

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 3733 of 2017

Golam Mustafa Haidari & Anr.

VERSUS

Boad of Wakfs & Anr.

For the petitioners:

Dr. Chapales Bandyopadhyay, Adv.

Ms. Anandamayee Dutta, Adv.

Ms. Gargy Basu, Adv.

For the Board of Wakf/Respondent
No.1:

Mr. Azizul Islam, Adv.

Mr. SK. Md. Galib. Adv

Mr. Abu Siddique Mallick

For the Opposite Party No.2.:

Mr. Sumit Kumar Ray, Adv.

Mr. Munshi Ashiq Elahi, Adv.

Last Heard on: March 12, 2025

Judgment on: Jun 11, 2025

Biswaroop Chowdhury,J:

The petitioner before this Court are applicants before the Waqf Tribunal West Bengal under the Waqf Act 1995, and is aggrieved by the Judgment dated 04-09-2017 passed by Learned Waqf Tribunal in OA 16 of 2010.

The case of the petitioner before the Learned Waqf Tribunal may be summed up thus:

1. That the petitioners are the owners of 16 decimals of Land in plot No. 3605, 11 decimals of land in plot No. 3596 and 2.5 decimals of land in plot No. 3631 of Mouza-Dhitora under Murarai Police Station.
2. The origin of these lands comprised in three plots above-mentioned have been found in C.S. Khaitan No-1407 published in the name of Mohar Sheikh and also from Nakpuri Bibi published under Khaitan No. 1341 In C.S. plot No. 3596 Nak puri Bibi was recorded for 11 decimals in 16 annas share in the said khaitian No-1341 and it has been mentioned that Mohar Sheikh and others are the oweners on the northern boundary of the said plot. Similarly under khatian No. 1407 recording has been made in respect of Mohar Sheikh for a specified share and under the said Khatian Plot No. 3605 for 16 decimals in 16 annas and 3631 for 5 decimals in 16 annas have been recorded. From the above – mentioned two C.S. Khatians being No. 1341 and 1407 it does not appear that the said Khatians contained any Waqf land, rather the said Nakpuri Bibi and Mohar Sheikh have been shown to have possessed specified shares in the said Khatian and the plot recorded there under.
3. From Nakpuri Bibi her interest in Plot No. 3596 stood devolved upon Rajab Ali, Son of Umed Sheikh and Sayeed Hossain, son of Jellal Bux were recorded in Khatian No. 1341 plot No-3596 was recorded in the

name of the said Rajab and others for 11 decimals of land in 16 annas share but in Column No. 23 it has been shown to be in the possession of Ashraf Khan son of Yakub Sheikh as Mutwalli of Mosque.

4. RS. Plot No. 3596 having an area of 11 decimals have been recorded in the C. R. Khatian Nos 2802/1 and 1998/1 out of total 11 decimals. Golam Mustafa Haidari got 6 decimals in his Khatian No. 2802/1 and Golam Mohammad Haidari in his Khatian No. 1998/1 has got 5 decimals of land. Similarly plot No. (CS) 3605 having an area of 16 decimals of land was recorded in the L.R. Record of Rights by amalgamation with a bigger plot being No. 3618. Plot No. 3618 has been recorded in the name of Golam Mohammed Haidari under Khatian No. 1998/1 C.S. Plot No. 3631 having an area of 5 decimals have been recorded in the LR. Record of Rights in the name of Golam Mustafa Haidari under Khatian No. 2802/01 having land area of 5 decimals.
5. Only in R.S. Khatian No. 1341 against Plot No. 3596 and Plot No. 3605 under Khatian No. 1407 in 23rd Column a name has been shown to be Mutwalli although original plot reflects the name of the owners.
6. On the basis of aforesaid inference Column No. 23rd in respect of said two plots being plot No- 3596 under Khatian No-1341 and Plot No- 3605 under Khatian No. 1407, the Board of Wakfs has treated the said property as Wakf.

