IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. 2472 of 2005

Chandan Dey and others

Vs.

The State of West Bengal and others

With

M.A.T. 520 of 2005

Tapan Dey and others

Vs.

The State of West Bengal and Others

For the petitioners in both cases	:	Mr. Kamalesh Jha, Adv. Mr. Md. Raihan Islam, Adv. Mr. Diptyendu Kr. Pal, Adv. Mr. Sourasis Roy, Adv.
For the State/respondents	:	Ms. Tapasi Palit Sinha, Adv.
For the opposite party No. 5	:	Mr. Mukteswar Maity, Adv. Ms. Manika Sarkar, Adv. Mr. Soumya Dev Naskar, Adv.

For the opposite party No. 6 : Mr. Md. Salahuddin, Adv.
Mr. Md. Ahsanuzzaman, Adv.
Mr. Md. Raziuddin, Adv.

Heard on : 29.09.2026

Judgment on : 25.11.2026

Md. Shabbar Rashidi, J.:-

1. The instant revisional application converted from W.P. 17999(W) of 2003 and M.A.T. 520 of 2005 is filed in assailment of the judgment and order dated March 20, 2003 passed in Appeal No. 7 of 2002, by the Wakf Tribunal established under the provisions of the Wakf Act, 1995.

2. By the impugned order, the learned Wakf Tribunal determined the property in dispute to be a Wakf property. As to the question regarding removal of alleged encroachment of the property by the P.W.D. and possession thereof by the private respondents, the Wakf Tribunal held that it had no requisite jurisdiction in terms of the relevant provisions under Section 54 of the Wakf Act, 1995 and hence cannot pass any order of removal of encroachment and further held that the appellants are to take recourse under Section 54 of the Act of 1995 for removal of encroachment, if any. The Hon'ble High Court by an order dated May 10, 2002 had relegated the matter to be decided by the tribunal.

3. The learned advocate for the petitioners submitted that the learned tribunal failed to consider that the property under dispute was not

capable of identification. However, the learned tribunal erroneously proceeded to decide that the properties in dispute were Waqf properties. The learned tribunal did not consider that the properties involved in the deed of Waqf dated May 3, 1967 and EC No. 14292 were relatable with its description in C.S. record of rights and R.S. record of rights. In the impugned judgment and order, the properties were described appertaining to C.S. Plot Nos. 1873 and 1963 corresponding to R.S. Plot Nos. 2907/7359 and 2909/7503.

4. It was also submitted by learned advocate for the petitioners that the documents produced by the petitioners in respect of acquisition of the suit properties were completely ignored by the learned tribunal. At the same time, learned advocate for the petitioners also submitted that merely, on the ground that the Hon'ble High Court had directed the matter to be placed before the tribunal for consideration, the properties cannot be presumed to be Waqf properties.

5. Learned advocate for the petitioners further contended that the properties involved in the impugned appeal were their secular properties, which were acquired by the petitioners or their predecessors from its erstwhile lawful owners. The properties in the present lis, have not been identified by the learned tribunal with reference to the title, Waqf deed and survey records. He submitted that the properties must have been

identified with reference to the records of registration maintained by the Board of Auqaf. It cannot be presumed merely by referring to the registration number.

6. Learned advocate for the petitioners also submitted that the impugned judgment and order has not considered the effect of several suits relating to the suit properties, which were dismissed for default. He also submitted that the learned tribunal ought to have identified the properties forming part of Waqf.

7. Learned advocate for the State of West Bengal also submitted that although, the present proceeding under Article 227 of the Constitution of India, cannot be converted into a regular appeal but the objections raised by the petitioners should be looked into on the touchstone of identification of the properties involved in the proceeding which were declared as Waqf properties, by the learned tribunal. He further submitted that if the properties have not been identified and correlated with the survey records vis-à-vis the Waqf records, such defect on the part of learned tribunal, if any, would suffice to hold that the learned tribunal failed to exercise the jurisdiction vested in it.

8. Learned advocate for the State further submitted that the jurisdiction of the learned tribunal to decide the status of a property as Waqf, is circumscribed by Sections 6 and 7 of the Wakf Act, 1995. He

further submitted that the learned tribunal did not decide the rival claims of the parties in respect of the title as well as possession of the subject properties. Unless the properties are properly identified and demarcated, there cannot be an effective adjudication.

