Adv

Mr. Ram Anand Agarwal

Mr. Kumar Gupta

Mr. Rajesh Kumar Gupta

Ms. Nibedita Pal

Mr. Ananda Gopal Mukherjee

Mr. Sonam Ray

... For the Appellant in
MAT 49 of 2024

Mr. Ejaj Hossain

... For the State

Mr. Jaydip Basu

... For the Mutawalli

1. Both the appeals are taken up together and disposed of by this common order.
2. We have heard the learned counsel appearing for the parties.
3. The genesis of the proceeding appears to be an application filed on behalf of the Sonaulla Wakf Estate, in short Sonaulla, under Section 54 of the Wakf Act, 1955.

4. Mr. Lutfar Rahaman, the present Mutawalli, on behalf of the said Estate filed an application alleging that late Md. Sonaulla by a registered Wakfnama dated 5th March, 1926 created the Wakf Estate and the present Mutawalli, Mr. Lutfar Rahaman, is the eldest great grandson of late Md. Sonaulla. Late Md. Sonaulla was the absolute owner of little more or less 21.8 decimals of Town land located at Jalpaiguri Town appertaining to C.S. Khatian No. 2755/1 of Mouja-Kharia, Pargana-Baikunthapur along with other plots.

5. In the year 1926 Md. Sonaulla created the Wakf and settled, inter alia, the aforesaid landed property along with other properties belonging to him to the said Wakf by executing and registering a Deed of Wakf on 5th March, 1926.

6. After partition in the year 1947 some opportunists took advantage of the situation and some managed to record their names as *Dakhalkar* in the record of rights. One of them is Niloy Chowdhury, son of Nirbhoy Chowdhury, who claimed to have manipulated the record of rights in respect of Khatian no. 2170 and incorporated his name by manipulating the record of rights under Section 44 of the Estate Acquisition Act, 1953.

7. Md. Sonaulla after creating the aforesaid Wakf Estate had never sold and/or granted Patta in favour of any third party. The new Khatian, which is the creation of manipulation of several opportunists, includes Niloy and his predecessor had no basis. With this allegation and furnishing certain particulars with regard to his right over the Wakf property the said application was filed under Section 54 of the Wakf Act. In the said proceeding Niloy participated and at the stage of spot verification it was alleged that the Chief Executive Officer of the Board of Wakf had proceeded with the matter in a pre-determined fashion and after conclusion of hearing had decided to go for spot verification without giving any notice to Niloy. This is a flagrant violation of principle of natural justice. Learned Single Judge had disposed of the matter and arrived at a finding that on consideration of the order dated 30th August, 2007 in which the Chief Executive Officer directed spot enquiry to be conducted after conclusion of hearing was objectionable to the interest of Niloy. If the Chief Executive Officer was of the view that the issue of encroachment could not have been decided without holding any spot enquiry or inspection, the same ought to have

been conducted prior to the parties being heard as the report of the spot inspection/enquiry would be a relevant piece of evidence for arriving at a decision on the issue of encroachment and the contesting parties are entitled to be heard before a finding is arrived at, if any reliance is made on the spot verification. We are entirely in agreement with the learned Single Judge in setting aside the order dated 30th August, 2007 and the notice dated 1st October, 2007 and directing a fresh spot enquiry upon notice.

8. Mr. Shyamal Sarkar, learned senior counsel appearing on behalf of the petitioner, submits that the said claim petition is ex facie clearly barred and Section 107 of the Wakf Act does not come to rescue of Lutfar Rahaman. Mr. Sarkar in this regard has relied upon a decision of the Hon'ble Supreme Court in the case of ***T. Kaliamurthi and Another Vs. Five Gori Thaikkal Wakf and Others, reported in (2008)9 SCC 306.*** Mr. Sarkar has referred to various paragraphs of the said judgment to show that the said provision is only prospective in operation and cannot be pressed into service to revive or initiate any proceeding that had become barred by limitation by the passage of time. Mr. Sarkar has submitted

that Md. Sonaulla had, by a Patta, settled the property in favour of the predecessor-in-interest of the present petitioner and based on that a plea had come up on the alleged encroached portion of the land and this point has been brought to the notice of the Chief Executive Officer. It is submitted that before the Chief Executive Officer it has been urged that the claim petition is liable to be dismissed or rejected by reason of limitation. The said issue appears to be still pending with the Chief Executive Officer. It would not be desirable at this stage for this Court to decide the applicability of Section 107 or applicability of law of limitation in a proceeding under Section 54 of the Wakf Act as the proceeding is pending before the Chief Executive Officer before whom the parties have the opportunity to address all the issues and would be entitled to make submission after the spot enquiry is completed in terms of the order of the learned Single Judge.

9. In view thereof, we propose not to go into question and leave it to the Chief Executive Officer, who shall decide all the issues raised by the parties with regard to their respective claims and it is needless to mention that all objections shall be taken into consideration by the Chief Executive

Officer.

10. In view of the fact that there has been flagrant violation of principle of natural justice, we refuse to accept the submission of Md. Galib, learned counsel appearing for the Board of Wakf, that Niloy could approach the Tribunal for redressal of his grievance instead of filing a writ petition under Section 226 of the Constitution of India. The law is well-settled that in the event of violation of principle of natural justice the Writ Court does have extraordinary power to redress the grievance.

11. On such consideration, we dispose of both the appeals with the aforesaid observation.

12. We direct the Chief Executive Officer to proceed with the matter, as directed by Justice Hiranmay Bhattacharyya in His Lordship's judgment dated 7th March, 2024. We reiterate paragraph 22 of the said judgment of the learned Single Judge.

13. In view of the pendency of the appeals the period of eight weeks, as directed by the learned Single Judge in paragraph 21 of the order dated 7th March, 2024, is extended by another eight weeks from the date of communication of this order by either of the parties.

14.In view of disposal of the both the appeals the connected application being CAN 1 of 2024 stands disposed of.

15. However, there shall be no order as to costs.

16.Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)