7. Plot No-3605 merged with Plot No-3618 and the Block Land and Land Reforms Officer has also issued a letter being Memo No. 22 dated 4th January 2005 addressed to the Officer-in-charge Murari Police Station stating that the Plot No-3605 has been merged with Plot No-3618 which is secular plot and the present owners are Golam Mohammed Haidari and Golam Mustafa Haidari under their L. R. Khatian No. 1998/1 and 2802/1 respectively.
8. Ultimately the matter was taken up by the Chief Executive Officer for hearing and he made a recommendation which was placed before the Board for confirmation and was confirmed in its meeting held on 25th February 2010. In the impugned resolution the Chief Executive Officer has referred to about a Mosque in respect of the Plots under consideration which does not relate to the said Mosque. The Chief Executive Officer held that he verified the record and found that plot No-3605 and 3631 were Waqf. In support of his finding the Chief Executive Officer has relied upon the C.S. Khatian No. 1407 although there is no such Khaitan in the C.S. Record of Rights.
9. It is claimed by the Chief Executive Officer, that Mohar Sheikh whose name was recorded in the C.S. Khaitan donated the Land to Ganirdanga para Mosque and accordingly the same was recorded showing Ashraf Ali as Mutwalli. While passing the impugned recommendations the Chief Executive Officer has also referred to a Trust Deed dated 18th July 1973, whereby it was alleged that Ashraf

Ali transferred his Mutwalliship of Golam Mohammed Haidari the petitioners herein, although the petitioners never accepted the said deed. Therefore from the said Deed it does not appear that Golam Mohammed, Haidari or Golam Mustafa Haidari at any point of time admitted that the said plot belong to a Wakf.

10. The Respondent no-2 did not place the said Deed before the Chief Executive Officer and no copy was supplied to the petitioners.

11. The petitioners purchased all the said 3 plots from the persons who acquired right title and interest which has been corroborated from undisputed C.S. and R.S. Record of Rights. The petitioners name has been duly recorded under their respective Khaitan. In the impugned resolution it appears that the Chief Executive Officer has relied on oral dedication way back from Nakpuri Bibi, who was recorded in the C.S. Record of Rights but it is surprising to note that Nakpuri Bibi had created a Wakf by oral dedication. Question of subsequent oral dedication by Mohar Sheikh also does not arise.

The opposite parties filed objections to the petition of the petitioners.

By Judgment dated 04-09-2017 the Learned Wakf Tribunal was pleased to dismiss the application of the petitioners by observing as follows:

‘On plain reading of the provisions of Regulation No. 30(2) (III) and 30(2)(IV) of the West Bengal Wakfs Regulation 2008 and the resolution of the Board taken on 06-11-2012 it may be said that the CEO, Board of Wakfs has

been authorized to recommend for enrolment and registration of the Waqf and for appointment of the Mutawalli of the Wakf Estate and therefore we find no merit in the contention of Ld. Advocates for the plaintiffs on the point of jurisdiction of the CEO.

The contesting respondents produced the information slip issued from Civil Judge (Junior Division) 1st Court Rampurhat Birbhum in connection with Title Suit No-169 of 2004 wherein it is clearly mentioned that an order was passed on 13-08-2008 to the effect that the said suit be stayed till the disposal of the Misc E.C. No-15 of 2004 pending before the West Bengal Wakf Board and the said order has not yet been vacated. On perusal of such information furnished in the information slip in connection with the said Title suit No. 169 of 2004 it may be said that the Ld. Civil Judge (Junior Division) 1st Court Rampurhat Birbhum perhaps on consideration of embargo imposed u/s. 85 of the Waqf Act 1995 on the question of determination of the dispute if the suit property was wakf property or a secular property also wanted the respondent Board of Auqaf dispose of the Misc E.C. case No. 169 of 2004 and the CEO in compliance with such order of the Civil Court made such recommendation for enrolment of the Waqf and appointment of Mutawalliship and therefore it cannot be said that CEO made such recommendation in violation of Court's Order.

That being the outcome of the aforesaid discussion and in the given facts and circumstances of the case we find nothing to interfere with the

recommendation for enrolment and registration of the Waqf property comprising in six plots including the disputed three plots and for appointment of Mutawalli which stood confirmed by the Board of Auqaf and as such the present application is liable to be rejected.

Accordingly it is ordered that the application filed u/s. 83(2) of Waqf Act 1995 on behalf of applicants is rejected on contest but without any cost. The impugned recommendation of the CEO confirmed by the Board of Auqaf thus stands confirmed.'

