



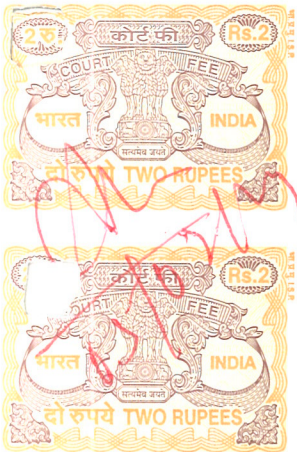
00X-47/03/02/24

Before, Judge - in - charge copying department, Amta, Haryana
In the Court of L2 Civil Judge (Jr. Div.) at Amta, Haryana

Ref:- T.S NO - 70/2020.

Rafikul Alam Jamadan & others - - - Plaintiff
V.S.

Rejaul Haque Jamadan & others - - - Defendants



C.F.
04
05/02/24



Application for xerox
certified copy of
order & judgement
in the above noted
case.

Applicant

Anandamayi Nag
Advocate
03/02/2024.

X-AT
Hee
05/02/24

Title Suit 70/ 2020 (CIS - 70/ 2020)
CNR No. - WBHW07 000 081 of 2020

SL-42
202-47/03.24
(22) sheet given
3 judgement
at 05.09.24

Order No. 45 dated 05.09.2022

Today is fixed for pronouncement of judgment.

Both parties are present.

Judgment is pronounced in open Court.

The original judgment is signed, sealed and thereafter kept in the record.

The present suit stands disposed of in terms of the final order contained in the body of the judgment which is as follows Hence, it is

ORDERED

That the instant suit be and the same is hereby dismissed on contest against the defendants on the preliminary issue framed and adjudicated herein. The present suit is found to be not maintainable in law in view of the observations made by the Hon'ble Supreme Court in the case of **Rashid Wali Beg Vs. Farid Pindari & Ors.** reported in **2021 SCC OnLine SC 1003** as well as in view of the specific provisions contained in sections 83, 85 & 88 of the Wakf Act of 1995. Interim order, if any, stands vacated.

The instant suit is accordingly disposed of. Dealing Assistant is directed to make necessary entries in germane registers and Case Information System, forthwith.

D/E by me

C. J. (Jr. Divn.)
Amta, Howrah
(JO Code WB 01195)

C. J. (Jr. Divn.)
Amta, Howrah
(JO Code WB 01195)

order No- 46
02/03/2023

Deehee is Drawn, up sealed, signed and kept on the record.

X-47
on
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05/02/24

1. Date of application for Copy... 03/02/24
2. Date fixed for Notifying the requisite Stamps... 05/02/24
3. Date of delivery of the requisite Stamps... 05/02/24
4. Date on which the Copy was ready for delivery... 05/02/24
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05.02.24
Comparing Clerk

05.02.24
Head Comparing Clerk
Copying Department
Civil Court
Amritsar, Howrah



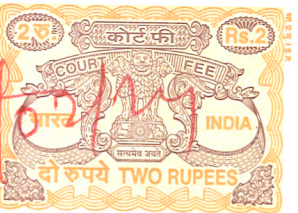
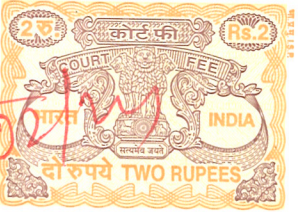
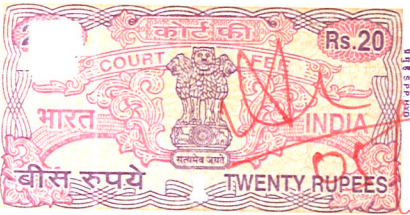
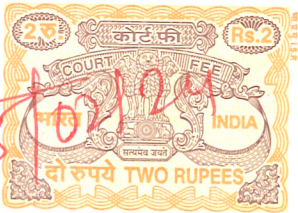
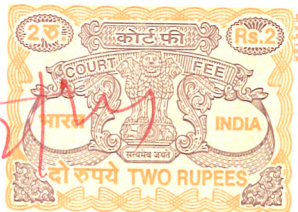
AD-47/03/24

Before, Judge - in - charge Copying department, Amta, Haryana
In the Court of L2 Civil Judge (Jr. Div.) at Amta, Haryana

Ref:- T.S NO- 70/2020.

Rafikul Alam Jamadar & others - - - Plaintiffs
V.S.

Rejaul Haque Jamadar & others - - - Defendants



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Advocate.

03/02/2024.

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CNP 428
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HIGH COURT FORM No. (J) 2

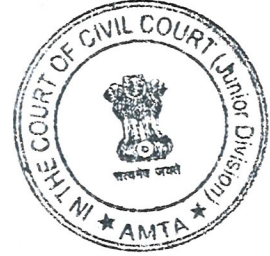
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District- Howrah.

The Court of the Civil Judge (Junior Division), Amta.

PRESENT: Mohammad Arif Nawab

Dated -- The 5th day of September, 2022



Title Suit No. 70 of 2020

CIS No. 70 of 2020

CNR No. WBHW07000081 of 2020

Rafikul Alam Jamadar & Ors.

.....Plaintiffs

Vs.

Rezaul Haque Jamader & Ors.

.....Defendants

This suit coming on for final hearing on 17.8.2022, 23.8.2022 & 29.8.2022 in presence of:-

Sri Kaushik PanjaAdvocate for the Plaintiffs.

