



2026:CGHC:3723

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR No. 98 of 2023

1 - Chhattisgarh State Waqf Board, Through Chief Executive Officer,
Raipur, District Raipur (C.G.) (Non-Applicant No. 01)

... Applicant

versus

1 - Mohammad Juber Rizvi S/o Mohammad Salim Rezievi Aged About
32 Years R/o Nehru Nagar, Raipur, District Raipur (C.G.) (Applicant No.
-1)

2 - Mohammad Yasin Khan S/o Vakil Ahmed Rizvi Aged About 28 Years
R/o Nehru Nagar, District Raipur (C.G.) (Applicant No. -2)

3 - Mohammad Farhan S/o Mohammad Subahan Khan Aged About 27
Years R/o Nehru Nagar, Raipur, District Raipur (C.G.) (Applicant No. -3)

4 - Yasin Khan S/o Amen Khan Aged About 31 Years R/o Tikrapara,
Raipur, District Raipur (C.G.) (Applicant No. -4)

5 - Mohammad Saif S/o Abdul Gani Aged About 39 Years R/o Nehru
Nagar, Raipur, District Raipur (C.G.) (Applicant No. -5)

6 - State Of Chhattisgarh Through Collector, Raipur, District Raipur
(C.G.) (Non- Applicant No. -2)

... Respondent

(Cause-title taken from the Case Information System)

For Applicant :- Mr. Prateek Singh Thakur, Advocate

For State :- Mr. Sangharsh Pandey, G.A.

SB- Hon'ble Shri Justice Amitendra Kishore Prasad**Order On Board****21.01.2026**

1. Being aggrieved by the order dated 07.07.2023 passed by the Chhattisgarh State Waqf Tribunal, Raipur, Chhattisgarh, in M.J.C. No. 25/2023, whereby the application filed by the applicant under Order VII Rule 11 of the Code of Civil Procedure, 1908, has been rejected by the learned Tribunal, the applicant prefers the present revision petition.

2. Following prayer has been made by way of this revision petition:-

“It is therefore prayed by the Hon'ble Court that the order passed in M.J.C. number 25/2023 dated 07.07.2023 (ANNEXURE A/1) by Chhattisgarh state waqf tribunal, Raipur Chhattisgarh may kindly be set aside and the application filed by petitioner before tribunal may be allowed and suit may be dismissed, in the interest of justice.”

3. Brief facts of the case are that the Chhattisgarh State Waqf Board, in its meeting dated 29.08.2022, unanimously amended Clause 7.3 of the Mutwalli Election Guidelines by enhancing the minimum age for contesting the post of Mutwalli from 25 years to 35 years. The said amendment order has not been challenged by the respondents. Respondent Nos. 1 to 5, claiming to be interested persons for participating in the Mutwalli election, became ineligible on account of the said amendment and had earlier approached

this Hon'ble Court by filing W.P.(C) No. 2825/2023. The said writ petition was withdrawn on 26.06.2023 with liberty to approach the Waqf Tribunal. Thereafter, respondent No. 1 filed an application before the learned Waqf Tribunal seeking cancellation of the amendment to Clause 7.3 and also submitted a representation to the Waqf Board on 05.06.2023. The learned Tribunal registered the matter as M.J.C. No. 25/2023 and issued summons to the applicant herein. The applicant filed a detailed reply, a stay application, and an application under Order VII Rule 11 CPC seeking rejection of the M.J.C. for want of mandatory statutory notice under Section 89 of the Waqf Act, 1995. However, by the impugned order dated 07.07.2023, the learned Tribunal rejected the application under Order VII Rule 11 CPC on erroneous grounds, namely, that the applicant had appeared before the Tribunal and that the respondents had not filed a reply. The learned Tribunal failed to appreciate and comply with the mandatory provisions of Section 89 of the Waqf Act. Hence, the present revision petition has been filed.

4. Learned counsel appearing on behalf of the applicant submits that the proceedings instituted by the respondent-plaintiffs against the Waqf Board are not maintainable in view of Section 89 of the Waqf Act, 1995, as no prior statutory notice was issued to the Board before initiation of the proceedings. It is contended that in the absence of compliance with the mandatory notice

requirement, the proceedings before the Waqf Tribunal are liable to be rejected at the threshold.

5. None appears on behalf of the private respondents, despite service.
6. I have considered the submissions advanced by learned counsel for the applicant and have carefully perused the entire record, including the pleadings before the Waqf Tribunal and the impugned order dated 07.07.2023.
7. The sole question which arises for consideration in the present revision is whether the proceedings initiated by respondent No. 1 before the Waqf Tribunal were maintainable in the absence of prior statutory notice to the Waqf Board as mandated under Section 89 of the Waqf Act, 1995, and whether the learned Tribunal committed an error in rejecting the application filed under Order VII Rule 11 CPC.
8. For ready reference, Section 89 of the Waqf Act, 1995 is quoted hereinbelow:-

“89. Notice of suits by parties against Board.- No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the

office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.”

9. A careful perusal of the record, including the application instituted before the Waqf Tribunal, makes it abundantly clear that no statutory notice under Section 89 of the Waqf Act was issued to the Waqf Board prior to initiation of the proceedings. The filing of a representation dated 05.06.2023 cannot, by any stretch of imagination, be construed as compliance with the mandatory statutory notice contemplated under Section 89 of the Act.

10. The requirement of notice under Section 89 of the Waqf Act is mandatory in nature and goes to the root of the maintainability of the proceedings. Non-compliance with such a mandatory provision renders the proceedings not maintainable in the eye of law, and such defect is incurable unless the statute itself provides otherwise. In such circumstances, the objection raised by the applicant under Order VII Rule 11 CPC squarely fell within the scope of clauses (a) and (d) thereof, as the proceedings did not disclose a legally maintainable cause of action and were clearly barred by a statutory provision. The learned Waqf Tribunal, while rejecting the application under Order VII Rule 11 CPC, has proceeded on wholly untenable grounds, namely, that the applicant had appeared before the Tribunal and that the

respondents had not filed a reply. Such considerations are legally irrelevant while examining a jurisdictional objection based on a statutory bar.

11. It is well settled that participation in proceedings does not amount to waiver of a mandatory statutory requirement, particularly when the statute does not contemplate such waiver. The learned Tribunal, therefore, failed to exercise jurisdiction vested in it and committed a patent error of law in entertaining the proceedings despite non-compliance with Section 89 of the Waqf Act.
12. In view of the foregoing discussion, this Court is of the considered opinion that the learned Tribunal erred in law in rejecting the applicant's application under Order VII Rule 11 CPC and in proceeding with the matter contrary to the mandate of Section 89 of the Waqf Act, 1995.
13. Accordingly, the impugned order dated 07.07.2023 passed by the learned Waqf Tribunal in M.J.C. No. 25/2023 is hereby set aside. The application filed by the applicant under Order VII Rule 11 CPC is allowed, and the proceedings instituted before the Waqf Tribunal are held to be not maintainable for want of statutory notice.

14. Consequently, the revision petition is **allowed**, and the
plaint/application filed by respondent No. 1 before the Waqf
Tribunal stands **rejected**.

15. No order as to costs.

Sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha