

26.06.2025

Court No.25

Sl. No.31
Mujahid

CO 2147 of 2021

Nur Islam Khan & Ors.
Vs.
The Board of Wakf, W.B. & Ors.

Mrs. Ajeya Mitra,
Mr. K.K. Chakrabarti,
Mrs. Srijani Das

...for the petitioners

Mr. Sk. Md. Galib,
Mr. Abu Siddique Mallik

...for the Board of Wakf, W.B.

Mr. Kushal Chatterjee,
Mr. Iftekar Munshi

...for the opposite party nos.4 to 7

1. Present petition has been filed challenging the order no.13 dated 18th November, 2021 in OA No. 31 of 2018, whereby an application filed by the applicants/petitioners under Order 39 Rule 1 and 2 read with 151 of CPC was dismissed.

2. Briefly stated, the facts as averred in the application were that late Motiur Rahaman Khan and his legal heirs challenged the resolution dated 13th March, 2018 duly confirmed on 26th April, 2018. The challenge of the petitioners/applicants before the Tribunal was that opposite party nos. 4 to 7 could not have been appointed as Mutawalli as the Suit No.260/1970 filed by late Sahajan Khan,

predecessor-in-interest of opposite party nos.4 to 7 was dismissed and the Title Appeal No.183/1971 was also dismissed.

3. The plea of the petitioners is that Board of Wakf appointed opposite party nos.4 to 7 as Mutawalli on the basis of ex parte inquiry report. The petitioners alleged that opposite party no.4, Alimgir Khan, committed illegality over Wakf property after his appointment as Mutawalli. The petitioners alleged that opposite party nos.4 to 7 took several steps to distribute Wakf property to many fishermen and other parties against a huge consideration.

4. The Tribunal after noting the submissions of the parties, inter alia, held that there is no provision for granting interim injunction or stay in OA proceedings. The Tribunal also inter alia stated that it is empowered to grant injunction in a suit and not in OA. It was further, inter alia, stated that the Tribunal is deemed to civil court while trying suit or executing decree or order. The Tribunal further, inter alia, held that if injunction is granted in this OA, it would be amounting to granting main relief without contesting hearing. The application was thus dismissed with cost of Rs.5000/-

5. Section 83 sub-section (5) of the Wakf Act, 1995, inter alia, provides that the Tribunal shall deem to be a civil court and shall have the same

powers as may be exercised by a civil court under the Code of Civil Procedure, 1908, while trying the suit, or executing a decree or order. The question that whether the Section 83 sub-section (5) can have a restrictive interpretation to the extent that the Tribunal shall be considered to be a civil court only while trying a suit or executing a decree or order or it should have an expansive interpretation. Learned counsel for the petitioners submitted that this proposition came up for hearing before the High Court of Kerala in Abdul Rasheed vs. Venmanad Mohallu Hayathul Islam Committee, 2018 4 KHC 38, where it was inter alia held as under:-

“10. But, it is pertinent to note that as per Section 83(5) of the Act, “the Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, while trying a suit, or executing a decree or order.” If the Waqf Tribunal is a deemed Civil Court, before which CPC as a whole is made applicable to procedure, necessarily it would follow that the Waqf Tribunal also shall have jurisdiction to review its own order, in exercise of the jurisdiction and power granted under Order XLVII Rule 1 of the CPC. Where the Waqf Tribunal is made equal to the Civil Court and CPC as a whole is made applicable to the procedure before it, the power of review is impliedly conferred and absence of special provision expressly granting power of review is

insignificant. In the above view, the Waqf Tribunal is justified in passing the impugned order, in exercise of the jurisdiction and power conferred to it under Order XLVII Rule 1 of the CPC.