Sri Subinoy BagAdvocate for Defendants.

and having stood for consideration to this day, the Court pronounced the following Judgment:-

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TS 70 of 2020
CIS No. 70 of 2020
CNR No. WBHW07000081-2020
Dated- 5th day of September, 2022

Typed and corrected by me

MOHAMMAD ARIF NAWAB
Civil Judge (Junior Division), Amta
District- Howrah
JO Code WB 01195

CIVIL JUDGE,
(JUNIOR DIVISION)
AMTA, HOWRAH

X-17
on
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05/02/24

JUDGMENT



Fact of the suit in brief:

1. This is a suit for declaration and permanent injunction valued at Rs. 155/-.
2. A total of 180 decimals property comprised in CS as well as RS plot no. 2254 corresponding to L.R. plot no. 2271 pertaining to CS & RS Khatian no. 87 corresponding to L.R khatian Nos. 2876, 2878, 2879, 2880, 2882, 2884, 2885, 2886, 3503, 3504, 3505, 3617, 3618, 3619, 3620, 3770, 3771, 3772, 3773, 3815, 3816, 3957, 3958, 3959, 4016, 4114, 4618, 4619, 4620 & 4621 for the Mouza of Joypur under Joypur P.S. within the district of Howrah is the subject matter of the present suit and the same has been described in detail in the schedule appended to the plaint of this suit.
3. The plaintiffs claim that the suit property originally belonged to Baro Abdul Bari Jamadar, Abdul Aji Jamadar and Mafijuddin Jamadar & others who were in possession of the same by building their residential houses thereon, and whose names were duly recorded as raiyats in CS khatian no. 87 for the mouza of Joypur. The plaintiffs have contended in paragraph 2 of the plaint that the aforesaid suit property was recorded as 'Cheragi' under CS Khatian No. 87 which they claim is nothing but a reference to 'the rules of interest of the suit property' which was prevailing at the time of preparation of the said CS Khatian. The plaintiffs have stressed in paragraph 3 of the plaint that at the time of the preparation of the RSROR pertaining to the suit property the word 'Chiragi' appearing in the CSROR was omitted by the concerned authority and the names of the then Raiyats who were in possession of the suit property at that point in time were duly recorded therein under RS khatian no. 87 which the plaintiffs claim is valid and correct.
4. The further case of the plaintiffs is that, at the time of preparation of LRROR the suit property was duly recorded in their respective names vide L.R Khatian nos. 3619, 4016 & 3773 for the mouza of

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TS 70 of 2020
CIS No. 70 of 2020
CNR No. WBHIW07000081-2020
Dated- 5th day of September, 2022

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MOHAMMAD ABIF NAWAB
Civil Judge (Junior Division), Amta
District- Howrah
JO Code WB 01195
CIVIL JUDGE,
(JUNIOR DIVISION)
AMTA, HOWRAH

X-AT
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05/02/24

Joypur. The plaintiffs have contended that they are presently possessing the suit property as co-sharers. It is the contention of the plaintiffs that the predecessor-in-interest of the principal defendants filed an application before the office of the proforma defendant no. 4 for getting the suit property recorded as a mosque. The plaintiffs have contended that after a detailed hearing the aforesaid application was rejected vide order dated 1.12.2000. The plaintiffs have gone on to contend that despite the passing of the aforesaid order, the principal defendants started making repeated attempts on and from 31.8.2020 to construct a mosque on the suit property even though the suit property is secular in nature and is the private property of the plaintiffs. The plaintiffs have claimed that presently the suit property is in joint possession of the plaintiffs and in accordance with their respective possession in the suit property, the LRROR pertaining to the same has been duly prepared which is binding upon the defendants along with the observations made in the order dated 1.12.2000.



5. It is the case of the plaintiffs that the cause of action behind the filing of the present suit arose for the first time on 31.8.2020 when the principal defendants tried to change the nature and character of the suit property, which is purportedly a family baastu, into a mosque without the consent of the other co-sharers and without obtaining any permission from the appropriate authority in this regard. The plaintiffs have contended that they duly resisted the said attempt on the part of the principal defendants and even brought this matter to the notice of Joypur PS on 2.9.2020. The plaintiffs have gone on to claim that they were compelled to file the present suit when the concerned PS failed to take any action against the said defendants. The plaintiffs have further contended that the failure on the part of the aforesaid authorities to take any action against the principal defendants further emboldened them to openly declare on 4.9.2020 that they will demolish the structure standing on the suit property and that they will construct a mosque on the same.

6. It has been contended from the side of the plaintiffs that on 4.9.2020 the principal defendants once again made an attempt to forcibly change the existing nature and character of the suit property for the purpose of constructing a mosque in its place. Even though this incident was duly brought to the

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Dated- 5th day of September, 2022

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Civil Judge (Junior Division), Amta
District- Howrah
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CIVIL JUDGE,
(JUNIOR DIVISION)
AMTA, HOWRAH

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notice of the O.C. of Joypur P.S. yet, once again no action was taken against the said defendant. These activities on the part of the principal defendants and the relative inactivity on the part of the police authorities compelled the plaintiffs to file the present suit in order to protect their right, title and interest in the same. The plaintiffs have come before this Court seeking a declaration that they are Raiyats in respect of the suit property having their respective share in the same as reflected in the LRROR pertaining to the suit property. Besides this, the plaintiffs are also seeking a decree of permanent injunction against the principal defendants so that they are restrained from changing the nature and character of the suit property by forcibly constructing a mosque on the same.



