

(2025) 03 CAL CK 1000

In the Calcutta High Court, Appellate Side

Case No : C.O. No. 3557 Of 2022 CAN No. 1 Of 2024

Mirza Murtaza Ali & Anr

APPELLANT

Vs

Syed Ezaz Ali & Anr

RESPONDENT

Date of Decision : 11-03-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Waqf Act 1995 — Section 83(2)

Citation : (2025) 03 CAL CK 1000

Hon'ble Judges : Bibhas Ranjan De, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee, Iftekar Munshi, Md. Salahuddin, Md. Ahsanuzzaman, Md. Raziuddin, Jaydip Kar, Ms. Susmita Das, Debangana Dey Nayak

Final Decision : Dismissed

Judgement

Bibhas Ranjan De, J

1. The instant revision application has its genesis from an application filed by the petitioners herein after the death of the erstwhile Mutawalli, for consideration of their application for Mutawlliship in respect of Kazi Sirajuddin Ali Khan and Musst. Karamunnessa Begam Waqf Estate, a public waqf in terms of the provision of the Waqf Act 1995 (for short Act of 1995), which was duly accepted by the Board of Waqf through the resolution dated 25.11.2020.

2. Being aggrieved, the opposite party herein filed an application under Section 83 (2) of the Act of 1995 thereby assailing and challenging the said resolution with a prayer for setting aside of the resolution dated November 25, 2020 and to pass an order restraining the private respondents i.e., the petitioners herein and/or their men, agents and assigns from carrying out any activity in the Waqf Estate on the basis of the resolution dated November 25, 2020. The said application under Section 83(2) of the Waqf Act, 1995 was registered as O.A. 02 of 2022.

3. The matter was taken up on November 01, 2022 for consideration by the Learned Waqf Tribunal, which in turn was pleased to pass an order dated November 01, 2022 thereby setting aside the resolution dated November 25, 2020 passed by the Board of Auqaf, West Bengal mainly on two scores i.e. firstly the Board did not adhere to the principle of natural justice by giving ample opportunity to both the parties for hearing as the representation of the opposite party was not considered and the other being, the impugned resolution was passed under administrative agenda and not in general resolution. Accordingly, the Ld. Tribunal passed an order thereby setting aside the impugned resolution passed by the Board of Waqf with the direction to the Board to pass resolution afresh after giving sufficient hearing to both the parties as per rule of succession given in the deed of Waqf as well as the law prescribed.

4. Being aggrieved, the petitioners have preferred the instant application under Article 227 of the Constitution of India with a prayer for setting aside of the order dated 01.11.2022 passed by the Ld. Waqf of Tribunal.

5. In the meantime, the opposite party to the application being no. C.O. 3557 of 2022 passed away and his son namely Syed Aiyaz Ali preferred a CAN application with a prayer for substitution of his name in place of Syed Ejaz Ali since deceased and also for modification of an Order passed by the Hon'ble Co-ordinate Bench of this Court dated 03.10.2023.

At the Bar:-

6. Ld. Sr. Counsel, Mr. Aniruddha Chatterjee, appearing on behalf of the petitioners has mainly canvassed his argument on the ground that the impugned order passed by the Ld. Tribunal is bad in the eye of law as it was passed without affording an opportunity to the petitioners to substantiate their pleadings and it is based on erroneous findings of law and fact. Therefore, the impugned order is liable to be set aside.

7. Ld. Counsel, Mr. MD. Salahuddin, appearing on behalf of the Board of Waqf/ opposite party no.2 has submitted that the order of the Ld. Tribunal is being complied with in its entirety in consonance with the direction provided by this Hon'ble Court vide order dated 03.10.2023.

8. Ld. Sr. Counsel, Mr. Jaydip Kar, appearing on behalf of the Intervener has contended that Syed Aiyaz Ali has already filed an application before the Board of Waqf for consideration.

Analysis:-

9. Considering the nomenclature of dispute at hand it would be profitable to first reproduce the resolution of the board meeting that took place on 25.11.2020:-

" Admn. Item No.28(1) of the agenda:-Bd. Meeting dtd. 25-11-20.

Ref: E.C. No.04. Dist.

