
(2012) 02 CAL CK 0033
In the Calcutta High Court
Case No : CO. No. 98 of 2012

Ameeruddin Ahmad

APPELLANT

Vs

Board of Wakfs, West Bengal

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Waqf Act, 1995 — Section 3(r), 83, 83(1), 83(2), 84

Citation : (2012) 2 CALLT 389

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Sahidullah Munshi, for the Appellant; K.J. Yusuf for the Opposite Party, for the Respondent

Judgement

Dipankar Datta, J.—The petitioner applied before the Board of Wakf and prayed for deletion of the name of the concerned naib mutwalli. The Board did not decide the application. Feeling aggrieved by the inaction of the Board, the petitioner applied before the Wakf Tribunal u/s 83(2) of the Act. The Presiding Officer of the Tribunal was of the view that an application u/s 83(2) would be maintainable only when an order is passed by the Board which affects a party and not against inaction of the Board to pass an order. The application was, accordingly, held to be not maintainable and dismissed as such. Mr. Munshi, learned Advocate appearing for the petitioner, contends that the impugned order is not sustainable in law in view of the decision of the Supreme Court reported in (2011) 1 WBLR (SC) 308 (Board of Wakf, West Bengal & Anr. v. Anis Fatma Begum & Anr.). He refers to paragraphs 10, 11, 14 and 16 of the decision which reads as follows:

"10. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted u/s 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article the Constitution of India.

11. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary

statute which has constituted a special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to Wakfs were being filed in the Courts in India and they were occupying a lot of time of all the Courts in the country which resulted in increase in pendency of cases in the Courts. Hence, a special Tribunal has been constituted for deciding such matters.

14. Thus, the Wakf Tribunal can decide all disputes, questions or other" matters relating to a Wakf or Wakf property. The words "any dispute question or other matters relating to a Wakf or Wakf property" are in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word "Wakf has been defined in section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r) then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

16. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that sections 83(1) and 84 of the Act do not confine the Jurisdiction of the Wakf Tribunal to the determination of the correctness or otherwise of an order passed under the Act. No doubt section 83(2) refers to the orders passed under the Act, but, in our opinion, sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to Wakf or Wakf property; as the plain language of sections 83(1) and 84 indicates."

2. Mr. Yusuf, learned advocate appearing for the Board, contends that if the Board is alleged to be guilty of inaction, the remedy of the petitioner lies in approaching the Writ Court for redress.

3. Having heard learned Advocates for the parties, there is no reason to relegate the petitioner to the Writ Court in view of the clear opinion of the Supreme Court in paragraph 10 of the decision in Anis Fatma Begum (supra).

4. The order impugned in this application holding the application u/s 83(2) of the Act as not maintainable on the ground recorded therein also appears to be in the teeth of the law laid down in paragraph 14 of the decision in Anis Fatma Begum (supra) which lays down the law that even if no order has been passed by the Board, the aggrieved party may approach the Tribunal for determination of the dispute raised by him if the same relates to a wakf property.

5. The order impugned is, accordingly, set aside. The Presiding Officer of the Tribunal is directed to consider the application filed by the petitioner on merits

and decide the same, subject to his convenience, as early as possible. The revisional application stands disposed of without any order as to costs.

Urgent certified photostat copy of this order if applied for, be supplied to the parties expeditiously.