The petitioner being aggrieved by the Order passed by the Learned Wakf Tribunal has come up with this application under Article 227 of the Constitution of India.

Pursuant to filing of this application notice was issued upon the opposite parties. Opposite parties filed affidavit in opposition to the applications.

It is the contention of the petitioner that the Learned Wakf Tribunal has acted illegally and with material irregularity by not considering that there is no proof or registered documents at all that the lands devolved as offered by any person as Wakf Property who is called Wakif.' It is further contended that the Learned Wakf Tribunal went wrong in not holding that the petitioners are the owners by virtue of registered sale deeds and their names were recorded in the record of rights even then there is no declaration of dedication made contemporaneously with the act of dedication. It is also contended that the Learned Wakf Tribunal failed to consider that 'record in Column No. 23 of the

respondent no-2 does not create any right in those plots as the respondent no. 2 is not a raiyat and the illegal enrolment of the lands as Wakf property by the Chief Executive Officer is miscarriage of justice.

The opposite party Board of Auqaf contended that from the records it appears that Plot no-3605 and 3631 in C.S. Khatian No. 1407 were recorded in the name of one Mohar Hussain. He verbally donated the land to Ganir Danga Para Mosque and accordingly in R.S. Record of Right these two plots were recorded in favour of Ashraf Ali Mutawalli but the L.R. Record of Right for the above mentioned plots have been recorded as secular in the name of the said petitioners Golam Mustafa Hyadari and Golam Muhammad Hyadari. The petitioners and others managed to get the Plot No-3605 merged with another 13 plots and created a new plot number 3618. It is contended that the oral dedications were made by Mohar Hussain in respect of Plot No.3596 and therefore there is no irregularity in creation of Wakf by Oral declaration as claimed by the petitioners.

The opposite party no-2 also filed affidavit in opposition denying the contentions made in the petition. It is contended that the transfer of Wakf properties without the permission of the Board of Wakfs was barred under the Bengal Wakf Act 1934, and the alleged Sale if any having not been regularized by the present Wakf Act 1995, the said transfer remains illegal and as such void ab-initio. It is further contended that there cannot be any dispute with regard to the proposition that a valid waqf may be created orally or by an

instrument as even by long user and once a valid waqf is established it shall always remain as a waqf and the subsequent alteration of LRROR by way of merging the plot no. 3605 with plot No. 3618 thereby creating a new plot No-3618 as secular is of no consequence. It is also contended that Record of Right does not confer any title.

The following decisions are relied upon:

Sayyed Ali and others

VS

AP Wakf Board Hyderabad and others

Reported 1998(2) SCC-642

Kiran Devi

VS

Bihar State Sunni Wakf Board and others.

Reported in (2021) 15 SCC-15

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite parties. Perused the petition and Affidavits and materials on record.

Learned Advocate for the petitioner submits that the Chief Executive Officer had no authority to dispose the application in terms of Regulation 30 of the West Bengal Wakf Regulations 2008 for matters of registration of waqf

under Section 36 of the Waqf Act 1995. Learned Advocate further submits that a total number of three plots Nos 3596, 3605 and 3631 in respect of which objections have been raised by the petitioners. C.S. Record of Rights shows that one Nakpuri Bibi was the owner of C.S. Plot No. 3605 and 3631 under C.S. Khatian No. 1407 Learned Advocate also submits that surprisingly the R.S. Record of Rights was published in the name of one Mutawalli standing in Column No. 23 in respect of the said plots. This record was altered without any legal instrument found to be in existence showing creation of Waqfs in respect of the said plots by the respective owners. Thus the alteration of records in the name of the Mutwalli is not supported by any legal documents hence there is no evidence.

Learned Advocates for the opposite parties submit that once a Wakf is created it is always a Wakf and there is no scope for the sale of Wakf property. Learned Advocate for the opposite party no-1 relies upon West Bengal Auqaf Regulations 2008 and submits that in terms of 31 of the said Regulations the Chief Executive Officer on authorization by the Board of Wakf, West Bengal before registering the Wakf shall give notice of the application to the person whose names appear in the Record of rights or their heirs and/or to the persons said to be in possession of the Wakf property and shall hear him if he wishes to be heard.

