

06.02.2024
Sl. No.5(DL)
srm

C.O. No. 3596 of 2022

Md. Takrimul Haque

Versus

The Board of Wakfs, West Bengal & Ors.

Ms. Sutapa Sanyal,
Mr. Subjajit Das,
Mr. Arshad Hussain

...for the Petitioner.

Mr. Gour Baran Sau

...for the Opposite Party No.3.

Ms. Nilofer Siddique

...for the Opposite Party Nos.4 & 5.

Sk. Md. Galib

..for the Board of Auqaf.

1. The revisional application has been filed against an order dated August 22, 2022, passed in Suit No.10 of 2022 by the learned Wakf Tribunal, West Bengal, Kolkata.
2. By the order impugned, the learned Wakf Tribunal rejected a prayer for injunction against the defendant No.2, in the said suit. The plaintiff in the suit, prayed for an order against the defendant No.2, restraining him from functioning as a joint mutawalli along with the defendant No.3. There were allegations of corruption, misappropriation and of acting adverse to the interest of the wakf property. The defendant

No.3, one of the joint mutawallis also supported the contentions of the plaintiff.

3. The learned tribunal was of the view that an order of injunction against a person who was appointed as a joint mutawalli by the Board of Wakf, vide resolution dated November 9, 2021, should not be passed. Moreover, in a prior suit, Tahammul Haque and others were allowed to function as mutawallis of the wakf estate and the commissioner of wakf was restrained from disturbing the said mutawallis, unless they were removed, in accordance with law.

4. Primarily, the learned tribunal was of the view that an order restraining the defendant No.2 from acting as a joint mutawalli, would be contrary to the settled proposition of law. The recorded mutawalli should normally not be restrained from discharging his duty, unless he was removed from the post. Proceedings with regard to such complaints were already pending before the Board of Wakf.

5. At such a stage, when the Board had not taken any interim decision with regard to the functioning of the defendant No.2, this Court is not inclined to interfere with the order impugned. Moreover, the right to appoint and remove a mutawalli is conferred by the law upon the Board of Wakf. During the pendency of the matter before the Board, an order restraining

the recorded mutawalli, who was appointed by the Board of Wakf form functioning would amount to pre-empting the Board from taking a decision.

6. Whether the petitioner should be appointed as a joint mutawalli and whether the resolution by which the defendant No.2 had been appointed as a joint mutawalli should be interfered with, are matters to be decided in the suit, as per law and the scheme of the wakf deed.

7. The Board is already in seisin of the allegations against the defendant No.2, akin to those made by the plaintiff in the injunction application, with regard to mismanagement and misappropriation of the income of the wakf estate by the defendant No.2. The defendant No.3 has already take steps in this regard. The matter should be left to the Board which will decide such issue and pass necessary orders. The tribunal rightly rejected the prayer for injunction on the aforementioned findings. This Court does not find that there is any impediment for the Board to proceed on the complaint against the defendant No.2.

8. The order impugned is upheld.

9. The revisional application is, thus, disposed of.

10. However, this Court makes it clear that the suit should be disposed of expeditiously and preferably within a year from date.

11. There shall be no order as to costs.

12. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)