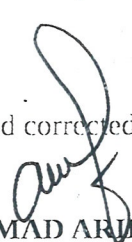
Defence set-up by the defendant nos. 1 & 2:

7. The defendants were summoned by this Court to appear and contest the instant suit by filing their written statement. The principal defendants duly entered appearance after receiving the summons of the present suit and filed their written statement challenging therein the case made out in the plaint. It is pertinent to mention here that while the present suit was pending for adjudication, they filed an application challenging the maintainability of the present suit in view of the provision contained in the Wakf Act of 1995. It has been contended by the defendants that the plaintiffs do not have any right, title or interest in the suit property which is a Wakf property. In support of their contention the principal defendants have drawn the attention of this Court to the solemn order dated 20.5.2009 passed by the Hon'ble Calcutta High Court in WP No. 27982 (W) of 1997 wherein the Hon'ble Calcutta High Court vide its said solemn order duly permitted the defendants to reconstruct a mosque on the suit property. The defendants have contended that the entire case of the plaintiffs is built on the contention that the suit property is a secular property in which they have exclusive right, title and interest. The defendants have challenged the claim of the plaintiffs that the suit property is a secular property. Rather, they have contended that the suit property has been enrolled as a Wakf property in the register of Wakfs by the West Bengal Wakf Board. In support of their aforesaid claim the defendants duly produced relevant pages of the Register of Wakf and submitted that in the aforesaid writ petition the Hon'ble Calcutta

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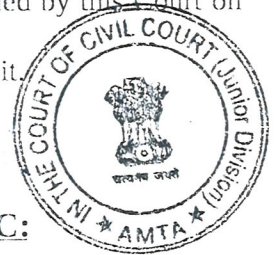
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Civil Judge (Junior Division), Amta
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High Court conducted a minute scrutiny of the aforesaid register other relevant documents, and after giving due consideration to the same the Hon'ble Court gave necessary permission to the defendants to proceed with the reconstruction of the mosque on the suit property. Placing heavy reliance on the aforesaid observation of the Hon'ble Calcutta High Court, the principal defendants have submitted that the order dated 1.12.2000 on the basis of which the plaintiffs are claiming right, title and interest in the suit property, have not been given any credence by the Hon'ble Calcutta High Court in its solemn order dated 20.5.2009. The said defendants have, therefore, contended that the plaintiffs have got no right, title or interest whatsoever in the subject matter of the instant suit, which has been declared to be a Wakf property, for which reason the instant suit is legally not maintainable in the light of the provisions contained in the Wakf Act. It is in this backdrop that preliminary issues were framed by this Court on 30.6.2022 vide order no. 40 for adjudicating on the maintainability of the present suit.



The preliminary issues framed under Order 14 Rule 2(2) of the CPC:

8. After taking due note of the contentions of defendants concerning the maintainability of the instant suit, this Court framed the following two preliminary issues under Order 14 Rule 2 (2) CPC-

- 1. Whether the present suit filed by the plaintiffs is not maintainable in view of the provisions contained in sections 83, 85 and 88 of the Wakf Act of 1995?
- 2. Whether this Court has jurisdiction to proceed with the further hearing of the present suit in the light of the provisions contained in sections 83, 85 and 88 of the Wakf Act of 1995?

DECISION WITH REASONS

Preliminary issue nos. 1 & 2.

9. These issues are inter-related besides being the crux issues of the present case. Therefore, they are taken up for discussion simultaneously in order to avoid repetition.

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TS 70 of 2020
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CNR No. WBHW07000081-2020
Dated- 5th day of September, 2022

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CIVIL JUDGE,
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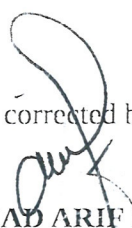
10. This Court has minutely gone through the contents of the plaint of the instant suit as well as the contents of the application filed by the defendants challenging the maintainability of the present suit. It is pertinent to mention here that it is apparent from the contentions made from the side of the plaintiffs in paragraphs 7 & 8 of the plaint that the dispute raised in the instant suit involving the suit property concerns the construction of a mosque on the suit property which is claimed by the plaintiffs to be their private property. On the other hand the defendants have contended that the suit property is enrolled as a Wakf property in the Register of Wakf and that the defendants are constructing a mosque on the same on the basis of the solemn order dated 20.5.2009 passed by the Hon'ble Calcutta High Court in WP No. 27982 (W) of 1997 permitting them to proceed with the construction of the said mosque on the suit property. Thus, the question which naturally arises for consideration is whether this Court has got jurisdiction to try the disputes raised in the present suit in view of the said solemn order dated 20.5.2009 passed by the Hon'ble Calcutta High Court, more so in view of the specific provisions contained in sections 83, 85 & 88 of the Wakf Act of 1995? To come to a conclusive finding on this point, this Court deems it fit to refer to the case-law of **Rashid Wali Beg Vs. Farid Pindari & Ors.** reported in 2021 SCC OnLine SC 1003 and the case-law of **Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf**, reported in (2010) 8 SCC 726, wherein the Hon'ble Supreme Court has attempted to put at rest the vexatious issue concerning the specific areas in which the Waqf Tribunal and the Civil Court shall exercise their respective jurisdictions and who among them is the appropriate forum to adjudicate on a dispute concerning the Waqf or secular character of a particular property.

