

(2019) 05 CAL CK 0003

In the Calcutta High Court

Case No : Civil Order/Miscellaneous Cas (CO) No. 466 Of 2018

Rashid Ali Molla And Others

APPELLANT

Vs

Board Of Wakfs And Others

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Waqf Act, 1995 — Section 6, 7, 32(3), 41, 52, 54, 54(4), 64(4), 64(1)(i)(c), 83
Evidence Act, 1872 — Section 63, 63(1), 65(c), 65(f), 76, 90
Limitation Act, 1963 — Section 14
West Bengal Waqf Rules, 2001 — Rule 26
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 05 CAL CK 0003

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Haradhan Banerjee, Shyamal Chakraborty, Anyapuaba Banerjee,
Partha Pratim Roy, Tapan Kumar Mahapatra, Sk. Md. Galib

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The present challenge is directed against a judgment and order dated October 25, 2017 passed by the Waqf Tribunal, West Bengal, dismissing the suit filed by the petitioners for several declarations, recovery of possession and consequential reliefs. The petitioners claimed right of mutawalliship in respect of the suit property by virtue of a registered deed of waqf dated November 11, 1919, whereby one Babujan Mallick, since deceased, allegedly created a wakf by dedicating approximately 7 acres and 95 decimals of land comprised of various plots, partly for the benefit of the settlor's family and his lineal descendants and partly for the purposes recognized by Mohammedan Law as pious, religious and charitable. Thus, according to the petitioners, the said wakf is a private wakf (wakf?alal?aulad).

2. According to the petitioners, the father of the petitioners, namely Motleb Ali

Molla, and their grandfather Kalo (Kalu) Molla attempted at various points of time to question the enrolment of the Wakf Estate of Babujan Mallick in the register of the Board of Wakfs, West Bengal under E.C. No. 10339, erroneously as 'Bahadur Molla Wakf Estate'.

3. In 1963, Kalo Molla had lodged a complaint in connection with such recording, but to no effect. After his demise, his son Motleb Ali Molla had been claiming right, title and interest as mutawalli to the said Wakf Estate, by virtue of the wakf deed of 1919, since 1988. During the lifetime of Motleb (since deceased) the private opposite parties lodged a complaint against him alleging encroachment of the wakf estate by Motleb. Pursuant to such complaint, a proceeding under Section 52, read with Section 54, of the Waqf Act, 1995 was drawn up by the Board of Waqf, which was registered as Miscellaneous Case No. 19 of 1981. A show-cause notice was served upon Motleb in connection with such proceeding by the Chief Executive Officer (CEO) of the Board under Office Memo No. 1049(1) dated July 13, 2005.

4. Motleb duly appeared and showed cause in support of his claim. In 2005, an enquiry was held at the behest of the Board, in pursuance of which a report was prepared by the concerned Inspector of the Board on November 9, 2005.

5. During pendency of the aforesaid miscellaneous case, a Memorandum, bearing Memo No. 440V dated April 12, 2006 was issued, directing Motleb to appear before the Mutawalli and Enrolment Committee on April 18, 2006.

6. Motleb appeared pursuant to the notice and submitted several documents, including the registered deed of wakf dated November 11, 1919 and argued in support of his claim. The Committee, upon hearing such submissions, recommended that the CEO should verify the matter regarding the schedule of the property contained in the deed of 1919, executed by Babujan Mallick and take necessary action after verifying the contents of the schedule and the concerned C.S. records and also direct Motleb to submit the C.S. records of the wakf property and thereafter the Committee would take necessary decision. The aforesaid recommendation of the Committee, dated April 18, 2006, was confirmed in its meeting, held on June 6, 2006. No action was taken by the CEO thereafter.

7. The matter was finally heard on March 29, 2007 by the Committee and a resolution was taken, subsequently confirmed by the Board of Wakf in its meeting dated April 18, 2007, rejecting the claim of Motleb.

8. The plaintiffs/petitioners preferred an appeal against the order dated April 18, 2007 before the Waqf Tribunal, which was registered as Appeal No. 6 of 2007 but was dismissed on the ground of maintainability by the tribunal vide Order No. 6 dated January 9, 2008.

9. The petitioners preferred a challenge against the order dated January 9, 2008 under Article 227 of the Constitution of India, giving rise to C.O. No.362 of 2008.

