

10.11.2025
Item No. 51.
Court No.8.
AB

MAT 1892 of 2025
With
CAN 1 of 2025
CAN 2 of 2025

Haji Abdul Mistry Wakf Estate
Vs
Destiny Developers Private Limited & Others

Mr. Biswaroop Bhattacharya,
Mr. Srijib Chakraborty,
Mr. Sumitava Chakraborty....for the Appellant.

Mr. Surojit Nath Mitra, Sr. Adv,
Mr. Sourajit Dasgupta,
Mr. Souradeep Banerjee,
Ms. Sanjana Sinhafor the Respondent No.6.

Sk. Md. Galib,
Mr. Abu Siddiqui Mallik
....for the Respondent No.3 to 5.

Mr. Anirban Roy, Sr. Adv,
Mr. Arjun Roy,
Mr. Santanu Chatterjee,
Mr. Nikunj Barlia,
Ms. Urvasi Jainfor the Respondent No.1, 2.

Dictated by Arijit Banerjee, J.

1. A judgment and order dated October 14, 2025, passed by a learned Judge of our Court in WPA 22210 of 2025, being a writ petition filed by the respondent nos.1 and 2 herein, is the subject matter of challenge in this appeal at the instance of the respondent no.4 in the writ petition.
2. It appears that the respondent nos.1 and 2 herein had some property dealing with the Mutawalli of the appellant/Auqaf Estate, which was vetted by the Board. Certain disputes having arisen in respect of such arrangement,

the respondent nos.1 and 2 herein approached the learned Single Judge.

3. Before the learned Judge, a point was taken on behalf of the present appellant as well as the respondent no.5 in the writ petition that the writ petition is not maintainable since the orders challenged in the writ petition are appealable orders under Section 83 of the Wakf Act, 1995. The learned Judge passed the impugned order, the relevant portion whereof reads as follows:

“3. The learned counsel for the petitioner submits that he has challenged the jurisdiction of the authority concerned and the violation of natural justice and as such prima facie the writ is maintainable.

4. Learned counsel has placed inner page No.23 of the impugned order wherein it appears that certain directions to the Mutawalli have been given to carry out certain acts on the petitioner herein. In the last paragraph it is also directed to start criminal proceedings against the petitioner. Apprehending the same, the writ application has been preferred before the Regular Bench just before this vacation.

5. Learned senior counsel appearing for the respondent No.5 submits that the order challenged has already been given effect to and the possession has been taken.

6. The said submission of the learned senior counsel is considered by this Court and as such exchange of affidavits is directed.

7. Considering the issue in the matter, the matter requires exchange of affidavits.

8. Parties shall file affidavit-in-opposition within four weeks and reply, if any, within two weeks thereafter.

9. The matter be fixed for further hearing before the Regular Bench on 15th December, 2025.

10. Pending hearing, the impugned order be stayed till 18th December, 2025, or until further order, whichever is earlier.

11. However, the point of maintainability is kept open.”

4. Being aggrieved, the Wakf Estate has come up before us by way of this appeal.
5. Since the writ petition is pending before the learned Single Judge, we are not inclined to go into the merits of the case. The learned Judge is yet to finally decide the disputes between the parties.
6. We request the learned Single Judge to decide the issue of maintainability of the writ petition as a preliminary issue before addressing the merits of the case. Insofar as the direction of the Wakf Board to the CEO of the Estate to initiate criminal action against the writ petitioners is concerned, we only clarify that stay of operation of such order granted by the learned Single Judge shall not stand in the way of the Wakf Board and/or Estate initiating criminal action against the writ petitioners if they are otherwise entitled to do so in law.
7. We have not entered into the merits of the case. All points are left open to be decided by the learned Single Judge in accordance with law and as expeditiously as the business of the Court may permit.

8. Till the learned Single Judge decides the writ petition, let status quo as of today as regards possession of the property in question be maintained.
9. The respondents will be at liberty to file their affidavits in opposition before the learned Single Judge within two weeks from date. Reply thereto, if any, be filed within two weeks thereafter. The parties will be at liberty to mention the matter before the learned Single Judge for hearing after exchange of affidavits.
10. Since we are disposing of the stay application and the application under Order 41 Rule 27 CPC without inviting affidavits, the allegations made in the said two applications are deemed not to be admitted by the respondents in this appeal.
11. With the aforesaid modification and clarification, we dispose of the appeal and the connected applications.
12. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)