Kolkata.

Re: To consider the matter of appointment of mutawalli in respect of Serauddin Ali Khan and Musst. Karamunnessa Begum Waqf Estate.

Admn. Item No. 28(1) of today's agenda dated 25-11-2020 is taken up for hearing.

From the office note it appears that Jb. Sirajuddin Ali Khan and his wife Mst. Karamunnessa Begum Jointly created a Waqf deed in or about 1824. After the death of the Wakifa one Golam Ali and Humayun Ali became the Joint Mutawallis and thereafter Hasan Ali became the mutawaili and then Md. Hossaon and Ahmed Hossain, both sons of Hasan Ali became Joint Mutawallis and after death of Mohammad Hossain one Waris Ali became the Joint Mutawallis with Ahmed Hossain and thereafter Nasir Ali, son of Waris Ali became mutawalli. Nasir Ali died on 06-04-2020 leaving his son Mir Murtuza Ali and two daughters and two brothers namely Mirza Mobarak Ali and Mirza Wasir Ali.

The present petitioner namely Mirza Murtuza Ali, son of Mirza Nasir Ali and Mirza Mobarak Ali, brother of Mirza Nasir Ali stated that during life time Nasir Ali selected to the present petitioners as successor mutawalli and his last expression of selection of Mutawalli was informed to the Board of Auqaf, West Bengal vide a letter dated 28-02-2020.

Heard the matter at length. Considering the fact as stated above, now after due deliberation and discussion it is unanimously resolved that the name of Mirza Nasir Ali the present mutawalli be deleted on account of his death and the name of the present applicants namely Mirza Murtuza Ali, and Mirza Mobarak Ali be recorded as Joint Mutawallis in respect of Sirajuddin Ali Khan and Mst. Karamannussa Begum Waqf Estate. Note in the Waqf Register accordingly.

From the record it appears that Waqf Contribution amounting to Rupees about 10 (ten) lacs is due from the mutawalli. The petitioners agreed to pay Waqf Contribution upto 2020. It is therefore resolved that the petitioners/mutawallis be directed to pay a sum of Rs.6,00,000/- (Six lacs) towards Waqf Contribution by December, 2020 and the balance amount due upto December, 2020 shall be paid by March, 2021.

Action be taken in this matter without waiting for confirmation of the same in the next Board meeting."

10. Being aggrieved by the said resolution, Syed Ezaz Ali (since deceased) filed O.A. being no.02 of 2022. It is the case of the opposite party no. 2 that the board did not take into consideration the application made by Syed Ezaz Ali on 26.06.2020. It is also alleged that the impugned resolution was not passed in general meeting.

11. A careful scrutiny of the impugned resolution would make it clear that there is no mentioning of actual presence of either of the parties in course of hearing.

Moreover, the application of Syed Ezaz Ali was not even discussed and taken into consideration before deciding on the issue of joint Mutawalliship. Also the conclusive portion of the impugned resolution would show that the decision taken there was without waiting for confirmation of the same in the next Board meeting.

12. At this very juncture, if I look into the impugned order passed by the Ld. Tribunal, it would be clear that all these issues mentioned hereinabove have been addressed by the Ld. Tribunal. Therefore, I find hardly any necessity to interfere with the impugned order dated 01.11.2022 by exercising jurisdiction under Article 227 of the Constitution of India.

13. Alternatively, I disincline to intervene with the matter of appointment of Mutawalli already assumed by the Waqf Board by dint of the ordain of Tribunal subsequently ratified by the order dated 03.10.2023 of the Hon'ble Co-ordinate Bench in connection with the instant revision application. However, I would like to clarify that the Ld. Waqf Board should not get influenced in any manner whatsoever by any observation made either by this Court or the Tribunal while deciding the issue of appointment of Mutawalliship in respect of Kazi Sirajuddin Ali Khan and Musst. Karamunnessa Begam Waqf Estate.

14. Accordingly, the instant revision application being no. C.O. 3557 of 2022 stands dismissed.

15. Interim order, if there be any, stands vacated.

16. Connected applications, if there be, also stand disposed of accordingly.

17. Parties to act on the server copy of this order duly downloaded from the official website of this Court.

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