A co? ordinate bench of this court dismissed the said revision on the ground of non? maintainability on December 10, 2010.

10. During pendency of the revisional application, in the month of June, 2009, the petitioners received a notice from the office of the CEO of the Board of Wakfs, as contained in Office Memo No.604(1) dated June 2, 2009, whereby the plaintiffs were directed to vacate the wakf estate immediately. The said order, according to the petitioners, was passed behind their back, without affording them a reasonable opportunity of being heard and without any prior notice upon them.

11. The aforesaid order of eviction was challenged by the petitioners by way of a writ petition under Article 226 of the Constitution of India, registered as W.P. No. 13821 (W) of 2009. A co?ordinate bench, by its order dated August 4, 2011, dismissed the writ petition with the observation that nothing therein shall prevent the petitioners from approaching the tribunal according to law.

12. Thereafter, the plaintiffs/petitioners filed a suit, bearing Suit No. 15 of 2012, before the tribunal, which is the genesis of the instant revisional application. In the said suit, the petitioners prayed for the following reliefs:

"a) A decree declaring that the plaintiffs are the lineal descendants of the BABUJAN MULLICK (since deceased), settlor of 'BAHADUR MOLLAH WAKF ESTATE', bearing Enrolment Certificate No. 10339;

b) A decree declaring that the entry made in the Register of Wakfs in the name of 'BAHADUR MOLLAH WAKF ESTATE', is wrong, with a further direction upon the concerned registering authority to make necessary correction in the Register of Wakfs by substituting therein the name of 'BABUJAN MALLICK WAKF ESTATE', instead and in place of

'BAHADUR MOLLAH WAKF ESTATE';

c) A decree declaring that the impugned order passed by the Defendant No. 2 under his office Memo No. 604 dated June 2, 2009 evicting the Plaintiffs from the said Wakf Estate is a nullity;

d) To remove defendant Nos. 16, 17 and 18 from Mutawalliship;

e) To declare one or more of the plaintiffs as Mutawalli/Mutawallis of the said Wakf Estate;

f) A decree of permanent injunction restraining the private defendants from enjoying possession of the said Wakf Estate and the income and usufructs arising therefrom and further restraining them from transferring, assigning, alienating and/or encumbering the suit property to any third party till the disposal of this suit;

g) An order for appointment of receiver;

h) Temporary injunction;

i) Costs;

j) Any other or further order or orders as to your Honour may seem fit and proper."

13. The defendants/opposite party nos. 3 to 10 and 12 to 17 appeared in the said suit and filed their written statements, thereby contesting the same.

14. Ultimately the tribunal, by its judgment and order dated October 25, 2017, dismissed the said suit with costs, against which the present application under Article 227 of the Constitution of India has been preferred.

15. Learned counsel for the petitioners argues that the tribunal, while dismissing the suit, primarily proceeded on the premise that the wakf deed of Babujan Mallick mentioned only 8 bigha of land, whereas more than 42 bigha of land was allegedly dedicated by Babujan Mallick as per the plaint case. It was further held by the tribunal that there was no paper or document to show that the property enrolled under E.C. No. 10339 was covered by the wakf deed of 1919.

16. The tribunal also held that the wakf deed executed by Babujan Mallick was in custody of his successors but the original was not produced by the plaintiffs/petitioners. Thus, the tribunal concluded inter alia that the property which belonged to Babujan Mallick, including the property that he dedicated by the wakf deed dated November 11, 1919, was recorded in favour of his successors as secular property during the operation of records of rights. It was observed that the wakf deed did not see the light of the day during the period starting from the preparation C.S. records of rights to the latest records of rights. The tribunal further went on to hold that the application for enrolment of wakf, the order passed by the Commissioner of Wakf allowing such enrolment and the copies of the orders passed by the Board from time to time appointing Mutawallis, together went on to show that the wakf property pertaining to C.S. Khatian No. 661 was registered with the Board in due process and it has assumed "a serious proportion" by the passage of time.

17. Accordingly, the suit was dismissed.

18. Learned counsel for the petitioners argues that the tribunal failed to take into account that a certified copy of the registered deed of wakf dated November 11, 1919 was produced as evidence and marked as an exhibit before the tribunal, the legal effect of which was overlooked by the tribunal. Even if the deed covered only a portion of the property enrolled under E. C. No. 10339, the tribunal could very well have decreed the suit in respect of the portion covered by the deed, if necessary by moulding the relief claimed in the suit.

