
(2023) 07 CAL CK 0086
In the Calcutta High Court
Case No : C.O. No. 581 Of 2020 , CAN 1 Of 2021

Firozuddin

APPELLANT

Vs

Board Of Waqf & Anr.

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Evidence Act, 1872 — Section 114(e)

Citation : (2023) 07 CAL CK 0086

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Abdul Hadi, Shamik Bagchi, Sumit Kumar Roy, Munshi Ashiq Elahi, Sk. Md. Galib, Tanwishree Mukherjee

Final Decision : Dismissed

Judgement

Ajoy Kumar Mukherjee, J

1. Present application under Article 227 of the constitution of India has been assailed against the judgment and order dated 17.09.2019 passed by learned Waqf Tribunal, West Bengal, Kolkata in O.A. No. 10 of 2014. Background of the case, in a nutshell, is that one Sabujan Bibi created the Waqf Estate in respect of her property. Waqifa Sabujan Bibi also made rule of succession regarding appointment of Mutwaliship in the deed of waqf stating that she will remain mutwali during her life time and after her death Md. Ali Hossain, who is her brother and in the absence of Ali Hossain his other brothers, one after another, as per the seniority, would be the Mutwali. Accordingly Md. Ali Hossain and thereafter imam Hossain was appointed as Mutwali and after his death, his brother Nader Ali was appointed as Mutwali. It is alleged that during the tenure of Nader Ali he filed an application before the Board of Waqf on 18.12.1989 for appointment of Nayeb Matwali as he was suffering from various health hazards. Subsequently said Nader Ali on 29.05.1991 made another application before the Board of Waqf with a prayer to appoint his wife Ahmdi Bibi as Mutwali and

subsequently a resignation letter was filed by Nader Ali to that effect and the same was identified by father of Opposite party no. 2 herein. On 16.07.1991 Nader Ali also submitted an affidavit with the same prayer. On 10.12.1991 Nader Ali made an application for cancellation of Nayeb Mutwaliship and his LTI (Left thumb impression) in the said application was identified by husband of present opposite party no. 2, Seikh Haider Ali.

2. Said Haider Ali subsequently filed an application on 11.12.1991 that he took no objection certificate from Nader Ali and accordingly he may be appointed as Mutwali. The Board issued notice to Haider on 15.02.1992 but prior to that Nader Ali died in the month of November, 1991. After his death, one of his brother Seikh Kasem Ali, a resident of Bangladesh filed an application before Board of Waqf on 27.02.1992 for appointing him as Mutwali. In spite of two reminders, Board did not respond to Kasem's request. On the contrary Board of Waqf, on 23.06.1992 appointed Ahmedi Bibi who is the wife of Nader Ali, as Mutwali for a period of two years. After the expiry of her tenure, she filed an application for extension of Mutwaliship for another three years and the same was approved by the Board. Further case is that on 25.7.2003 an inquiry was conducted by the Board of waqf and the report shows that after death of Nader Ali who according to the petitioner died issueless, the petitioner herein has been looking after the Waqf Estate as per last nomination of Mutwaliship executed by Ahmedi Bibi. Accordingly on 08.07.2005 petitioner herein made an application before Board of waqf for appointment of his Mutwaliship wherein he has annexed copy of order of this High court, passed in WP no. 26 of 1996, wherein this court directed Board of waqf to fill up vacancy of Mutwaliship within a period of six weeks. The petitioner filed a Genealogical table before the Board and contended that Nader Ali and Ahmedi Bibi both died issueless and accordingly as per genealogical table, Murshida Begum is the sister of Ahmedi Bibi. Father of present petitioner namely Md. Safi was the only son of said Murshida Begum. Said Md. Safi expired and petitioner being his legal heir is the only available descendant of the original waqifa and as such he is the fit person to be appointed as mutwali of the said property.

3. On 14.09.2000 Board of Waqf conducted hearing relating to appointment of mutwaliship. The opposite party no. 2 herein Nasreen sultana claiming herself as the daughter of Ayesha khatoon who happens to be the daughter of Nader Ali and Ahmedi Bibi, claimed mutwaliship in the suit property. Opposite party no. 2 herein contended that Ayesha Khatoon who is the mother of opposite party no. 2 and daughter of Nader Ali and Ahmedi Bibi was born in the year of 1931 in Dhaka, Bangladesh but her certificate was registered on 31.01.2009.

4. In the said hearing the petitioner's specific case was that Nader Ali and Ahmedi Bibi expired issueless, then how the opposite party no. 2 can be the descendant of Nader Ali. In the course of hearing, opposite party no. 2 was directed to get birth certificate of her mother attested from the External Affairs Department of Bangladesh and after considering the birth certificate the opposite

party no.2 herein was appointed as Mutwali. Petitioner's case is opposite party no.2 has been appointed illegally without giving any opportunity to disprove the document filed by opposite party No.2 by the petitioner herein. Board has ignored the fact that the opposite party no. 2 filed application on 24.05.2006 for appointing her temporary Mutwali but board of waqf appointed her as permanent Mutwali. Petitioner herein filed documents of Waqf contribution paid by him, but same was not considered while passing final order.