11. Speaking for the bench, Hon'ble Justice V Ramasubramanian has observed in para 8 of the **Rahid Wali Beg** case that, "*The question of jurisdiction of Civil Courts to adjudicate upon disputes, for the determination of which special tribunals are constituted under special statutes, has been a vexed question which has turned, over a period of time, into a seesaw battle. This is specially so particularly in respect of Waqfs. But there is a historical background to this.*"

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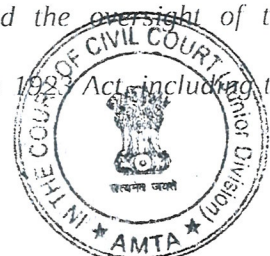
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CIVIL JUDGE,
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12. Dwelling upon the history of legislation pertaining to Waqfs, the Hon'ble Supreme Court in paras 9, 10 & 11 of the aforesaid case-law remarked that, *"The earliest enactment to come up, relating to Waqfs, was the Mussalman Waqf Validating Act, 1913 (6 of 1913). This Act recognized the right of Muslims to make settlement of properties by way of Waqf in favour of their families, children and descendents.... Then came the Mussalman Waqf Act 1923, which can be called the precursor of Waqf Legislation, dealing with the creation, maintenance and administration of Waqf and Waqf property. This Act required the Mutawalli of every Waqf to furnish to the Court within whose jurisdiction the Waqf property was situate, a statement of particulars. The Act also mandated the Mutawalli of every Waqf to furnish a full and true statement of accounts to the Court, after it is audited. The Court was empowered under this Act to hold an inquiry to ascertain : (i) Whether the Waqf exists (ii) Whether any property is a Waqf property and (iii) Who is the Mutawalli of the Waqf. The 1923 Act contemplated the creation of a Register of Waqfs and the Court was conferred with the power to record entries in the said Register.... Thus the 1923 Act specifically provided a role for the Civil Court in the matter of recognition and registration of Waqfs, protection of Waqf properties and the oversight of the management of the Waqfs. In fact, the Court had enormous powers under the 1923 Act including the power to order a special audit."*



13. The Hon'ble Apex Court then proceeded to discuss the enactment which the legislature enacted post-independence for better and effective administration of the Waqf properties in the country. In this connection the Hon'ble Supreme Court has observed in paras 12 & 13 of the said case-law that, *"After India attained Independence, the Parliament enacted the Waqf Act 1954, with the professed object of providing for better administration and supervision of Waqfs. The statements of Objects and Reasons of the 1954 Act, recorded that the 1923 Act was not of much practical value..... Sections 6, 27, 36A, 43, 55, 56, 57, 60 and 61 of the 1954 Act recognised the Civil Court as the forum for the resolution of various disputes relating to Waqfs and Waqf properties as could be seen from the following:—*

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TS 70 of 2020
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(JUNIOR DIVISION)
AMTA, HOWRAH

MOHAMMAD ARIF NAWAB
Civil Judge (Junior Division), Amta
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X-AT
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(i) Section 6 enabled the Board or Mutawalli or any person interested to institute a suit in a Civil Court of competent Jurisdiction, wherever any question arose as to (A) Whether a particular property specified in the list published under Section 5 is a Waqf property or (B) Whether the Waqf is a Shia waqf or a Sunni Waqf.

(ii) Though Section 27(1) of the Act, authorised the Waqf Board also to decide the question whether a particular property is a Waqf property or not, the decision of the Board on the question was made subject to jurisdiction of the Civil Court as seen from Section 27(2).

(iii) Section 36-A (1) provided for the remedy of a requisition by the Waqf Board to the Collector, whenever any immovable property of a Waqf was transferred without the previous sanction of the Board. The Collector was empowered under this provision to pass an order directing the person in possession of the said property, to deliver it to the Board. The order so passed by the Collector was appealable to the District Court under Section 36A (4).

(iv) Section 43(5) of the 1954 Act made the order of the Waqf Board removing the Mutawalli and directing him to deliver possession of the Waqf property, deemed to be a decree of the Civil Court, executable by the Civil Court, as if it was a decree passed by it.

(v) Section 55 enabled the Waqf Board to institute a suit to obtain any of the reliefs mentioned in Section 92, CPC relating to any Waqf, without obtaining the consent referred to in Section 92, CPC. Section 56 contained a provision similar to Section 80 of CPC and Section 57 laid down the procedure to be followed by the Civil Court, in every suit or proceeding relating to title to Waqf property or the right of a Mutawalli or any sale of Waqf property in execution of a decree of Civil Court.

(vi) Section 60 imposed a bar on the rights of the parties to a suit, to enter into a compromise without the sanction of the Board. The Waqf Board was empowered by Section 61 to make an application to the Court in case of failure of Mutawalli to discharge his duties."