Before proceeding to decide the matter in issue it is necessary to consider Section 36 of the Waqf Act 1995 definition of Waqf and essential ingredients of Waqf.’

Section 36 of the Waqf Act 1995 provides as follows:

S.36. Registration-1) Every [Waqf] whether created before or after the commencement of this Act shall be registered at the office of the Board.

2) Application for registration shall be made by the mutawalli.

Provided that such application may be [made by the Waqif] or his descendants or a beneficiary of the [Waqf] or any Muslim belonging to the sect to which the [Waqf] belongs.

3) An application for registration shall be made in such form and manner and at such places as the Board may be regulation provide and shall contain following particulars.

a) A description of the [Waqf] properties sufficient for the identification thereof.

b) the gross annual income from such properties.

c) the amount of land revenue cesses rates and taxes annually payable in respect of the [Waqf] properties.

d) an estimate of the expenses annually incurred in the realisation of the income of the [Waqf] properties.

- e) the amount set apart under the [Waqf] for
 - i) the salary of the mutawalli and allowances to the individuals.
 - ii) purely religious purposes.
 - iii) charitable purposes and
 - iv) any other purposes.
 - f) any other particulars provided by the Board by regulations.
- 4) Every such application shall be accompanied by a Copy of the [Waqf] deed or if no such deed has been executed or a copy thereof cannot be obtained shall contain full particulars as far as they are known to the applicant of the origin nature and objects of the [Waqf]
- 5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure 1908 (5 of 1908) for the signing and verification of pleadings.
- 6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.
- 7) On receipt of an application for registration the Board may, before the registration of the [Waqf] make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the [Waqf] property, the Board shall

before registering the [Waqf] give notice of the application to the person administering the [Waqf] property and shall hear him if he desires to be heard.

8) In the case of [Auqaf] created before the commencement of this Act, every application for registration shall be made within three months from such commencement and in the case of [Auqaf] created after such commencement within three months from the date of the creation of the [Waqf].

Provided that where there is no Board at the time of creation of a [Waqf] such application will be made within three months, from the date of establishment of the Board.

Section 3 (9)(r) of the Waqf Act 1995 defines Waqf as follows:

“waqf” means the permanent dedication by any person, of any moveable or immoveable property for any purpose recognised by the Muslim Law as pious religious or charitable and includes:

- i) A waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser.
- ii) A Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record.

- iii) 'grants' including mashrat-ul-khidmat for any purpose recognized by the Muslim law as pious, religious or charitable and;
- iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim Law as pious religious, or Charitable provided when the line of succession fails the income of the waqf shall be spent for education development, welfare, and such other purposes as recognised by Muslim Law.

And 'waqif' means any person making such dedication.

As per clause (s) of section 3 of the Waqf Act 1995. 'Waqf deed' means any deed or instrument by which a [waqf] has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

Thus the essentials of a valid Waqf is that declaration of dedication should be made contemporaneously with the act of dedication. The Wakif must divest himself of the ownership of the property. Physical delivery of the property is not essential but such possession as is possible must be given. The three essentials of a valid waqf are:

- i) Perpetuity.
- ii) Irrevocability.
- iii) Inalienability.

Thus from the essentials of valid waqf it is clear once a Waqf always a waqf. There is no essential formality or the use of any expression or phrase or term requisite for the constitution of a Waqf.

It has been held in different Judicial Pronouncements that a Waqf may be made either verbally or in writing.

In the case of Mohd Imdadeullah VS Mst Bismillaco reported in AIR-1922 P.C. it was laid down that the dedication need not be express but may be inferred from the facts and circumstances. Even if there is no express dedication a property can be declared to be a Waqf property by mere user or reputation.

Thus it is clear that Waqf can be created by Deed as well as orally but the essential ingredients must be there.

