(2010) 12 CAL CK 0013

Calcutta High Court

Case No: C.O. No. 362 of 2008

Motleb Ali Molla (dead) and Others		APPELLANT
	Vs	
The Chief Executive Officer, Board of Wakfs and Others		RESPONDENT

Date of Decision: Dec. 10, 2010

Acts Referred:

- Waqf Act, 1995 - Section 83(2)
- Wakf Rules, 2001 - Rule 26

Citation: (2011) 1 CHN 739

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: M.P. Chakraborty, for the Appellant; Sahidullah Munshi, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Appellant and is directed against the order No. 6 dated January 9,2008 passed by the learned Presiding Officer, Wakf Tribunal, West Bengal, Kolkata in Appeal No. 6 of 2007 thereby dismissing the same on the ground of being not maintainable.

2. The Appellant filed a petition before the Chief Executive Officer, Board of Wakfs, West Bengal claiming for the membership of the Mutawalli Committee in respect of Bahadur Molla Wakf Estate, enrolled under the E.C. No. 10339, Howrah. The M.E. committee of the Board of Wakfs considered the petition of the Appellant and a Resolution dated March 29, 2003 was adopted rejecting the claim of the Appellant. The said Resolution was thereafter placed before the Board of Wakfs, West Bengal and then the Board of Wakfs, West Bengal confirmed the said Resolution on April

18, 2007. Being aggrieved by such decision of the M.E. committee on the part of wakfs and subsequently by the Board of Wakfs, the Appellant preferred the appeal being Appeal No. 6 of 2007. That appeal was dismissed on the ground of being not maintainable of the same by the impugned order. Being aggrieved, this application has been preferred.

3. Now, the point for consideration is whether the impugned order should be sustained.

4. Upon hearing the submission of the learned Counsel for the parties and on going through the materials on record, I find that the learned appellate tribunal rejected the appeal on the ground of being not maintainable. It is observed by the learned appellate Tribunal that the appeal has not been filed as per provisions of the Wakf Act, 1995. It is hit by Section 83(2) of the Wakf Act, 1995. For proper appreciation, I am quoting the Section 83(2) of the Wakf Act, 1995 :

2. Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made there under, 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 wakf.

5. In view of the provisions of Section 83(2) of the Wakf Act, 1995, if any person is aggrieved against the determination of any dispute relating to wakf matter, the aggrieved person is to file an application within 30 days from the date of such resolutions or order. But no appeal lies. In the instant case, it is found that the resolutions were passed on March 29, 2007 and April 18, 2007. The Appellant filed an application for getting a certified copy of the resolutions on June 26, 2007 and the certified copy was made ready for delivery on August 23, 2007. The Appellant filed the instant appeal on September 21, 2007. So, I find that even the appeal was not filed as per provisions of the said Act.

6. The learned Advocate for the Petitioners submits that the nomenclature of the matter shall not be the matter of consideration. Instead of describing the matter before the wakf tribunal as an application, it was described as an appeal. So, the said so-called appeal should have been considered as an application. In this respect, I am of the view that the field of consideration of the application and the appeal is quite different. In order to dispose of an application, evidence may be recorded or materials may be tendered. But in the case of appeal, it is, generally, not done so. The learned appellate tribunal is to consider whether the learned lower court has dealt with the application properly and if the conclusion arrived at by the learned lower forum is in consonance with the evidence or materials on record. Since the field of the two matters is quite different and the appeal has been filed at the belated stage, I am of the view that the learned wakf tribunal has rightly dismissed the appeal on the ground of being not maintainable. Moreover, an application

before the wakf tribunal may be filed within 30 days from the date of the order as per Section 83(2) of the Wakf Act, 1995 read with Rule 26 of the Wakf Rules, 2001. So, if the appeal filed by the Petitioners is treated as an application, yet, it is barred by limitation. So, I have no other alternative but to confirm the order passed by the learned wakf tribunal. Therefore, the impugned order should be sustained.

7. Therefore, there is nothing to interfere with the impugned order. Therefore, this application is dismissed.

8. Considering the circumstances, there will be no order as to costs.

9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.