(2007) 12 CAL CK 0055

Calcutta High Court

Case No: W.P.L.R.T. No. 464 of 2004

Sk. Abdur Rouf Wakf Estate		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: Dec. 6, 2007

Acts Referred:

- West Bengal Land Reforms Act, 1955 - Section 14K, 14M, 14M(1), 14M(5)

Citation: (2008) 2 CHN 249

Hon'ble Judges: Manik Mohan Sarkar, J; K.J. Sengupta, J

Bench: Division Bench

Advocate: Amal Baran Chatterjee and Anadi Banerjee, for the Appellant;

Judgement

1. No one has come forward on behalf of State to oppose this application.

2. Admitted position is that the property in question was owned one point of time by one Abdur Rouf, who by and under a written deed of wakf, dedicated his entire property to Allah (Almighty), appointing himself as the first Mutawalli. Thereafter, he desired that his sons and successive descendants would be the Mutawallis and he also provided that in case of extinction of any of the descendant Mutawallis, the learned District Judge would appoint Mutawalli and income of the wakf property would be utilised for religious and charitable purpose, viz. for rendering help to the poor people of Muslim community.

3. The present matter relates to agricultural land which is a part of the wakf property. The original Wakif at one point of time filed "B" form under the West Bengal Estates Acquisition Act and at that time, the deed of wakf was produced and it was understood that this wakf was a Wakf-Alal-Aulad. As such, authority concerned accepted the said position and passed appropriate orders.

4. Now, there is no descendant Mutawallis of the Wakif. Outside Mutawalli has been appointed by the Commissioner of Wakf under the appropriate Act. The quantum of

land which is the subject-matter of the present application is about 25 acres. There was litigation in this Court previously and order of vesting was set aside by this Court and this Court directed the authority concerned to decide the matter afresh. The decision was not proper, so the Mutawallis approached appropriate forum and filed appropriate proceedings. The learned Tribunal in the immediately preceding last order asked the revenue authority to ascertain the nature of the wakf to decide the question of applicability of Section 14M Sub-section (5) of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act), meaning thereby, whether it is a wakf for charitable purposes or not.

5. The aforesaid Sub-section (5) clearly mentions if it is for religious and charitable purpose, then the question of vesting does not and cannot arise. The revenue officials, pursuant to the order of the learned Tribunal held, upon reading the language of the wakf deed that it is a Wakf-Alal-Aulad and the actual beneficial ownership was conferred upon the Mutawallis, who are the members of the family of the Wakf. The revenue official is also of the opinion that under no circumstances, this can be treated to be a wakf for charitable purpose to get the land exempted from the purview of the said Act. Therefore, the Mutawallis, the husband and wife has been treated to be ordinary raiyat and after allowing to retain the maximum quantum of land, as mentioned in Section 14M of the said Act, 7.25 acres of land was directed to be vested.

6. The appellate authority also affirmed the said view and did not interfere with the findings of the Revenue Officer. The learned Tribunal did the same thing. However, while affirming the findings of both the officials, learned Tribunal discussed the implication and applicability of the said Act and also filing of "B" form. Learned Tribunal found that when the original Wakif himself has treated the wakf as Wakf-Alal-Aulad and retained the land, as such the said wakf cannot be treated to be for charitable purposes. By necessary implication, the learned Tribunal while deciding an issue which was not raised before him in addition to other issues, upheld the order of the Revenue Officer of vesting of a quantum of 7.25 acres of land and order of retaining 7.30 acres of land.