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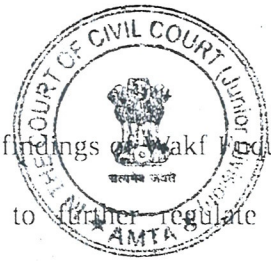
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14. The Hon'ble Apex Court thereafter proceeded to examine the findings of the Waqf Inquiry Committee leading to the 1984 Amendment Act which was enacted to further regulate the unsatisfactory functioning of the Waqf Boards. In paras 14 & 15 of the said case-law the Hon'ble Apex Court reflected that, *"The 1954 Act, went through some amendments in 1959, 1964 and in 1969. But by and large, the working of the Waqf Boards was found to be unsatisfactory and hence with a view to tone up the administration of Waqfs, the Central Government constituted a committee known as Waqf Inquiry Committee. The Committee made a large number of recommendations and its Report, after consultation with all stake holders, led to comprehensive amendments to the Act, under the Waqf (Amendment) Act, 1984. One of the important amendments made by this Amendment Act, was the substitution of the existing Section 55 of the principal Act with a new provision. The newly substituted Section 55(1) provided for the constitution of special tribunals for the determination of any dispute, question or other matter relating to a Waqf or Waqf property. But the right to invoke the jurisdiction of the Waqf Tribunal was made available under Section 55(2) of the Act, only to, (i) any Mutawalli of the Waqf; (ii) a person interested in the Waqf; or (iii) any other person aggrieved by any order made under the Act or Rule or any order made there under. Section 55(5) declared that the Tribunal shall be deemed to be a Civil Court, having the same powers as may be exercised by a Civil Court under the CPC, while trying a suit or executing a decree..... Section 55C barred the jurisdiction of Civil Court in respect of any dispute, question or other matter relating to any Waqf, Waqf property or other matter which is required by or under the Act to be determined by a Tribunal. But at the same time, Section 55D contained a provision enabling the Court to appoint a Receiver under certain circumstances."*

15. In paras 16 & 17 of the said case-law the Hon'ble Apex Court delved on the background leading to the enactment of the Waqf Act of 1995 and the provisions made u/s 83 concerning the setting up of Waqf Tribunals and the sphere of their jurisdiction, and went on to observe, *"But it appears that the Amendment Act of 1984 came under severe criticism and hence only two provisions of the 1984 Act came to be enforced because of strong opposition from the community. Therefore, a comprehensive bill*

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CIVIL JUDGE.
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AMTA, HOWRAH

MOHAMMAD ARIEF NAWAB
Civil Judge (Junior Division), Amta
District- Howrah
JO Code WB 01195

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on Waqf matters incorporating the features of the 1954 Act and such provisions of the 1984 Act in respect of which there was near consensus, was introduced. This became the Waqf Act, 1995. This Act provided for the setting up of Waqf tribunals to consider questions and disputes pertaining to Waqfs.

83. Constitution of Tribunals, etc.—

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Waqf or Waqf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any Mutawalli person interested in a Waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Waqf.

(3)

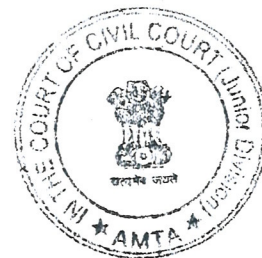
(4)

(4A)

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Civil Procedure Code, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Civil Procedure Code, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court.



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TS 70 of 2020
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(8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Civil Procedure Code, 1908 (5 of 1908).

(9)

16. After taking due note of the powers of the Waqf Tribunals and the sphere in which they are entitled to exercise their jurisdiction, the Hon'ble Apex Court, in paras 17, 22 & 25 of the said case-law, proceeded to delve upon the provisions contained in sections 85, 86 & 88 of the Waqf Act of 1995 concerning specific bar placed on the jurisdiction of Civil Court to decide any dispute or question relating to a Waqf property as well as the limited sphere where the jurisdiction of Civil Court could be invoked.



“85. Bar of jurisdiction of civil courts.—

No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.

Dehors the jurisdiction conferred upon the Tribunal under Section 83(1) and dehors the bar of jurisdiction of the Civil Court, revenue Court and any other authority under Section 85, the 1995 Act contains a special provision in Section 86 for the appointment by the Civil Court, of a Receiver, in certain cases.....Apart from the bar of jurisdiction of Civil Courts under Section 85, the Act envisages yet another bar under Section 88. Section 88 excludes the jurisdiction of a Civil Court to entertain a challenge to any notification or order or decision made, proceeding or action taken by the Central Government or the State Government under the Act. Section 88 reads as follows:

“88. Bar to challenge the validity of any notification, etc.—

Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any Civil Court.”

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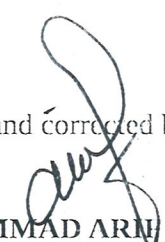
17. Summing up the sum and substance of the aforesaid provisions contained in sections 83, 85 & 88 of the Wakf Act of 1995, the Hon'ble Supreme Court laid down in Paras 56, 56 & 57 of the said case-law that, "In view of the language employed in Sections 83 and 85, coupled with the reference to Civil Courts in Sections 86, 90 and 93, it appears that the question of bar of jurisdiction of the Civil Court, has been left by the law makers to the vagaries of judicial opinion and this has given rise to conflicting decisions..... It is well settled that the Court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter (i) relating to a Waqf; and (ii) relating to a Waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a Waqf property and not if it is admitted to be a Waqf property, is indigestible in the teeth of Section 83(1)..... In fact, Section 83(5) of the Act makes it clear that the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the CPC, while trying a suit or executing a decree or order. This is why this Court held in **Syed Mohideen v. Ramanathapura Peria Mogallam Jamath**, reported in (2010) 13 SCC 62, that the Waqf Tribunal will have power to issue temporary injunctions under Order 39, Rule 1 CPC."

18. It is pertinent to mention here that similar observations have been made by the Hon'ble Supreme Court in the case-law of **Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf**, reported in (2010) 8 SCC 726. Speaking for the bench, the Hon'ble Justice T S Thakur has observed in para 25 of the said case-law that, "Whenever a question arises whether any dispute, question or other matter relating to any Wakf or Wakf property or other matter falls within the jurisdiction of a Civil Court, the answer would depend upon whether any such dispute, question or other matter is required under the Act to be determined by the Tribunal constituted under the Act. If the answer be in the affirmative, the jurisdiction of the Civil Court would be excluded qua such a question, for in that case the Tribunal alone can entertain and determine any such question. The bar of Jurisdiction contained in Section 85 is in that sense much wider than that contained in Section 6(5) read with Section 7 of the Wakf Act."

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While the latter bars the jurisdiction of the Civil Court only in relation to questions specified in Sections 6(1) and 7(1), the bar of jurisdiction contained in Section 85 would exclude the jurisdiction of the Civil Court not only in relation to matters that specifically fall in Sections 6 and 7 but also other matters required to be determined by a Tribunal under the Act. There are a host of such matters in which the tribunal exercises original or Appellate jurisdiction.”



19. Elucidating the provision contained in Section 85 of the Wakf Act, the Hon'ble Supreme Court has observed in para 28 of the **Ramesh Gobindram case** that, “Section 85 of the Act clearly bars jurisdiction of the Civil Courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the tribunal. It follows that although the Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of the Civil Courts even under section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the Civil Court does not falls within the four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be set to be barred.”

20. Summing up the the sum and substance of the provision contained in Sections 83 and 85 of the Wakf Act, the Hon'ble Supreme Court has concluded in para 34 of the said case-law that, “The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.”

21. Thus, from the aforesaid observations made in the said case-laws it is apparent that the Hon'ble Supreme Court has clearly demarcated the specific areas in which the Waqf Tribunal and the Civil

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Court shall exercise their respective jurisdictions and who among them is the appropriate forum to adjudicate on a dispute concerning the Waqf or secular character of a particular property.

22. In the matter at hand, the plaintiffs have contended that the cause of action behind the filing of the present suit arose for the first time on 31.8.2020 when the principal defendants tried to change the nature and character of the suit property by attempting to convert the same into a mosque without the consent of the other co-sharers and without obtaining any permission from the appropriate authority in this regard. This Court has minutely gone through the contents of the plaint of the instant suit as well as the contents of the application filed by the defendants challenging the maintainability of the present suit. It is pertinent to mention here that it is apparent from the contentions made from the side of the plaintiffs in paragraphs 7 & 8 of the plaint that the dispute raised in the instant suit involving the suit property concerns the construction of a mosque on the suit property which is claimed by the plaintiffs to be their private property. On the other hand, the defendants have contended that the suit property is enrolled as a Wakf property in the Register of Wakf and that the defendants are constructing a mosque on the same on the basis of the solemn order dated 20.5.2009 passed by the Hon'ble Calcutta High Court in WP No. 27982 (W) of 1997 permitting them to proceed with the construction of the said mosque on the suit property.

23. This Court has minutely gone through the plaint as well as the instant application of the principal defendants challenging the maintainability of the instant suit in view of the specific provisions contained in the Wakf Act of 1995 expressly barring the jurisdiction of a Civil Court in certain matters. After giving due consideration to the contentions made from either side, it is the considered view of this Court that the subject matter of the instant suit has a history which is chequered. But this past history of the suit property is not completely reflected in the plaint. Rather, a brief history of the suit property is to be found in the solemn order dated 20.5.2009 passed by the Hon'ble Calcutta High Court in WP No. 27982 (W) of 1997 while granting permission for reconstruction of a mosque on the suit



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property. A copy of the said solemn order has been filed by the principal defendants. This Court appreciates the settled legal principle that each suit should be tried and decided on its own merit yet, at the same time this Court finds a detailed reference to the solemn order dated 20.5.2009 is inevitable as the same makes some definite pronouncement as regards the suit property. The Hon'ble Court in its aforesaid solemn order has categorically observed, ".....It is therefore evident that today the two persons who have taken out this application are the Mutawallis of the Waqf. Under the circumstances, I am of the view that they should be permitted to reconstruct the mosque that is in a state of dilapidation, an uncontroverted fact. I think the application should be allowed. For these reasons, I allow this application. The two persons who have taken out this application are permitted to reconstruct the mosque after obtaining all sanctions, approvals, etc. from all statutory authorities and bodies in accordance with law."



24. From the aforesaid observations made by the Hon'ble Calcutta High Court in W.P. No. 1982 (W) of 1997 it is clearly forthcoming that it is an uncontroverted fact that a mosque does exist on the suit property. It is also forthcoming from the said solemn order that the aforesaid mosque is in a dilapidated state and that an application for reconstruction of the same has been made by none other than individuals who are the Mutawallis of the property on which the mosque is situated. While dealing with the term 'Mutawalli', this Court posed a question to itself which is, whether the office of Mutawalli can exist in respect of a secular property which does not form part of any Wakf estate? In this context it will be insightful to refer to Wilson's Glossary wherein the expression 'Mutawalli' has been defined to mean 'a person appointed to the care and management of a religious building and endowment.' Furthermore, in Muslim Law by Tyabji (4th edition Page- 490) the expression is defined to mean a person entrusted with the fulfilment of the object of the Wakf, and carrying out all the directions given at the time of its dedication. It is thus clear that the expression 'Mutawalli' is a co-terminus with Wakf estate which leads to the conclusion that there cannot be a Mutawalli without there being a Wakf estate.