11. *We are of the opinion that the legislature was so conscious and careful while granting the powers under the CPC to the Waqf Board and Tribunal. We are unable to accept the contention raised by the learned counsel for the revision petitioner that the last limb of Section 83(5) ‘while trying a suit or executing a decree or order’ must be understood in the limited meaning as examination of witness and final hearing only.*

12. *further, we are of the opinion that the legislature has granted the entire powers as provided under the CPC to the tribunal by stating that the tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the CPC. In view of the first limb of Sec. 83(5), the last limb cannot be interpreted restrictively as contended by the learned counsel for the revision petitioner and the last limb has been given a broad meaning by conferring the entire provisions under the CPC to the tribunal. The above view is justified by the rule of harmonious interpretation. It follows that the Waqf tribunal shall have the power of review as conferred under Order XLVII of the CPC.*

13. *in the above analysis, we find that in view of Section 83(5) of the Waqf Act, the proposition laid down in the decisions referred to above cannot be made applicable to the procedure*

before the Waqf Tribunals. The above view is further supported by the decision of the Supreme Court in Kalabharati Advertising vs. Hemant Vimalnath Narchania, 2010 KHC 4641. In the aforesaid decision, the Supreme Court held that “the power of review must be conferred by law either expressly/specifically or necessary implication and in the absence of any provisions in the Acts/rules review of an earlier order is impermissible as review is a creation of statute”. We are of the opinion that in the instant case, the power of review is conferred on the tribunal by necessary implications as provided under Section 83(5) of the Waqf Act, though a provision is not specifically made. Where the entire provisions in the CPC are made applicable, the legislature was not expected to make a special provision again. In the above view, we find that the tribunal is justified in exercising the power of review”.

6. Above judgment is primarily on the point of power of review. The High Court of Kerala expressed its opinion that even if power of review is not specifically conferred under Section 83(5) of the Waqf Act, but since the legislature has conferred the power of civil court as Tribunal, it would include power of review. However, there is no expression of opinion that whether under Section 83(5) of Waqf Act, the Tribunal shall have power of civil court only while trying a suit or executing a decree or order or will go

beyond it to the extent that the Tribunal shall have the power of civil court, while hearing an appeal or OA.

7. Learned counsel for the Board of Wakf has submitted that the correct interpretation of Section 83 sub-section (5) of the Wakf Act would be that the Tribunal shall exercise the power of civil court, while trying the suit, whereas while deciding an appeal or an original application as provided under Section 83 sub-section (2), the principles of CPC will apply and not the Code of Civil Procedure in strict sense. Learned counsel also relied upon Section 83 sub-section 6 of the Wakf Act, which provides as under:-

“83(6). Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.”

8. However, irrespective of that at the outset, the view expressed by the Tribunal that it does not have power to consider and adjudicate the interim injunction application in OA proceeding cannot be sustained in the eyes of law. It is a settled principle that while deciding an injunction application, the adjudicatory body has to consider three golden principles, that is, prima facie case, balance of convenience and irreparable loss and injury. The adjudicatory bodies have to take a pragmatic interpretation and must endeavour to return a

finding after considering the same on the touchstone of principles of natural justice. The judicial proceedings are not battle of wits, the adjudicatory authority must consider that ultimate question is justice. Any judicial/quasi-judicial body cannot shut the doors to the litigant, stating that it does not have the power. Even if the Code of Civil Procedure is not applicable in a given case, the broad principles/propositions of Code of Civil Procedure shall certainly apply. The legislature in its wisdom has conferred the power upon the Tribunal to decide the OA and thus Tribunal is duty bound to adjudicate the same in accordance with the law. Even at the cost of brevity, it may be repeated that the general principles of CPC will certainly apply while deciding the injunction application. Every court including quasi-judicial authorities have the inherent power to decide the interim applications, if they are conferred the power of deciding an issue/his finality.

9. In the circumstances, order no.13 dated 18th November, 2021 cannot be sustained in the eyes of law. Both the parties have graciously agreed that the matter may be remanded back to the Tribunal. Learned counsel for the petitioners have submitted that the petitioners are ready to argue OA No. 31 of 2018 itself and the Tribunal may decide the same on merits in accordance with law. It is pertinent to

mention that parties shall be at liberty to raise all the contentions, including the applicability of CPC, while deciding the OA. It may be noted that all the contentions have been left open for adjudication by the Tribunal in accordance with law.

10. The Tribunal may also make any interim arrangement for the management/administration of the Wakf, if so required or being pleaded by the parties.

11. With these observations, the present petition stands disposed of.

12. It is made clear that this court has not gone into the merits of the case and nothing expressed herein shall tantamount to be an expression on the merit of the case upon an application being moved.

13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)