

23.02.2024
Item No.18
RP
Ct. No.7

CO 3370 of 2023

Zulfikar Ali Chowdhury
Vs.
Ishaat Chowdhury & Ors.

Mr. Sukanta Chakraborty
Mr. Zubair Ahmed

.... For the Petitioner

Sk. Md. Galib
Ms. Tanwishree Mukherjee

.... For the State

Affidavit-of-service filed in Court today is taken on record.

Mr. Chakraborty, learned Advocate appearing for the petitioner submits that the registered envelope addressed to the opposite party no.1 returned with the endorsement “intimation served”. He further submits that the learned Advocate of the opposite party no.1 has, however, received the copy of the registered envelope.

The order dated 5th June, 2023 passed by the Waqf Tribunal in OA No.1 of 2023 is under challenge in this civil order. By the impugned order the learned Tribunal directed the respondent therein i.e. the Board of Auqaf to consider and dispose of the representations dated 17th August, 2022 and 21st December, 2022 filed by one Ishaat Chowdhury, being the opposite party no.1 herein, as per law after giving reasonable opportunity of hearing to all the parties concerned within the time limit specified in the said order.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that such an order is nullity as the same was passed behind the back of the

petitioner and without even making the petitioner a party to such proceeding.

Mr. Galib, learned advocate representing the opposite party no.2 submits that by the order impugned the learned Tribunal only directed the Board of Auqaf to consider and dispose of the representations and no adjudication on merits of the claim of the opposite party no.1 has been made by the learned Tribunal. He, therefore, submits that the petitioner herein cannot be said to be a necessary party in such a proceeding.

The petitioner claims to be a Mutawali and the opposite party no.1 alleges that the appointment of the petitioner is illegal and bad in law, this Court is of the considered view that the petitioner herein was a necessary and proper party in the proceeding before the learned Tribunal. However, considering the fact that the learned Tribunal in the operative portion of the order only directed the Board of Waqf to consider and dispose of the representations dated 17th August, 2022 and 21st December, 2022 filed by the opposite party no.1 herein as per law after giving reasonable opportunity of hearing to all the parties concerned within a specified time limit. No useful purpose will be served in setting aside the said order and directing the learned Tribunal to decide the matter afresh after impleading the petitioner herein as a party in OA 1 of 2023. However, since certain observations and findings have been recorded in the order dated 5th June, 2023 which was admittedly passed behind the back of the petitioner, this Court feels that an opportunity should be granted to the petitioner to raise all points before the Board at the time of hearing of the representations dated 17th August, 2022 and 21st December, 2023 in terms of the order passed by the learned Tribunal. It is,

however, made clear that the petitioner herein will be entitled to raise all points including the maintainability of the prayer contained in the representations dated 17th August, 2022 and 21st December, 2023 before the Board at the time of hearing of such representations. The Board of Waqf will consider the said representations and dispose of the same strictly in accordance with law after giving an opportunity of hearing to the petitioner herein and the opposite party no.1 herein without being swayed by the findings recorded by the learned Tribunal in the order dated 5th June, 2023.

With the aforesaid observations, CO 3370 of 2023 is disposed of.

(HIRANMAY BHATTACHARYYA, J.)