

3. INSTRUCTION ON WAKF PROPERTIES

GOVERNMENT OF WEST BENGAL
Office of the Director of Land Records and Surveys
and Joint Land Reforms Commissioner, West Bengal,
35, Gopalnagar Road, Alipur Calcutta-27.

Memo No.9/1518-35/C/96

Dated, Alipur, the 17th June, 1996.

To

The District Land and Land Reforms Officers,

Subject : Modification of Settlement Records of Wakf Properties.

In enclosing a copy of memo. No.641 Dated: 21.3.96 of the Commissioner of Wakfs, West Bengal on the above mentioned subject, he is requested to kindly ensure recording of all properties belonging to the Wakfs in the name of Board of Wakfs, West Bengal. In this connection it may be noted that Wakf recorded in R.S. Khatians must continue to be recorded in L.R. Khatians.

A report of compliance may be sent to this Directorate in due course.

M.K. Sarkar

For Director of Land Records and Surveys and
Joint Land Reforms Commissioner, West Bengal.

OFFICE OF THE COMMISSIONER OF WAKFS, WEST BENGAL.
6/2, Madan Street, Calcutta-72.

Memo No.641

Dated 21.3.96

To

The Director,
Land Records & Surveys,
35, Gopalnagar Road
Alipore, Calcutta-700 027.

Ref : Discussion held in the chamber of the Hon'ble Minister-in-charge of Wakfs, Shri Mehboob Zahedi on the 29th January, 1996, regarding modification of settlement records of the Wakf properties.

Sir,

Please recall our discussion held on the date under reference. I am to inform you that so many Wakf properties in West Bengal have wrongly been recorded in the settlement records in the personal names of the mutawallis (Sebayets) of the respective Wakf Estates. Consequently, the heirs of the deceased mutawallis claim their title on the said properties as secular. And sometimes they even sell out the same illegally and without the knowledge of this office. If it is allowed to continue there will be no existence of Wakf properties in near future.

In this connection I like to mention that there is an order dated 16th December, 1982 passed by the Hon'ble Justice Mr. Monoj Kumar Mukherjee in Civil Rule No.11357(W) of 1976(Haji Sk. Fazle Rahman Vs. The State of West Bengal & Ors.) containing inter alia that once the Commissioner of Wakfs has decided that the land in question were Wakf properties, the Revenue Officer cannot entertain that question nor can be decided that the properties were not Wakf properties but were personal properties of the petitioner (Xerox copy of the judgment and order dated 16.12.82 enclosed).

In view of the above circumstances and in the light of the aforesaid order dated 16.12.82 I am to request you to kindly issue instructions to all the B.L.&L.R.O., S.D.L. & L.R.O. and D.L.&L.R.O. in West Bengal to record all the Wakf properties under their respective jurisdiction in the names of the relevant Wakf Estates under the domain of "Board of Wakfs, West Bengal".

Yours faithfully,
Sd/-Illegible
Commissioner of Wakfs,
West Bengal

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
The 16th Day of December, 1982
Present:**

The Hon'ble Monoj Kumar Mukherjee

One of the Judges of this Court;

Civil Rule No.11357W of 1976, issued by this Court;

In the matter of an application under

Article 226 of the Constitution of India;

And in the matter of an application for a Writ in the nature of Mandamus;

And in the matter of an application for a writ in the nature of Certiorari;

And in the matter of an application for a writ in the nature of Prohibition;

And in the matter of an application for any other appropriate writ, order and/or direction;

And in the matter of order being no.1,2,3,4,5,6,7 dated 24th December, 1975, 27th December, 1975; 6th January, 1976, 21st January 1976, 2nd February, 1976, 10th February 1976 and 29th February 1976 respectively passed by the Revenue Officer Chinsurah 'B' Camp, Hooghly in case No.1 (Magra) of 1975-76 arising out of a proceeding under Section 14T of the West Bengal Land Reforms Act.

And in the matter of West Bengal Land Reforms Act as amended by amended Act 1972 and Rules framed thereunder;

And in the matter of Hazi Sk. Fazle Rahaman son of late Jamaluddin of village Naksha P.S. Mogra, district Hooghly..... Petitioner.

Versus

1. State of West Bengal through the Secretary, Land and Land Revenue Department, Writers' Buildings, Calcutta-1.
2. Revenue Officer (Settlement 'B' Camp) P.S. Chinsurah Dist. Hooghly.
3. Commissioner of Wakf, West Bengal, 6/2, Madan Stret, Calcutta-13
4. Janab Sk. Ali Mohammad Mutwali of the Wakf Estate of Hazi Sk. Fazle Rahaman of vill. Naksha P.O. Talandu, P.S Magra , District HooghlyRespondents.