19. As to the question of identification of the wakf property covered by the deed, as raised by the tribunal, the petitioners submit that the report filed by the Inspector appointed by the Wakf Committee in connection with the previous proceeding, annexed at page 123 of the instant revisional application, was sufficient to identify the property in question.

20. It is further submitted that since the petitioners approached the appellate forum and thereafter the writ court, which categorically relegated the petitioners to the tribunal, the tribunal could not have cited such previous dismissals as conclusive, without factoring in the liberty granted by the last forum, that is, this court, in the writ petition, to approach the tribunal.

21. Moreover, on a conjoint reading of Sections 6, 7, 54 and 83 of the Waqf Act, 1995, the tribunal had ample jurisdiction to decide the suit.

22. The finding as to there being no document to establish the title of Babujan Wakf Estate, was perverse in view of the petitioners having produced as evidence the certified copy of the registered wakf deed dated November 11, 1919 (exhibit 2), the relevant extracts of the respective records of rights in respect of the C.S. Khatian Nos. 506, 661, 974, 98 and L.R. Khatian No. 660 (exhibit 4) and the certified copy of the enquiry report submitted by the Inspector of the Board (exhibit 5), all of which were marked as exhibits but were overlooked by the tribunal. It is submitted that the petitioners produced several other documents as well, to establish that the petitioners had the right of Mutawalliship over the suit property on the strength of the wakf deed of 1919.

23. On the other hand, nothing had been established to show the basis of the enrolment of the property in question as a public wakf. Not a single document of dedication had been produced from the end of the opposite parties before any forum in support of the creation of such a public wakf.

24. As regards the tribunal having disregarded the certified copy of the 1919 deed due to non-production of the original, it is submitted that there were sufficient materials in the evidence on record to show that the original had been lost, justifying the production of the certified copy as secondary evidence.

25. Since there was no rebuttal on the part of the opposite parties to the 1919 deed, the tribunal acted without jurisdiction in refusing the decrees prayed for by the petitioners.

26. In any event, the petitioners and/or their predecessors in interest could not be regarded as encroachers in respect of the property in dispute.

27. By citing Mulla's Mahomedan Law, learned counsel for the petitioners argues that Section 184 thereof specifically provides the modes of creation of a wakf. A wakf can be inter vivos or testamentary, but cannot be created merely by enrolment in the register/list of wakfs maintained by the authorities.

28. Since the basis of the entries in the register of wakf was challenged in the suit, and in view of the absence of any proof as to any basis for alteration of the status of parties in the R.S. records vis-à-vis the C.S. records (which were in favour of the petitioners' predecessor), the tribunal ought to have decreed the suit filed by the petitioners.

29. By citing Mulla's Mahomedan Law, learned counsel for the petitioners further

argues that the settlor or anybody claiming through him cannot say that a wakf was not intended to be acted upon. Learned counsel verbally refers to judgments reported at (1933) 58 CLJ 259 and (1905) 10 CWN 449, 484, referred to in Mulla, in this context.

30. It is further submitted that a third party cannot claim that a deed of wakf was not acted upon.

31. It is reiterated by learned counsel for the petitioners that the legal effect of the registered deed of wakf of 1919, which, in law, prevails over an enrolment in the list/register of wakfs, was not taken into consideration by the tribunal.

32. The opposite parties did not prove any dedication of the disputed property as a public wakf, to form a basis for the enrolment or the subsequent entries in the R.S. records, in deviation from the C.S. records. Thus, there being no foundation of the subsequent entries in the R.S. records, the C.S. records had to prevail, which, in conjunction with the deed of wakf, were sufficient to prove that the enrolment of the property as a public wakf was vitiated on law and facts.

33. It is further submitted that if, as held in the impugned order, identification of the extent of the property covered by the 1919 deed was an issue, the tribunal could easily have relied on the inspection report referred to earlier and exhibited in the suit, or even suo moto directed a commission to be held for the purpose of such identification vis-à-vis the deed. At least a partial decree could be passed, declaring the property covered by the 1919 deed to be a wakf^{alal}aulad and modifying/cancelling the enrolment to that extent.

34. The opposite party nos. 3 to 16, on the other hand, argue that due course was followed in enrolling the disputed property as a wakf property. No effective challenge to the Board resolution to that effect was taken out at all. The eviction order passed subsequently was merely consequential to the enrolment of the property as a public wakf. As such, in the absence of any fruitful challenge to such enrolment, the eviction order, which is a corollary thereof, could not also be challenged as such.

35. It is further submitted on behalf of the opposite party nos. 3 to 16 that the tenor of the suit was such that, in effect, the petitioners prayed for a change of the character of the wakf, which was enrolled as a public wakf, to a wakf^{alal}aulad, that is, a private wakf. However, no such relief was sought in specific terms in the suit. The effect of cancellation of enrolment would tantamount to granting such a relief, which was not prayed for specifically by the plaintiffs/petitioners in the suit. In the absence of such a prayer, the suit was not maintainable in its present form and could not be decreed in favour of the plaintiffs.

36. It is submitted that the tribunal rightly held that the purported deed of wakf pertained only to a miniscule portion of the enrolled property and could not entitle the plaintiffs/petitioners to a cancellation of the entire enrolment. As such,

the suit was not maintainable in its present form.

37. Opposite party nos. 3 to 16 submit further that Motleb, the predecessor in interest of the petitioners, had prayed for substitution in place of his father Kalo Molla as mutawalli. Such prayer was refused by the Commissioner of Wakf as far back as on March 21, 1980, which refusal order is annexed at page 212 of the present revisional application. In such view of the matter, the petitioners' predecessor had endorsed the enrolment in a sense, seeking to be brought in as a mutawalli in such enrolled wakf. Therefore the petitioners, who were bound by the action of their predecessor, could not now resile from such position and claim the property to be a private wakf and/or pray for cancellation of the enrolment itself.

38. Moreover, the Commissioner of Wakf, West Bengal had asked for certain clarifications from Kalo (Kalu) Molla, the predecessor in interest of Motleb, with reference to Kalu Molla's application for enrolment dated September 18, 1963. There is nothing on record to show that Kalu proceeded any further with such application, which had been registered as Miscellaneous E.C. No. 193 of 1963.

39. It is pointed out from page 245 of the present application under Article 227 of the Constitution of India that the Board of Wakfs had communicated to Motleb on July 31, 2007, the rejection of Motleb's claim of mutawalliship. The resolution dated April 18, 2007, on the basis of which such communication was made, was not challenged by Motleb and has attained finality. The present suit was filed only in the year 2012, that too after the order of eviction was passed against Motleb. Instead of preferring a challenge before the tribunal, the petitioners filed the suit in question. As such, the reliefs claimed in the suit could not be granted in favour of the petitioners.

40. Even after the Commissioner of Wakfs duly appointed mutawallis in respect of the wakf estate, comprised in E.C. No. 10339, in respect of Bahadur Molla Wakf Estate vide order dated December 1, 1978, the petitioners or their predecessors in interest did not prefer any challenge against the same.

41. After they sat tight over the matter for so long, the petitioners could not be permitted in law to come up with the suit at a belated stage, only in the year 2012.

42. Learned counsel for the opposite party nos. 3 to 16 next argues that the original of the purported wakf deed of 1919 was not produced at all. Moreover, there is no explanation as to why the deed, if existent, was withheld for so long over a prolonged period of time, during which Kalu and his son Motleb approached various authorities with regard to mutawalliship and enrolment. It is evident from such act of the predecessors in interest of the petitioners that the deed was either never existent or had never been acted upon at all.

43. It is further argued that the certified copy of the purported deed of 1919, which was produced as evidence and marked as exhibit 2, was not duly proved

by calling for the relevant records and volume books from the registration office or by bringing an employee from the said office to prove the same. The plaintiff no. 2 proved such certified copy, on which the document was marked as exhibit 2 with objection. Hence, the document was never marked as an exhibit or proved in accordance with law, which precluded the court from even looking into the said document for any purpose whatsoever.

44. In this context, learned counsel places the provisions of Section 63 and 76 of the Indian Evidence Act, 1872 as well as cites a judgment reported at AIR 1935 PC 132 [Basant Singh, Kunwar and others vs. Brij Raj Saran Singh, Kunwar, since deceased], for the proposition that in the event a document was produced as secondary evidence, the tendering party had to duly prove that the original was lost or could not be produced for some reason sanctioned by law. Mere oral evidence in that regard would not suffice.