9. Learned advocate for the opposite party no. 5 i.e. mutawalli of the Waqf estate, on the other hand, submitted that in the appeal, the petitioners failed to establish their title over the suit properties. The learned tribunal had rightly come to a conclusion that the suit properties were Waqf properties. There exists a mosque over the suit properties established on May 3, 1967, even prior to the coming into force of the Act of 1995.

10. Learned advocate for the opposite party no. 5 further submitted that the suit properties appertained to 7 decimal of Bastu land under C.S. Khatian No. 1055 and C.S. plot No. 1873 corresponding to R.S. Khatian No. 1282, Plot No. 2909/7503, L.R. Khatian No. 3081, Plot No. 4528 and an area 3.5 decimals of Bastu land under CS Plot No. 1863, corresponding to R.S. Khatian No. 1283, Plot No. 2907/7359, L.R. Khatian No. 3081, Plot No. 4581 wherein Kakdwip Jame Masjid is situated for the Muslim community. Opposite party no. 5 have been in continuous possession of the Waqf properties since 1967. The enrolment of neither the suit properties as Waqf properties were ever challenged nor

any complaint was ever filed from any corner, after promulgation of the Act of 1995. It is duly registered as such property in the records of Board of Auqaf under E. C. No. 14282.

11. Learned advocate for the opposite party no. 5 further submitted that petitioners trace their title to the suit properties from one Nibas Chandra Bairagi whose name was recorded as in the R.S.R.O.R. However, the learned tribunal held in the impugned order that the title of said Nibas Chandra Bairagi itself could not be established. There was no explanation as to how his name came to be recorded without any document of acquisition post cadastral survey records. He further contended that as regards the claim of the petitioner No.4 Biswanath Tewari, S/o Late Ramshuk Tewari in respect of CS Khatian No. 1055, Plot No. 1863. The total area of said plot was 38 decimals, and out of 38 decimal 3.5 decimals was purchased by Julhas, Julkekar and Julkadar by the registered deed No. 1364, dated 21.1.1943. They gifted the said property to the Jame Masjid. Thereafter, R.S. Khatian No. 1283, Plot No. 2907/7359 and L.R. Khatian No. 3081, Plot No. 4581 in the name of Jame Maszid. One Ramshuk Tewary purchased the rest portion from the original owner. He has no right and/ or claim in respect of LR. Plot No. 4581, Khatian No. 3081, i.e. the Wakf property. Accordingly, the said Biswanath Tewary is an illegal encroacher of the Wakf property.

12. Learned advocate for the opposite party no. 5 further submitted that C.S. Khatian No. 1054, C.S. Plot No. 1873 originally belonged to (i) Dulal Chandra Das, (ii) Gulzar Das, and (iii) Raghunandan Das. Seven (7) decimals therein out of total area 18 decimal in such plot, was purchased by (i) Julhas, (ii) Julkekal, (iii) Julkeda, by deed No. 1388, dated 21.1.1943 and in turn, they gifted the same in favour of Juma Masjid. However, in the R.S. Record of rights it was wrongly recorded as 1 decimal in place of 7 decimal under R.S, Khatian No.1282, Plot No. 2909/7503 in the name of Jume Maszid. At the time of recording on physical inspection, it was encroached by PWD. For the very reasons, the area of 6 decimals has not been recorded in the name of Jume Masjid. Challenging the said erroneous recording an appeal was preferred which is pending in the court of ADMLR, LR. Being Appeal No. 131/2022.

13. Learned advocate for opposite party no. 5 also submitted that the aforesaid properties were never the subject matter of any acquisition proceedings, as such, no question of distributing and settling such land with any of the parties does arise at all. He submits that the impugned judgment and order was rightly passed by the learned tribunal and it does not call for any interference.

14. Petitioner nos. 1 and 2 trace their title over R.S. Plot no. 2909/7503 appertaining to R.S. Khatian no. 1282 through Nibas

Chandra Das Bairagi who was the recorded tenant in respect of 1 decimal of said plot in the R.S. record-of-right. Out of 1 decimal, the said Nibas Chandra Das Bairagi transferred ½ decimal in favour of Petitioner nos. 1 and 2 by a registered deed of gift dated July 29, 1967. The remaining ½ decimal was transferred by the said Nibas Chandra Das Bairagi to one Sampatti Bala Bairagi by a deed of gift dated July 29, 1967. Sampatti Bala Bairagi, in turn, gifted the same to one Radha Rani Dey i.e. the mother of petitioner nos. 1 and 2, by a registered deed of gift dated July 30, 1986. The said Radha Rani Dey also transferred the said ½ decimal of land to the petitioner nos. 1 and 2 by a registered deed of gift dated January 25, 1989. Petitioner nos. 1 & 2 claimed to have possessed the said 1 decimal of suit R.S. Plot no. 2909/7503 by running a shop and paying rent to the Government of West Bengal.