5. Being aggrieved by the said resolution dated 04.04.2013 which was confirmed on 18.04.2013 wherein, opposite party. 2 was recorded as Mutwali in respect of said Sabujan Bibi Waqf Estate, petitioner herein preferred O.A. no. 10 of 2014 before the Waqf Tribunal of West Bengal. The Waqf Tribunal after hearing the contention of both the parties found that the birth certificate of Ayesha Khatoon who is the mother of opposite party no. 2 is correct and accordingly it had accepted appointment of opposite party no. 2 being the daughter of Ayesha Khatoon and thereby confirmed the resolution taken by Waqf Board in the meeting dated 18.04.2013 and accordingly said O.A. No. 10 of 2014 was dismissed by the said Tribunal.

6. Learned counsel appearing on behalf of the opposite party nos. 1 and 2 have taken almost similar stand and contended that opposite party no. 2 is the daughter of Ayesha Khatoon, who was the daughter of Nader Ali and Ahmeda Bibi and she was born in Bangladesh. Said birth certificate in the name of Ayesha Khatoon was referred to the Government who apprised the Board about the general procedure for accepting the documents issued by the Foreign Sovereign. In accordance with the said procedure, the birth certificate issued by the Registrar of Birth and Death of Bangladesh needs consular apostille from the External Affairs Department of Bangladesh and ultimately Board directed the opposite party no. 2 to get the said birth certificate attested or authenticated by the External Affairs Department of Bangladesh. Such direction and resolution on the part of the board is suggestive of the fact that the Board of waqf have made all possible queries as per their requirements and asked the opposite party no. 2 herein to satisfy their queries on the appropriate authenticated documents as per the requirement of opposite party no. 1 herein and having been satisfied with the requirements the opposite party no. 1 found it just and proper to record opposite party no. 2 as Mutwali in respect of the aforesaid Waqif Estate.

7. The opposite party no. 2 specifically contended that as a matter of fact said Ayesha Khatoon, the mother of opposite party no. 2 married against the wishes of her parents and as such the relation amongst them soured to such an extent that during her life time, while residing at Dhaka she had practically no relation to her parents which might have prompted her parents Nader Ali and Ahmeda Bibi to deny her existence but so far as documents produced by opposite party no. 2 and relied upon by opposite party no. 1 on verification are all genuine documents, authenticated by the External Affairs Department of Bangladesh as well as Ministry of Foreign Affairs, Dhaka. Therefore there can be no shadow of

doubt in respect of the documents on the basis of which the opposite party no. 2 is found to be legal heir of Nader Ali and Ahmeda Bibi having eligibility of being recorded as Mutwali. Moreover the opposite party no. 2 has valid passport which clearly establish that opposite party No.2 is an Indian Citizen. On the contrary the petitioner herein admittedly is a tenant under the Waqf Estate deriving his tenanted interest from his mother Zohra Begum, since deceased and as such having no nexus with the affairs of Waqf Estate, the petitioner/applicant cannot raise his claim for mutawaliship even if he might have paid waqf contribution or might have temporarily managed the waqf estate without having any authority or permission and or sanction from opposite party no. 1 herein in this regard.

8. In view of aforesaid submissions made by the parties, the only question which has been referred before this court is to adjudicate whether both the Forums were justified in coming to a conclusion that the opposite party no. 2 being the descendant of Nader Ali and Ahmeda Bibi is the fit person to appoint as Mutwali in the Waqf property or not and whether the petitioners claim of mutwaliship in the suit property is justified or not.