45. The Board of Wakf argues that the tribunal had no jurisdiction to entertain the suit at all, since the same was not covered by Sections 6, 7 and 83 of the Waqf Act, 1995. The suit had been filed under Section 83 of the Act and not under Section 32(3) of the Waqf Act.

46. Prayer (b) of the suit was covered by Section 41 of the 1995 Act, which empowered the Board of Wakf to direct the mutawalli to apply for registration of a wakf or in respect of amendment of the register of auqaf.

47. Prayer (c) was covered by Section 54(4) of the 1995 Act, as it stood before the amendment of October 29, 2013, which came into effect from November 1, 2013, which amendment is not applicable to the present case, since the suit was instituted earlier.

48. As per the previous sub?section (4) of Section 54, any person aggrieved by an order made by the Chief Executive Officer under sub?section (3) thereof, for eviction of encroachers, could institute a suit in the tribunal to establish his right, title or interest in the land, building, space or other property. However, the present suit was not filed under the said provision. Even for the removal of a mutawalli, an aggrieved person had to prefer an appeal under Section 64(4) of the 1995 Act, that too within one month from the date of receipt of the order passed under Section 64(1)(i)(c) of the said Act.

49. By placing reliance on Rule 26 of the West Bengal Waqf Rules, 2001, learned counsel for the Board of Wakf argues that the limitation for a suit was 30 days from the cause of action. As such, the suit, from which the present revision arises, was palpably time?barred.

50. In this context, learned counsel cites an unreported judgment of this court passed in C.O. No. 2563 of 2018 [Gopala Conclave Private Limited and another vs. Haji Nurul Huda Layek and others] to elaborate the scope of interference by the tribunal.

51. Learned counsel for the Board of Wakf points out from grounds XII and XV of

the revisional application that title has been claimed in the present revisional application, which is beyond the scope of the suit itself, since no declaration of title or inheritance could be sought before the Waqf Tribunal.

52. The predecessors' interest of the petitioners, and consequently the present petitioners, could not approbate and reprobate in the same breath by claiming mutwalliship in the suit property, which was enrolled as a public wakf, and subsequently, by filing the suit, claiming that the property was wakf alaulad.

53. Learned counsel further cites a judgment reported at (2017) 1 WBLR (Cal) 170 [Sayed Hassan Ali vs. Mahammed Sahidul Islam], wherein a division bench of this court explained the powers of the tribunal, in support of the contentions of the Board of Wakf.

54. Learned counsel for the petitioners, in reply, argues that the rejection by the Board of the claim of Motleb, vide order dated February 8, 2006 passed in connection with E.C. No. 10339, was not on merits but left it open for the petitioners' predecessors' interest to seek alternative remedy.

55. Placing reliance on the plaint averments, in particular paragraph no. 7 thereof, it is argued by the petitioners that the suit is not time-barred. In this context, the petitioner highlights the filing of Appeal No. 6 of 2007 first and thereafter the writ in connection therewith, wherein liberty was given to the petitioners to approach the tribunal. As such, the cause of action of the petitioners ripened only upon the disposal of the writ. Even taking the worst case scenario, Section 14 of the Limitation Act would be applicable to the present case. It is reiterated that no document of dedication of the property, as a basis of the enrolment, was furnished by the opposite parties to rebut the deed of wakf of 1919 filed by the petitioners.

56. As regards the objection as to the marking of a certified copy of the deed of wakf as an exhibit, it is argued that such objection pertained to the mode of proof and had to be taken and decided at the time of exhibiting the document itself. Since the document was permitted to be marked as an exhibit despite the objection, and since the matter does not relate to the evidentiary value of the document but to the mode of proof only, the opposite parties were now precluded from challenging such marking of the document as an exhibit.

57. It is further submitted that the deed of wakf of 1919 was produced before the Board of Wakf at the hearing and referred to in the recommendation of the M.E. Committee dated April 18, 2006, which was confirmed in its meeting held on June 6, 2006. Hence the argument, that the deed was never produced, is not a valid argument.

58. It is further submitted that under Section 65(c) of the Indian Evidence Act, it was sufficient if the original wakf deed was shown to be lost, for the adduction of the certified copy thereof as secondary evidence. For such purpose, it was

sufficient to lead foundational evidence. In the present case, in the cross-examination of the petitioners' witness, it was specifically stated by the said witness that the original was lost, which was sufficient, even in the absence of further proof, to adduce secondary evidence.

59. Section 65(f), Section 63(1) as well as Section 76 of the Evidence Act were sufficiently complied with in the present case and as such, there was no bar in producing the said document as secondary evidence.

60. As regards the argument of the Board of Wakf, that the tribunal did not have jurisdiction to take up the matter, learned counsel for the petitioners argues that the said argument is being advanced for the first time in this revisional application, thereby taking the petitioners by surprise. Such point could not be urged on behalf of the Board after having submitted to the jurisdiction of the tribunal, for the first time before the revisional forum. Although it is argued by the Board of Wakf that the said objection pertains to inherent lack of jurisdiction and can be taken at any point of time before any forum, in the present case, the board waived the right to take such objection by participating full-fledged in the proceedings before the tribunal, without taking such objection.

61. Since the suit is based on the right, title and interest of the petitioners, and the reliefs claimed in the suit are based on such title, the suit had ingredients of Section 54(4) of the 1995 Act (as it stood to the 2013 Amendment) and as such, was maintainable in any event.

62. Thus the applicability of Section 6 may not arise directly.

63. Hence, it is submitted by the petitioners that the tribunal acted without jurisdiction in refusing the decree sought by the petitioners.

64. A perusal of the impugned judgment and order shows that the tribunal refused to take into account the wakf deed dated November 11, 1919, despite a certified copy of the same being produced in evidence. The cross-examination of the plaintiffs' witness shows that the said witness stated categorically that the original of the wakf deed was lost, thereby creating a foundation for secondary evidence of such document to be led. Since the certified copy of a registered transfer deed, validly issued, is recognized as secondary evidence under Section 76 of the Indian Evidence Act, there was no bar in the plaintiffs/petitioners producing the certified copy of the said registered deed in evidence. As such, the tribunal refused to exercise jurisdiction vested in it by law in not giving credence to such document.

65. The cited judgment of the Privy Council was in a different factual context and primarily dealt with the question, whether the presumption as to genuineness of an original 30 years old document could apply to a copy thereof. In the present case, the question does not pertain to the presumption of genuineness contemplated in Section 90 of the Evidence Act, but to the acceptability of a duly issued certified copy of a registered document as secondary evidence. Hence, the

said judgment has no manner of applicability to the instant case.

66. If the said deed is taken into consideration, it reveals a basis for the plaintiffs' claim that Babujan Mallick had created a wakf, partly for the benefit of the settlor's family and lineal descendants and partly for purposes recognized by Mohammedan Law as pious, religious and charitable, comprised of a wakf^{alal} aulad.

67. On the contrary, no particular basis was disclosed by the opposite parties for enrolment of the propertyⁱⁿ question as a public wakf. Since the enrolment of a property as a wakf property is amenable to challenge before the tribunal under Section 83 of the Waqf Act, 1995, there was no bar to the tribunal deciding the challenge to veracity of the enrolment of the propertyⁱⁿ question as a public wakf.

68. Both Sections 6 and 7 of the 1995 Act contemplate questions or disputes as to whether a particular property in the list of auqaf is wakf property or not. On the other hand, Section 83 of the 1995 Act envisages the determination of any dispute, question or other matter relating to a wakf or wakf property and any allied question. Hence, a conjoint reading of the said sections, without doubt, confer the tribunal had full jurisdiction to take up the principal reliefs claimed in the suit. A proper appreciation of the aforesaid sections, read in proper perspective, reveals that even the nature of a wakf, that is, whether it is a public or a private wakf, is broadly covered within the combined ambit of Sections 6 and 7, thus enabling the tribunal to invoke jurisdiction under Section 83 of the said Act.

69. Although the first relief claimed in the suit, that is, a declaration as to lineal descendancy of the petitioners, strictly falls within the domain of a civil court, in the present case, the said question is relevant as a necessary component of the other declaratory reliefs sought in the suit.