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25. Thus, a strong whiff that the suit property is actually a Wakf property is palpable from the aforesaid observations made by the Hon'ble Calcutta High Court in WP 27982 (W) of 1997. The said observations of the Hon'ble Court gain further credence from the relevant entries made in the register of Wakf in relation to the suit property. From the relevant entries made in the Register of Wakf it is forthcoming that the suit property property has been duly enrolled as a Wakf property on the basis of Taidad no. 49952 for the year 1209 BS and that defendant Rezaul Haque Jamader has been recorded as a Mutawalli in respect of the same even though no formal Wakf deed is found to have been executed in connection with the suit property. The name of the other defendant i.e. Moshiar Rahaman Jamader also features under the head of Committe Mutawalli in the said register. The aforesaid entries in the said register appearing on page 91 of the same bear the seal and signature of Superintendent as well as the CEO of the Wakf Board besides carrying the official seal of The Board of Wakf, West Bengal. It is also forthcoming from the said register that the suit property has been recorded as Cheragi Imam Saheb Masjid Wakf Estate vide serial no. 15207 of the register of enrolment application. Therefore, it can be safely concluded that there is sufficient credible evidence on record to conclude that the suit property is not a secular property but a Wakf estate.



26. In connection with the entries contained in the Register of Wakf in relation to the suit property this Court posed another question to itself which is, whether a Wakf can be made in respect of a particular property without formally executing any Wakf deed. In this regard it will be insightful to refer to the case of **Mohammad Kazim Vs. Abu Saghir**, reported in AIR 1932 Patna 33, wherein the Hon'ble Patna High Court held that, "A wakf may be created by a document as also by oral dedication. A Wakf may be construed from royal grants of properties made in favour of individual persons as long as it was for perpetual, religious or charitable purpose and that the dedicator need not even use the word 'Wakf' at all or may not formally transfer the properties to the ownership of God." In the instant case, there are recitals in the CSROR concerning the suit property which provide concrete evidence of the property being used as 'Cheragi'. It is pertinent to mention here that in order to ascertain the true

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meaning of the terms 'Cheragi' and 'Taidad' this Court deemed it fit to refer to H H Wilson's 'A Glossary of Judicial and Revenue Terms and of Useful Words Occurring in Official Documents Relating to the Administration of the Government of British India'. Therein the term 'Taidad' has been defined as an extract from a public register or other document of authority in confirmation of a claim. Similarly, the term 'Cheragi' has been defined as burning of lamps at the shrines of saints as well as burning of lamps in a mosque. In Mulla's Mohammedan Law, the valid object of a Wakf are enumerated and one of them is burning lamps in a Mosque. Therefore, applying the principle concerning the valid object of a Wakf, it can be safely concluded that a valid inference as to the creation of a Wakf can be made in the matter at hand. Thus, after an elaborate scrutiny of all the aforesaid documents pertaining to the suit property it can be reasonably concluded that the only conclusion which can be arrived at with regard to the properties included in Taidad no. 49952 for the year 1209 BS is that the suit property is a Wakf property.



27. Thus, from the observations made in solemn order dated 20.5.2009 passed by the Hon'ble Calcutta High Court in WP no. 27982 (W) of 1997 as well as the entries contained in the Register of Wakf it is apparent that the property included in Taidad no. 49952 for the year 1209 BS is Wakf properties. Furthermore, there is nothing on record from which it could be concluded that the aforesaid solemn order of the Hon'ble Court and the entries contained in the Register of Wakf have been modified or set aside by any forum. Hence, it can be concluded that the observations made by the Hon'ble Court in its solemn order along with the entries in the Register of Wakf with regard to the said Taidad property have become binding upon all persons claiming any interest in the same. Therefore, in view of the findings of the Hon'ble Court and the entries contained in the Register of Wakf, no credence could be given to the claims made in the plaint by the plaintiffs in relation to the suit property.

28. In the matter at hand, the crux of the dispute between the parties relates to the actual character of the suit property i.e. whether the same is a property having secular character as claimed by the

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plaintiffs or a Wakf property as claimed by the principal defendants. It is pertinent to mention here that, in support of their claim that the suit property belongs to the category of a public Wakf, the principal defendants have placed reliance on the certified copy of the Wakf Register. This Court has minutely gone through the photocopy of the certified copy of the relevant portion of the aforesaid register. It is revealed from there that the property comprised in J.L. No. 105 pertaining to CS & RS khatian No. 87 relating to CS & RS plot no. 2254 corresponding to L.R plot no. 2271 having a total area of 1.80 acre covered under Taidad No. 49952 for the year 1209 B.S., is a public Wakf being classified as 'Cheragi Imam Saheb Masjid Wakf Estate' vide serial No. 575, enrollment application No. 15207, with Rezaul Haque Jamader as the recorded Mutawalli. Thus, it is apparent from the aforesaid document that the suit property is part of public Wakf and has been classified in the Register of Wakf as 'Cheragi Imam Saheb Masjid Wakf Estate' vide serial No. 575 and enrollment application No. 15207.