7. Mr. Amal Baran Chatterjee, learned Counsel appearing for the petitioner submits that all the authorities should have read the wakf deed as a whole and if it is read as a whole, then it will be appearing that dedication was complete in favour of Allah (Almighty). The moment it is done, the intent and purpose is for religious and it will appear from Clause 11 of the said wakf deed and particularly from the facts exist today. The charitable purpose of this wakf has become operative as there has been extinction of descendant Mutawallis of the Wakif. In his alternative argument, Mr. Chatterjee submits that the present Mutwalli cannot be treated to be a raiyat as, when it is an admitted fact that there has been wakf, the Wakif has divested himself to be the secular raiyat or rather, ordinary raiyat. Similarly, successor Mutawallis cannot be termed to be raiyat, rather here Allah (Almighty) being represented by the

Mutawallis must be treated to be the raiyat within the meaning of Section 14M of the said Act. He has drawn our attention to Article 202 of Mullah''s Mahomedan Law which speaks about the definition of Mutawalli, which is as follows:

Article 202. Mutawalli.- Under the Mahomedan Law the moment a wakf is created all rights of property pass out of the Wakif and vest in the Almighty. The Mutawalli has no right in the property belonging to the wakf; the property is not vested in him, and is not a trustee in the technical sense. He is merely a Superintendent or Manager. The admissions of a Mutawali about the nature of the trust are not binding on his successors.

8. Mr. Chatterjee has also referred to the definition of wakf as mentioned in Wakf Act, 1995 wherefrom it is clear that wakf means amongst others a Wakf-Alal-Aulad to the extent to which the property is dedicated for any purpose recognized by Muslim Law as pious, religious or charitable. He further submits that in case of endowment of property by a Hindu to the deity appointing a sebait, the settler ceases to be the owner and deity becomes the owner of the property and it is being managed by the sebaits. Sebaits are not the owners but the managers.

9. In a similar problem in cese of Hindu endowment this Court has decided in the case of Sri Sri Iswar Saradiya Durga Thakurani v. Rrevenue Officer and Ors. reported in 1981(1) CHN 178, that when a property is absolutely dedicated to the deity, the property belongs to the deity and the usufructs of the property are to be utilised solely for the purpose connected with the Seva Puja of the deity and ancillary functions.

10. We have considered the submission of Mr. Chatterjee and we have gone through all the findings and order of the learned Tribunal. It appears to us that it is an admitted position that the Revenue Officer was to consider whether it is a wakf for charitable purpose or not. All the officers have found, upon interpretation of documents, it is a Wakf-Alal-Aulad.

11. So, we do not want to give our interpretation in this regard. We hold that it is a Wakf-Alal-Aulad for the time being as it was acted upon previously. Once it is held to be a Wakf-Alal-Aulad, precisely it is held to be a wakf, the Wakif ceases to be the owner and Allah (Almighty) became the owner and the property is being managed by Allah (Almighty) through the Mutawallis who cannot have any proprietory interest in the property and become custodian of the property on behalf of Allah (Almighty). Therefore, the raiyat in this case is not the possessor, but the person or persons, may be artificial person, having no proprietory right in the land in question.

12. We, therefore, hold that the Mutawallis are not the raiyats here. The raiyat should be here Allah (Almighty), as wakf is an accepted position. While approving and accepting the principle laid down by the learned Single Judge in the aforesaid Sri Sri Iswar Saradiya Durga Thakurani''s case (supra), we think in this case the agricultural land belong to Allah (Almighty) and Allah (Almighty) should have been

treated to be "other raiyat" as defined in Section 14M(1)(e) of the said Act.

13. Therefore, if it is an "other raiyat" then ceiling limit should be 7.00 standard hectares and not 5.00 standard hectares. The land in question admittedly situates within non-irrigated area. Therefore, one hectare should be read as 1.40 standard acres, as per provision of Section 14K(f)(1) Clause (b) of the said Act. If 7 standard hectare is multiplied by 1.40 acres, then it comes to 9.98 acres as it is a non-irrigated land.

It appears to us that the land in question is less than the aforesaid standard acre. According to us, therefore, no quantum of land is being held beyond the ceiling limit under the aforesaid statute and accordingly, the decision of vesting of a quantum of 7.24 acres of land is patently illegal. Accordingly, the decision and order to that extent is not sustainable under the law and the same is set aside. However, we have not decided the question of status of the wakf at present; because of death of descendant Mutawallis and appointment of third party Mutawallis by the Commissioner of Wakf. This question is left open. ,

This application is, thus, disposed of. There will be no order as to costs.

14. Urgent xerox certified copy of this order, if applied for, be supplied to the applicants.