70. Hence, relief (a), instead of being read in an isolated and independent manner, can be read into the other reliefs for declaration, as a necessary corollary of the said reliefs. Any issue framed on the other declaratory reliefs sought in the suit, would necessarily involve at least an incidental adjudication of the issue of lineal descendancy of the petitioners. As such, none of the reliefs claimed in the suit can be said to be redundant and the tribunal had jurisdiction to decide all the said reliefs. Although relief (a) required incidental adjudication as a component in the build^{up} to a decision on the other issues, it was not a principal issue but subservient in order of importance to the other declaratory reliefs. Hence the tribunal had jurisdiction to decide the suit, since the principal reliefs sought therein fell within the domain of the tribunal's jurisdiction and relief (a) was an incidental relief, covered within the broad spectrum of the other reliefs.

71. The eviction order against the petitioners was passed on the premise of the adjudication by the Board, that the petitioners were encroachers and had no

right on the basis of the 1919 deed. In the event such adjudication as to enrolment was set aside, the eviction order would thus die a natural death.

72. The tribunal had ample jurisdiction to take up the consequential issue of eviction as well, not merely under Sections 52 or 54 of the 1995 Act but, in the sense that such recovery order, in the present case, was a fallout of the negation of the petitioners' rights, pertaining to the nature of the wakf. In the event of the petitioners' rights as mutawalli being declared, the eviction order would consequentially go.

73. As regards the enlistment of the property as a public wakf, neither the Board of Wakf nor the tribunal adverted to any proof of such nature of the property?in? question.

74. Mere alteration in subsequent records of rights, after the names of the petitioners' predecessors?in?interest were duly recorded in the CS ROR, could not be a determinant as to the nature of the property. The opposite party nos. 1 and 2 had to disclose the foundation of the alteration in the entries in the RS records from the CS records. In the absence of any such foundation, the entries in the RS records of rights, being later on point of time, were palpably without any basis and ought to be ignored by the tribunal.

75. Since there was no rebuttal to the wakf deed dated November 11, 1919, the tribunal refused to exercise jurisdiction vested in it by law in refusing to place reliance on the said deed and in not paying heed to the forward presumption carried by the C.S. ROR entries, in the absence of any basis being satisfactorily shown for the alteration of such entries in the subsequent records of rights.

76. The judgments cited on behalf of the Wakf Board do not lay down anything which precludes the jurisdiction of the tribunal to take up the suit?in?question, upon a proper interpretation thereof.

77. In view of the aforesaid discussions, the tribunal ought to have ascertained the nature of the suit property which was covered by the wakf deed dated November 11, 1919. The ground cited by the tribunal for not deciding the matter, being that the wakf deed did not cover the entire enrolled property, was a flimsy pretext. An erroneous act of enlistment, by usurping a private wakf into the hotchpot of other properties, could not be a justification for the tribunal to shirk its duties and look th other way.

78. Although the Inspector's report was not elaborate as to identification of the property, as argued by the petitioners, the tribunal had the duty, in case of any doubt in its mind, to issue a commission, suo moto if necessary, for the purpose of ascertaining the exact extent of property covered by the deed of wakf dated November 11, 1919 executed by Babujan Mallick. The suit could then be decreed, if the tribunal was otherwise satisfied on the Wakf Deed dated November 11, 1919 along with corroborative evidence, by moulding the reliefs claimed by the plaintiffs/petitioners and declaring the title of the petitioners in

respect only of the property covered by the deed, and cancelling the enrolment of those properties only. Since no such exercise was undertaken by the tribunal, the impugned order is vitiated by illegality and jurisdictional error and ought to be set aside.

79. Accordingly, C.O. No.446 of 2018 is allowed on contest, thereby setting aside the impugned order and directing the tribunal to re-hear Suit No.15 of 2012, filed before it, afresh, by directing issuance of a commission to ascertain the exact extent of property out of the total property enrolled under E.C. No.10339, which is covered by the wakf deed dated November 11, 1919, executed by Babujan Mallick, bearing Exhibit No.2 in the suit and to re-adjudicate the suit on merits on the basis of such deed, giving proper evidentiary weightage to the entries in the CS records of rights and permitting the parties to adduce further evidence, if necessary, to assess whether the alteration in the RS records of rights had any foundation. The tribunal shall complete such fresh hearing in the light of the observations made above, as expeditiously as possible, preferably within six months from the date of communication of this order to the tribunal, without granting any unnecessary adjournment to either side.

80. There will be no order as to costs.

81. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.