29. In the light of the aforesaid facts, it is the considered view of this Court that since the State Wakf Board has already enrolled the suit properties as Wakf properties under the Register of Wakf, it was, therefore, imperative on the part of the plaintiffs to serve a statutory notice u/s 89 of the Wakf Act 1995 on the State Wakf Board before instituting the instant suit. Be that as it may, the question which now arises before the Court is whether this Court has jurisdiction to review the decision of the State Government or the State Wakf Board to register the suit property in the Register of Wakf as being part of public Wakf and classify the same in the said Wakf Register as 'Cheragi Imam Saheb Masjid Wakf Estate' vide serial No. 575 and enrollment application No. 15207? In this connection it will be insightful to refer to section 88 of the Wakf Act of 1995.

88. Bar to challenge the validity of any notification, etc.—

"Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any Civil Court."

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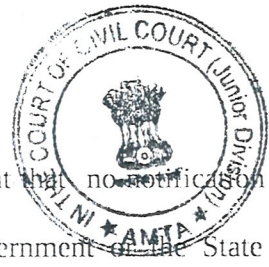
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30. From the provisions contained in section 88 of the Wakf Act it is apparent that no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any Civil Court. In the matter at hand, the suit property has already been classified in the Register of Wakf as being part of public Wakf in the form of 'Cheragi Imam Saheb Masjid Wakf Estate' vide serial No. 575 and enrollment application No. 15207. It is pertinent to mention here that as per the provisions made in section 88 of the Wakf Act, the aforesaid decision of the Commissioner/Superintendent of Wakf to register the suit property in the Register of Wakf as being part of public Wakf and classify the same in the said Wakf Register as 'Cheragi Imam Saheb Masjid Wakf Estate' vide serial No. 575 and enrollment application No. 15207 cannot be challenged before this Court. Nor does this Court has the jurisdiction to try the suit and come to a finding whether the suit property is of secular character or whether the same is a Wakf estate, as such jurisdiction is specifically vested in the Wakf Tribunal u/s 83 of the Wakf Act of 1995 as has been held by the Hon'ble Supreme Court in the case-law of **Rashid Wali Beg Vs. Farid Pindari & Ors.** and the case-law of **Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf.** Therefore, in the considered view of this Court, as the crux of disputes raised in the instant suit involves adjudication on the true nature of the suit property as well as on the propriety of the decision of the Mutawalli of the aforesaid Wakf estate to reconstruct a mosque on the suit property, proceeding any further with the trial of this suit would not only be an exercise in futility but would also amount to gross violation of the specific bar contained in sections 83, 85 & 88 of the Wakf Act of 1995.

31. Before parting with the matter at hand, this Court deems it fit to put on record that while a detailed hearing on the aforesaid preliminary issues was going on, the plaintiffs filed an application under Order VII Rule 10 A (2) of the CPC on 23.8.2022 with a prayer for return of the plaint for the purpose of presenting the same before the appropriate forum. The said petition was taken up for a detailed hearing by this Court on 29.8.2022. After hearing the learned Advocates of the parties at length and upon minutely perusing the contents of the said petition, this Court is of the considered view that it

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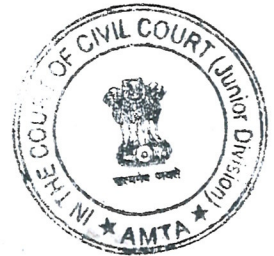
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would be inappropriate to return the plaint of the instant suit at this juncture when the very maintainability of the instant suit itself has been challenged by the principal defendants. Moreover, any order directing return of plaint at this stage of the suit when the plaintiffs are availing the benefits of an ad-interim order of injunction passed by this Court would amount to further perpetuation of an illegality committed by the plaintiffs as from the discussion made herein it is apparent that this Court has no jurisdiction to pass any such ad-interim order. In fact, returning the plaint by keeping said ad-interim order in force would only amount to allowing the plaintiffs to take further advantage of an illegality committed by them by sheer cunningness on their part in suppressing the solemn order dated 20.5.2009 passed by the Hon'ble Calcutta High Court in WP no. 27982 (W) of 1997 as well as the aforesaid entries contained in the Register of Wakf relating to 'Cheragi Imam Saheb Masjid' Wakf Estate. Therefore, this Court is not inclined to allow the instant application of the plaintiffs and the same is hereby rejected in limini.

The aforesaid issues are, accordingly, answered in favour of the principal defendants.

32. The suit, therefore, fails.
33. CF paid is found to be correct.
34. Hence, it is



ORDERED

that the instant suit be and the same is hereby dismissed on contest against the defendants on the preliminary issue framed and adjudicated herein. The present suit is found to be not maintainable in law in view of the observations made by the Hon'ble Supreme Court in the case of **Rashid Wali Beg Vs. Farid Pindari & Ors.** reported in 2021 SCC OnLine SC 1003 as well as in view of the specific

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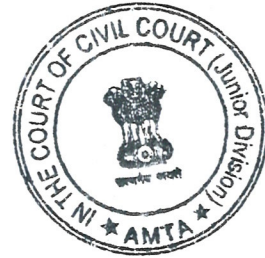
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provisions contained in sections 83, 85 & 88 of the Wakf Act of 1995. Interim order, if any, stands vacated.

The instant suit is accordingly disposed of. Dealing Assistant is directed to make necessary entries in germane registers and Case Information System, forthwith.

Dated, Amta, the 5th day of September, 2022.



Mohammad Arif Nawab.
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