9. The petitioner in this case by referring the application dated 29.05.2021 and the affidavit affirmed on 16.07.1991 sworn by deceased Nader Ali and the councillor's certificate dated 20.08.1991, as well as the application dated 11.12.1991 made by aforesaid Sk. Haider Ali contended that all those documents prima facie establish that Nader Ali and Ahmed Bibi were admittedly issueless. Moreover by the letter dated 11.12.1991 Nader Ali specifically wrote to the waqf Board that they have no issue and as such her wife Ahmeda Bibi, may be appointed as Mutwali. Accordingly the petitioner raised the question, if Nader Ali and Ahmedi Bibi admittedly expired issueless then how opposite party no. 2 claimed that Ayesha Khatoon was the daughter of Nader Ali and Ahmeda Bibi. Accordingly the initial burden was upon the opposite party no. 2 to prove that her mother Ayesha Khatoon was the daughter of Nader Ali. The birth certificate of Ayesha Khatoon filed by opposite party no. 2 had been duly considered by the Waqf Board and thereafter Board of Waqf has sought for an opinion from the Government of West Bengal and the Joint secretary, Government of West Bengal by virtue of a letter dated July 12th 2011 clarified about the procedure for accepting such document and accordingly opposite party no. 2 took steps for authentication of document by way of Consular attestation by the Ministry of External Affair Department of Bangladesh as prescribed by the joint secretary to the Government of West Bengal in his aforesaid letter. Opposite party no. 2 thereby has discharged her initial burden to prove that her mother was the daughter of Nader Ali and the Board of Waqf came to a finding that the birth certificate produced by opposite party no. 2 is genuine and under the provisions of section 114 (e) of the Indian Evidence Act Board of Waqf accepted the said document and appointed opposite party no.2 as Mutwali in the said property. It also appears that on earlier occasion also opposite party no. 2 claiming herself as heir of Nader Ali made an application before the Board for appointing her as Mutwali but said prayer was initially turned down by the Board of Waqf on May,

28, 2007, against which opposite party no. 2 filed O.A. No. 6 of 2007 before the Tribunal and the Waqf Tribunal by its judgment dated 31st December, 2009 turned down resolution taken by the Board of Waqf on May 28, 2007. Aforesaid judgment dated December, 31, 2009 passed by Waqf Tribunal in O.A. No. 6 of 2007 has not been challenged before higher forum, which ultimately attained its finality. It is not in dispute in the present case that so long as the descendant from the family of waqf is available, no outsider can be appointed as Mutwali. The genealogical table filed by the petitioner shows that he is not direct descendant of the family of the waquifa.

10. The opposite party no. 2 herein took specific plea, referring counter part of rent receipt that one Zohora Begum being the mother of the petitioner herein was a tenant under the Waqf Estate and as such the petitioner herein cannot have better status than that of son of a tenant of the Waqf Estate. The petitioner in his written objection filed in O.A. No. 6 of 2007 before the Waqf Tribunal admitted such contention. In this context both the opposite parties submits that a tenant of the same waqf Estate cannot be appointed as a Mutwali since it is admitted position that the petitioner and his family is at present staying in the waqf property as a tenant. A tenant cannot claim Mutwaliship only on the ground that at certain point of time he put waqf contribution or looked after waqf property or submitted accounts before the Board of Waqf.

11. During the course of argument learned counsel for the petitioner has argued that wife of Nader Ali namely Ahmedi Bibi adopted present petitioner as she was issueless and as such the petitioner was acting as defacto Mutwali in place of Ahmadi Bibi who was his grandmother. No cogent document or evidence has been produced by the petitioner to show that Ahmadi Bibi before her death adopted petitioner herein as his son and accordingly such contention does not find any leg to stand. Petitioners vamiently argued that the birth certificate of Ayesha Bibi and the rent receipt in support of petitioners tenancy in the waqf property are forged and manufactured document but petitioner has miserably failed to establish such contention.

12. When both the forums being the Board of waqf and learned Waqf Tribunal have concurrent finding that the birth certificate of Ayesha Khatoon is genuine and thereby appointment of opposite party no.2 as Mutwali in the waqf property is justified being direct descendent of the waqf family, such concurrent finding can hardly be interfered under Article 227 of the constitution of India in absence of convincing ground. The approach of the petitioner that the birth certificate of Ayesha has not been duly proved to be genuine or that it is a suspicious document, left me unconvinced. There is hardly any material for holding that there was any impropriety in exercising Jurisdiction by said Forums. High Court should not interfere such concurrent finding by the said two Forums acting within jurisdiction of such Forum. There is nothing perverse in accepting the birth certificate of Ayesha Khatoon as genuine in view of the fact that the Waqf Board has made its best endeavour to scrutinize the said document and thereafter in

terms of reply sent by the Joint Security, Government of West Bengal, about the procedure for accepting such document, the certificate got duly authenticated by the External Affairs Department of Foreign Sovereign. Accordingly it cannot be said that in view of materials available in record, no prudent person having the knowledge of law would not have arrived at such finding or that the finding is not based on materials or such finding results in manifest injustice or misdirection of law, so that interference by the High Court under Article 227 can be warranted in the present context. High Court is not exercising Appellate Jurisdiction or original jurisdiction under Article 227 of the Constitution of India but exercising supervisory jurisdiction which can be exercised only if it is found that Forums below have assumed jurisdiction, which it does not have or have failed to exercise a jurisdiction, which it does have or that it has exercised jurisdiction in a manner not permitted by law, which resulted failure of justice or grave injustice. No such incident occasioned herein, so that this court may step in to exercise its supervisory jurisdiction. In such view of the matter the order impugned does not call for any interference and present application is liable to be dismissed.

13. C.O. 581 of 2020 along with connected application, if any, stands dismissed.

There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.