In the instant matter the dispute is centred over 11 decimals of Land of C.S. Plot No-3596 16 decimals of land of C.S. Plot No-3605 and 5 decimals of Land of C.S. plot No. 3631. Plot No-3596 belonged to Nakpuri Bibi and Plot no. 3605 and 3631 belonged to Mohar Sheikh. The petitioners claimed to have purchased the said plots from successive legally of Nakpuri Bibi and Mohar Sheikh and thereby became the owner and occupier of the same. It is the contention of the opposite party no-2 that from copy of RS ROR that the disputed Plot No-3536 with the area of 11 decimals and Plot no. 3605 with the area of 16 decimals of land was recorded in favour of village Masjid while one Asraf was recorded as Muwawalli of the Masjid. It was further observed that

plot No. 3631 with the area of 3 decimals was recorded in favour of Sayed Abdul Sayeed and it would also be found from the copy of the registered deed of Trust dated 17-07-1973 executed by Asraf in favour of applicant no-1 that said Asraf made a declaration that his uncle Sayed Abdul Sayeed was the owner of Plot no-3605 with the areas of 16 decimals and 2.5 decimals of Land Plot No-3631 who donated the said land for the management and maintenance of Village Masjid. It was also the contention of the opposite party no-2 that it was Nakfuri Bibi who donated her land of plot no.- 3596 for the management and maintenance of the Masjid.

Now with regard to plot no-3631 and plot no-3605 where there is an existence of Trust Deed reflecting the particulars of the creation of Waqf the said deed will speak for itself and there is no scope to re-open the issue. However with regard to plot no. 3596, which is claimed to be a Waqf property made by oral dedication it is incumbent upon the applicant who applies for registration under Section 37 of the Waqf Act 1995 to give particulars of the nature origin and object of the Waqf. Although waqf may be created orally without waqf deed but at the time of registration of such waqfs under Section 36 of The Waqf Act 1995 the Board of Waqf should be cautious before ordering such registration and shall consider all relevant particulars and in the event of dispute or objection permit parties to adduce both oral and documentary evidence and examine witness acquainted with the facts and thereafter arrive at a conclusion as to whether the property is a Waqf property.

In the instant case there is nothing on record to show that evidence were adduced with regard to piece of land at Plot No. 3596 claimed to be donated by Nakfuri Bibi. Neither any documents in support of such donation is filed except the oral statement of opposite party no-2. Thus the findings with regard to Plot no-3596 claimed to be donated by Nakfuri Bibi cannot be sustained and the same should be set aside. The matter should be remitted to the opposite party no-1 to re-consider the issue of donation by Nakfuri Devi of Plot No-3596 after permitting the applicants and opposite party no-2 to adduce both oral and documentary evidence.

As alienation of Waqf property without sanction of the Board is invalid the opposite party no-1 shall ascertain from record, whether prior sanction was obtained before sale of such property. In the event it is found that no sanction was obtained for sale of Waqf property the Board shall consider if the transfer can be regularized by treating it as a limited transfer of lease in accordance with law. A special Officer should be appointed to enquire as to who is in possession of plot no-3596, Plot No. 3605 and Plot no-3631. The Special Officer shall also enquire as to whether there is any structure on the said plots and how the said plots of Land are used. The said report shall also enclose a site map giving the particulars. A photography of the village Masjid together with these plots of Land shall be taken and furnished with the report. Upon preparation of the report the Learned Special Officer shall submit the same before the Board of Waqf opposite party no-1 herein within 4 weeks from the date of communication of this order.

Mr. Sahidul Islam Learned Advocate High Court Calcutta Bar Association Room No-14, Mobile-9382591490 is appointed Special Officer. The Learned Special Officer shall be entitled to a remuneration of 1000 G.M. to be paid by the petitioners. The transport costs and other incidental costs to be incurred by the Special Officer shall also be borne by the petitioners.

Hence this Revisional Application is allowed in part. The matter is remitted back to the opposite party no-1 to decide the issue of donation by Nakfuri Bibi of plot no-3596 upon permitting the parties to adduce evidence and upon considering the Report of the Special Officer as observed above. The opposite party no-1 shall also consider under Section 51 of Wakf Act that the sales if made without sanction of the board whether can be regularized by post facto approval and by treating it as lease in this case and the petitioners may make representation in this regard.

The decision regarding reconsideration of the issue as observed above and post facto approval, shall be by a reasoned order and communicated to the parties.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)