15. Petitioner no. 5 was inducted by petitioner nos. 1 & 2, as tenant in respect of 2 tile shed room over R.S. Plot no. 2909/7503 measuring ½ decimals. Subsequently, ½ decimal of suit land was transferred in favour of petitioner no. 5 by registered sale deed executed by petitioner no. 1 and others in the year 1976. Since purchase, petitioner no. 5 has possessed the said land by running his business under valid licence issued by the authorities and by paying taxes.

16. It was claimed that the predecessors of Petitioner no. 4 purchased portions of plot no. 2907/7359 by several deeds executed by its erstwhile owners. It was also contended that successors of erstwhile owners as well as the private opposite parties also instituted civil suits against petitioner no. 4, which are still pending. Petitioner no. 3 claimed that he was running tea stall over PWD lands and that it was not a private property or Waqf property. It was also contended that when an eviction drive was taken out by PWD, petitioner no. 3 along with others moved a writ petition in order to save his running business. The possession of the petitioner was upheld and protected by an order passed in such writ petition. Similarly, petitioner no. 8 also claimed to have been running a tea stall over PWD land and in support of his possession, he claimed to have been paying trade tax, electricity bill, panchayat tax etc.

17. A case was further made out that opposite party no. 5, mutawalli filed WP No. 3244 (W) of 1998 praying for direction upon the authorities to remove unauthorized constructions of the petitioners from the Waqf properties. By an order passed in the said writ petition, this Hon'ble Court relegated the matter to the Waqf Tribunal for adjudication. Accordingly, the records of the writ petition was transmitted to the learned tribunal and was renumbered as Appeal No. 7 of 2002 which has resulted in the impugned judgment and order.

18. The learned tribunal, in the impugned judgment and order, had held that 18 decimals of Sali land under C.S. Plot No. 1873 belonged to three brothers namely, Dulal Chand Das, Guljar Das and Raghunandan Das to the extent of 8 anna shares therein. The remaining 8 annas share belonged to other co-sharers. At the same time, 38 decimals in C.S. Plot No. 1863 exclusively belonged to the aforesaid three brothers and their names were duly recorded in the C.S. R.O.R in respect of the aforesaid plots of land. On such basis, the learned tribunal held that there was physical existence of the plots of land over which, the erstwhile owners had transferable rights. It also noted in the impugned judgment and order that three brothers, namely Md. Jal Hash, Md. Jal Kelal and Md. Jal Kader purchased 7 decimals of plot No. 1873 and 3½ decimals in plot No. 1963 from the share of Dulal Chand Das and Raghunandan Das far back in the year 1943 by two registered deeds of sale. The learned tribunal also took note of the fact that upon such purchase, the properties were recorded in the name of the purchasers in the R.S. R.O.R with diminished areas. The tribunal also held that the R.S. R.O.R contained a note with regard to existence of a mosque over such properties.

19. The impugned judgment and order further noted that the learned tribunal considered the certified copy of the deed of Waqf dated May 3,

1967 which established that 7 + 3 ½ decimals of land were dedicated into Waqf by the three brothers Md. Jal Hash, Md. Jal Kelal and Md. Jal Kader. The certified copy of Waqf registered was also admitted in evidence in the proceeding and the learned tribunal found therefrom that the aforesaid properties were duly enrolled as Waqf property with the Board of Auqaf under E.C. No. 14282. On the basis of such evidence, the learned tribunal came to a finding that the aforesaid properties were Waqf properties.