Mr. Ashok Banerjee for petitioner.

Mr. Manan Kumar Ghosh for respondents.

The lands in question have been declared to be included within the Wakf Estate of Sk. Fazle Rahaman by the Commissioner of Wakf, West Bengal and it has been so recorded in the Wakf Register. Thereafter, the Revenue Officer, Magra, initiated a proceeding under Section 14-T of the West Bengal Land Reforms Act against the said Fazle Rahaman, the petitioner in this Rule, and in the said proceeding these lands, included in the said Wakf Estate, were directed by the Revenue Officer to vest in the State treating the same as the personal property of the petitioner. Aggrieved by the said order of the Revenue Officer dated February 29, 1976, the petitioner moved this Court and obtained the present Rule.

The petitioner contends that once it has been decided by the Commissioner of Wakf that the lands in question were Wakf properties, the Revenue Officer could not hold, while disposing of the proceeding under Section 14-T of the said Act, as the private property of the petitioner. In support of his contention the petitioner has relied upon section 46A of the Bengal Wakf Act, 1934. On behalf of the State, it is, however, contended that the Revenue Officer acting under a different Statute could always decide the point in accordance with the powers conferred upon him by the statute namely, West Bengal Land Reforms Act.

Having considered the relevant provision of section 46A of the Bengal Wakf Act, I am unable to accept the contention of the respondent State. The said section clearly lays

down that any question as to whether a particular property was a Wakf property or not can be decided by the Commissioner of Wakf and his decision unless revoked or modified by a Competent Court shall be final. There cannot be any manner of doubt, therefore, that once the Commissioner of Wakf has decided that the lands in question were Wakf properties, the Revenue Officer cannot entertain that question nor can decide that the properties were not Wakf property but were personal properties of the petitioner.

In view of the above decision, the application succeeds and the Rule is made absolute. The impugned proceeding is hereby quashed.

There will be no order for costs.

16.12.82

Monoj Kumar Mukherjee. J

Registered No.WB/SC-247

No.WB/DTP/Pt.I/CPS/96/1753

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FRIDAY, DECEMBER 13, 1996

SAKA 1918

PART I – Orders and Notifications by the Governor of West Bengal, the High Court,
Government Treasury etc.,

**GOVERNMENT OF WEST BENGAL
Judicial Department**

NOTIFICATION

No.JF/W/36

Dated, Calcutta, the 12th December, 1996.

In exercise of the power conferred by sub-section (1) of section 4 of the Wakf Act, 1995 (43 of 1995), the Governor is pleased hereby to appoint, with immediate effect, for the area comprised within the territorial jurisdiction of the Calcutta Municipal Corporation, the Joint Director of Land Records and Surveys, Government of West Bengal, to be also the Additional Survey Commissioner of Wakfs for the purpose of making a survey of wakfs existing in the said area at the date of the commencement of the said Act.

By order of the Governor,
P.K. Sengupta
Secy. to the Govt. of West Bengal

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Copy to Notification No.JF/W/34 dated, Calcutta, the 12th December, 1996 published in the Calcutta Gazette (Extraordinary), dated, 13th December, 1996 issued by the Government of West Bengal, Judicial Department.

In exercise of the power conferred by sub-section (1) of section 4 of the Wakf Act, 1995 (43 of 1995), the Governor is pleased hereby to appoint, with immediate effect, all the District Land and Land Reforms Officers of the Government of West Bengal to be also the Additional Survey Commissioners of Wakfs for the areas comprised in the respective districts over which they exercise jurisdiction as District Land and Land Reforms Officers for the purpose of making a survey of wakfs existing in their respective districts at the date of the commencement of the said Act.

By order of the Governor
P.K. Sengupta
Secy. to the Govt. of West Bengal

Copy forwarded for information and necessary action to:

1. Sri.....
2. The District Land & Land Reforms Officer,
3. The Office Superintendent
4. Sri S. Saha, SRO-II and Librarian.
5. Guard File.

M.K. Sarkar
For Director of Land Records & Surveys
& Jt. Land Reforms Commissioner,
West Bengal.

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GOVERNMENT OF WEST BENGAL
Office of the Director of Land Records & Surveys
And Joint Land Reforms Commissioner, West Bengal
35, Gopalnagar Road, Alipore, Kolkata-27.

Memo No. 50/4511/C/2001

Dated Alipur, the 10th August, 2001

To
The District Land & Land Reforms Officer,
Hugli.

