

Calcutta High Court

HON'BLE JUDGE(S): **KESANG DOMA BHUTIA, J**

RASHIDALIMOLLA V. BOARD OF WAKF

C.O - 768 of 2021, decided on 19/01/2022

Waqf Act (43 of 1995), S.4- Civil P.C. (5 of 1908), 0.26 R.10- Preliminary survey of waqfs

- Application for rejection of report of Advocate Commissioner - Maintainability - Report submitted by Advocate Commissioner stating property covered by deed of 1919, not identifiable - Application for rejection of report and appointment of new Commissioner filed, before Commissioner and Amin could face cross examination in witness box and testify veracity of their report or before their report accepted or made part of record or rejected - Failure to file written objection mentioning ground of objection against report of commissioner before tribunal - Pre mature applications - Not maintainable.

(Para 9, 10)

Name of Advocates

Haradhan Banerjee, Bhushan Jain for Petitioner; Sk, Md. Galib, Aniruddha Chatterjee, Iftekar Munshi, for Respondent.

I **.ORDER** :-The petitioners have filed an application under Article 227 of the Constitution of India being aggrieved by the order of rejection of their application dated 16.12.2020 and 17.12.2020 by the Waqf Tribunal and where they have prayed for rejection of report of the Advocate Commissioner and well that of BL and LRO and for appointment of fresh Commissioner to hold local investigation of the schedule property in Suit No. 15 of 2012 on 23.02.2021.

2. For proper appreciation of the order under challenge it is necessary to discuss the history of the case in nutshell. The dispute relates to 7.95 Acres of land fully described in the scheduled of the plaint situated at Mouza-Kurchi Binodbati, J.L No. 15, under Udaynarayanpur Police Station in the district of Howrah.

3. It is the case of the plaintiffs/petitioners the property was originally owned by one Babujan Mallick who during his lifetime dedicated the property by executing a Registered Waqf Deed in the year 1919 for the benefit of his family members and also his lineal descendants. The said Waqf was a private Waqf. In the C.S. record of right the disputed property was recorded as Waqf property of Babujan Mallick, but in subsequent settlement record the property has been recorded in the name of Bahadur Molla Waqf Estate and as well in the Register maintained in the Waqf Board of West Bengal under E.C. No. 10339.

4. The predecessor-in-interest of the plaintiffs/petitioners made several representations before the Waqf Board for rectification in the Register and getting the same registered as Waqf Estate of Babujan Mallick, but in vain. Rather the predecessors of the plaintiffs/petitioners were served with notice by the Waqf Board asking them to vacate the Waqf Estate immediately and finding no other alternative the petitioners have to file Suit No. 15 of 2012 before the Waqf Tribunal for declaration that the plaintiffs are the lineal descendants of Babujan Mallick. That the recording of Estate of Babujan Mallick as Bahadur Molla Waqf Estate in the Register of Waqf is wrong. Notice of eviction dated 2 June, 2009 is and void. They have also prayed for declaration that one of the plaintiffs as Mutwali of the disputed Waqf Estate and permanent injunction restraining the private defendants from enjoying the usufructs of disputed property.

5.It has come on record that as per the direction of the Hon'ble High Court passed in C.O. No. 466 of 2018 on 02.05.2019, tribunal was directed to hold local investigation of the property covered by deed of Waqf dated 11.11.1919 executed by Babujan Mallick and to ascertain the exact extent of property covered by the said deed.

6.That in compliance of the direction of the Hon'ble High Court, the Waqf tribunal appointed an Advocate Commissioner to make survey and cause inspection with the help of concerned BL and LRO. Advocate Commissioner and BL and LRO submitted a report to the effect that they are unable to ascertain exact extent of property covered by Waqf Deed dated 11.11.1919 executed by Babujan Mallick as the same is not identifiable. Being aggrieved by such report the plaintiffs/petitioners have filed two applications praying for rejection of such report and for appointment of a fresh Commissioner alleging that the property covered by Waqf Deed on 1919 is identifiable, but learned Advocate Commissioner and BL and LRO for reason best known to them have reported the property could not be identifiable.

7.After taking into consideration such petitions of the plaintiffs, the learned Tribunal has taken of view that the applications of the petitioners/plaintiffs are premature and without examining both Advocate Commissioner and BL and LRO it is not possible to ascertain the reason why they could not identify the property covered by Waqf Deed dated 1919 and if it is found that Advocate Commissioner and BL and LRO did not do the investigation properly then the question of appointment of fresh Commissioner would rise. If it is found on examination of the commissioner and Amin that it is not possible to identify the properties covered by Waqf Deed dated 1919 then it would be appropriate for the petitioners to request the State Government to identify the disputed property by their Surveyor Commissioner or Additional

Surveyor Commissioner or Assistant Surveyor Commissioner in terms of Section 4 of the Waqf Act.

8. On the above background let see whether the impugned order suffer from any irregularity or illegality liable by set aside as prayed by petitioners.

9. The plaintiffs want survey of land covered by the deed of 1919. Then as per the order of the

Hon'ble High Court Survey passed advocate commissioner and Amin of BLLRO office Udaynarayanpur, where the property alleged to be located were appointed to hold survey of the land in question. They have submitted a report stating the property covered by deed of 1919 is not identifiable. Surprisingly enough before commissioner and Amin could face cross examination in witness box and testify the veracity of their report or before their report was accepted or made part of the record or rejected and without filing any written objection against the report by the petitioners/plaintiff they have come with the impugned applications for rejection of report and for appointment of fresh commissioner. The petitioners who are aggrieved by the report of the Commissioner having failed to file any written objection mentioning the ground of objection against the report of the commissioner before the tribunal and before examining both the learned advocate commissioner and Amin on the report submitted by them as stipulated under order 26 rule 10 CPC, they have outright prayed for rejection of their report and for appointment of a new commissioner to ascertain property covered by deed dated 1919. Therefore, it is seen they have filed those pre mature applications and before the Tribunal could decide whether the report indeed suffers from any material infirmities or defective.

10. Therefore, this court holds prayers made by the petitioners before the Tribunal being premature is not maintainable and no reason to interfere with the order impugned passed by the learned Waqf Tribunal in Suit no.15 of 2012 on 23.02.2021.

11. Accordingly, C.O. no. 768 of 2021 stands dismissed.

12. Interim order, if any, stands discharged.

13. There will be no order as to costs.

14. In view of the order made above affidavits

15. are not invited. Allegations made shall be deemed to be denied.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

Petition Dismissed