20. While considering the claim of the appellants, the learned tribunal, in the impugned judgment and order, considered that the appellant (respondent no. 12) had traced his title over C.S. Plot No. 1863 through his father Ramsuk Tewari, who had purchased 8 ½ decimals therein by five separate deeds dated 24.4.1950, 12.4.1957, 10.5.1957, 6.10.1967 and 26.10.1956 executed by the C.S. recorded owners Dulal Chand Das and Raghunandan Das. The learned tribunal, considering the extent of shares of such vendors, held that transfer of 8½ decimals of land in favour of Ramsuk Tewari could not have any effect on the share of lands transferred in favour of Md. Jal Hash, Md. Jal Kelal and Md. Jal Kader, which ultimately, was dedicated to waqf. The original owners owned much more than the transferred shares. In any case, Md. Jal Hash, Md. Jal Kelal and Md. Jal Kader were prior purchasers.

21. As to the claim of the appellants (respondent nos. 5, 6 and 13), the learned tribunal observed that they trace their title over the suit properties under C.S. plot no. 1863, Nibas Chandra Bairagi, Sampattibal Bairagi and Radharani Bairagi. The name of Nibas Chandra Bairagi came to be recorded in the R.S. R.O.R in respect of a portion of the suit plot. However, the learned tribunal held that the deeds produced by such parties, including that executed by Nibas Chandra Bairagi, did not contain any recitation as to how and in what manner, Nibas Chandra Bairagi acquired title over such properties and on such basis, the learned tribunal held that mere recording of names in the record of rights, does not create or establish title.

22. By the impugned judgment and order, the learned tribunal negated the submissions made on behalf of the present appellants to the effect that the claim of respondent mutawalli was barred by res-judicata in so far as several cases filed by the mutawalli were dismissed and the application for restoration thereof were also dismissed. The learned tribunal held that in none of such cases, issues were framed and decided on merits and as such, the tribunal held that such dismissals could not operate as res-judicata against the respondent mutawalli.

23. The learned tribunal, referring to order dated July 14, 1998 passed in W.P. No 3244 (W) of 1998, also noted that the State of West Bengal or

the Public Works Department failed to establish that the properties in dispute were ever acquired by it and/or distributed among the appellants for running their business thereon in view of the provisions of Article 300A of the Constitution of India. Consequently, the learned tribunal came to a conclusion that the suit properties were waqf properties. However, the tribunal refrained itself from passing any order regarding removal of encroachment from the suit properties and relegated the mutawalli to take appropriate steps in this regard in accordance with the provisions of Section 54 of the Act of 1995.

24. In his decision, the learned tribunal considered the acquisition of C.S. plot nos. 1867 and 1873 which came to be recorded in the R.S. R.O.R as plot nos. 2909/7503 and 2907/7359 with definite area. The tribunal also considered the shares of erstwhile owners from whom a definite area of such properties were purchased by Md. Jal Hash, Md. Jal Kelal and Md. Jal Kader. The aforesaid purchasers, ultimately, dedicated the said properties into Waqf which was duly enrolled in the register of Waqfs maintained by the Board. On such consideration, the learned tribunal came to a conclusion that the properties were Waqf properties.

25. So far as the claim of the petitioners herein are concerned, the learned tribunal examined the evidence adduced by the petitioners and held that the petitioner nos. 5, 6 and 13 failed to establish their title over

the suit properties through a valid source. As to petitioner no. 12, it is the finding of the tribunal that even transfer of share in the suit properties by the original owner in favour of the predecessor-in-interest of petitioner no. 12, could not have any bearing on the transfer in favour of Md. Jal Hash, Md. Jal Kelal and Md. Jal Kader. The original owner had sufficient share in the suit properties to transfer in favour of Md. Jal Hash, Md. Jal Kelal and Md. Jal Kader and petitioner nos. 5, 6 and 13. Therefore, by such transfer, the title of Waqf properties was not affected. In any case, the tribunal could not and was not acting as civil court to decide the title of the parties. Its jurisdiction was confined to determination of the properties as Waqf which it did on the basis of evidence produced before it. I find no reason to interfere with such findings in view of the case made out by the petitioners. In the facts and circumstances of the case, I am not in a position to hold that the learned tribunal exercised a jurisdiction which is not vested in it or that the learned tribunal failed to exercise its jurisdiction vested in it or that the judgment and order passed by the tribunal suffers from illegality or material irregularity.

26. In the result, thus, the impugned judgment and order is hereby affirmed. Consequently, C.O. 2472 of 2005 alongwith M.A.T. 520 of 2005 stand dismissed, however, without any order as to costs.

27. Department will treat both C.O. 2472 of 2005 as well as M.A.T. 520 of 2005 as disposed of in terms of the instant judgment and order.

28. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]