Sub : Regarding enquiry into nature of Wakf property under the provisions of WBLR Act.

With reference to his office memo. No.X/C/WAKF/364 dated 12.04.2001, this is to state that after delivery of the judgement of the Hon'ble Justice Mr. Monoj Kr. Mukherjee in C.R. No.11357(W) of 1976 in the year 1982, the Section 14T(6) has been introduced in WBLR Act by WBLR Amendment Act, 1981, published in the Official Gazette on 24.03.86. Similarly, the Section 14M(5) has also been drastically changed by WBLR Amendment Act, 1981, published on 24.05.86

Before amendment, the Section 14M(5) was as follows:-

“The lands owned by a trust or endowment other than a public nature, shall be deemed to be lands owned by the beneficiaries under the trust or endowment and each such beneficiary shall be deemed to be a raiyat under this Act to the extent of share of his beneficial interest in the said trust or endowment”.

But now, as per amended Section 14M(5) lands owned by any trust or endowment other than that of a public nature, shall be deemed to be the lands owned by author of the trust or endowment to the extent of his share of such author in the said land and shall be taken into account for calculating the area of lands owned and for the purpose of determining the ceiling area.

So, the judgement is not applicable after amendment of WBLR Act, 1981. Moreover, WBLR Act has overriding effect in Section 3 and Chapter IIB also.

Finally, no judgement has been passed to any Court regarding constitutional validity of Section 14T(6) & Section 14M(5) of WBLR in relation to WAKF Act. In addition, the Wakf Act 1995, coming into force, the State Acts on Wakf have been repealed i.e. Bengal Wakf Act, 1934, has also been repealed by Section 112(3) of the Wakf Act, 1995.

In view of the above, he is requested to proceed as usual in determining the charecter of Wakfs U/s. 14T(6) of WBLR Act.

S. Suresh Kumar
Director of Land Records and Surveys &
Joint land Reforms Commissioner, West Bengal

GOVERNMENT OF WEST BENGAL
Office of the Director of Land Records & Surveys &
Joint Land Reforms Commissioner, West Bengal
35, Gopalnagar Road, Alipur, Kolkata-700027.

Memo No.13/888/C/2002

Dated, Alipur, the 19th February, 2002.

To
The District Land & Land Reforms Officer,
Howrah.

Sub : Recording of homestead land in Wakf of State

With reference to his office Memo. No.06/LR dated 01.01.2002, this to state that the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans & Fishermen Act, 1975 extends to the whole of West Bengal except the areas included in a Municipal Corporation, a Municipality, a Town Committee, a Notified area, a Cantonment and also the areas included in the Kolkata Metropolitan area.

2. Land, in this Act, means either agricultural land or non-agricultural land upon which there is a homestead.

3. Nothing in this Act shall apply to any land(a) belonging to or taken on lease or requisitioned by the Central Government or any State Government (b) belonging to or taken on lease by local or statutory authority.

Now as per Wakf Act, Bengal Wakf Act, Board of Wakf is a statutory body, but Wakfs are not at all belonging to Statutory body.

As per Wakf Act 1995, Wakf means a permanent dedication, by a person professing Islam, of movable or immovable property for any purpose recognised by Muslim law as pious, religious or charitable purposes and includes....etc.

Now, each Wakf is individual endowment/Institution and identified by the name of the Wakf, created for the spiritual benefit of the dedicator.

In West Bengal Land Reforms Act 1955, such institutions are all raiyats U/S 2(10) of WBLR Act 1955. As there is no bar to vest the excess land of Wakf, no bar in recording of bargadar, hence, there is no bar in recording a beneficiary's name under the West Bengal Acquisition of Homestead Land for Agricultural labourers, Artisans & Fishermen Act, 1975, provided fulfilling all other conditions of the said Act, any beneficiary construct a homestead on Wakf land on or before 26.06.1975.

He is requested please to take necessary steps as per clarification made above.

D. K. Chaudhuri
Director of Land Records and Surveys and
Joint land Reforms Commissioner,
West Bengal

Memo No. 13/889-919/C/2002

Dated, Alipur, the 19th February, 2001

Copy forwarded for information and necessary guidance to the :-

- (1) The District Land and Land reforms Officer,
- (2) Sri for information and necessary action.
- (3) Office-in-Charge, Library (Directorate)
- (4) Head Assistant 'C' Group with a request to show it to all of 'C' Group.
- (5) Guard File 'C'.

A. K. Bhattacharya
For Director of Land Records and Surveys and
Joint Land Reforms Commissioner, West Bengal.

<http://wbllroa.in>