

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.359 of 2014

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1. Nayeema Khatoon W/O Late Sk. Ms. Golam Bari Resident of Mohalla-Muradpur Masjid, P.O- Bankipur, P.S- Pirbahore, District- Patna- 800004.
2. Aminur Rahman S/O Late Sk. Md. Golam Bari Resident of Mohalla-Muradpur Masjid, P.O- Bankipur, P.S- Pirbahore, District- Patna- 800004.
3. Anisur Rahman S/O Late Sk. Md. Golam Bari Resident of Mohalla-Muradpur Masjid, P.O- Bankipur, P.S- Pirbahore, District- Patna- 800004.
4. Anjum Bari S/O Late Sk. Md. Golam Bari Resident of Mohalla-Muradpur Masjid, P.O- Bankipur, P.S- Pirbahore, District- Patna- 800004.

..... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Patna.
3. The Sub- Divisional Magistrate, Sadar, Patna
4. The Bihar State Sunni Waqf Board, through its Chief Executive Officer, 2nd Floor, Haj Bhawan, 34 Ali Imam Path (Harding Road), Patna.

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Triloki Nath Maitin, Adv.
For the Respondent/s : Mr. Ajay Behari Sinha, Adv.
For the Waqf Board : Mr. Syed Arshad Alam, Adv.
Mr. Fakhruddin Ali Ahmad, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

7 03-07-2015 Heard Mr. Triloki Nath Maitin, learned Senior Counsel for the petitioner, Mr. Neeraj Raj A.C. to S.C. 19 for the State and Mr. Syed Arshad Alam for the Waqf Board.

The petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the letter No. 3025 dated 28.11.2013 issued under the signature of the Chief Executive Officer, Bihar State Sunni Waqf Board, Patna filed before the Sub Divisional Magistrate, Patna as contained in Annexure-5 as well as the notice issued by the Sub Divisional Magistrate in Case No. 1637(M) of



2013 in exercise of power vested under Section 55 of the Waqf Act, 1995 (hereinafter referred to as 'the Act') requiring the petitioner to remove the alleged encroachment stated to be on Plot No. 274, 269 and 270 Ward No. 15/5(old) 28(new), Holding No. 48/49,51/52 and 54/55 situated at Muradpur Bihari Sao lane, Muradpur, Ashok Rajpath, P.O. Bankipur, P.S. Pirbahore in the town and district of Patna as contained in Annexure-6.

The request made the Chief Executive Officer and the notice issued pursuant thereto as contained in Annexures-5 and 6 respectively herein has been questioned by the petitioner on a limited ground of having been issued in utter violation of the statutory provisions underlying Section 54(3) of 'the Act'. It is the specific contention of the petitioners that without drawing any proceedings, without making any enquiry, without affording opportunity of hearing to the petitioners and without there being any order on record under Section 54(3) of 'the Act' that the Chief Executive Officer has straight way requested the Sub Divisional Magistrate for removal of the encroachment on the plots aforementioned and which request has been mechanically accepted by the Sub Divisional Magistrate.

This Court taking note of the issue raised in the writ petition required a response from the Waqf Board vide order passed on

22.9.2014 and which has been duly filed but the issue remains unanswered.

I have heard learned counsel for the parties and I have perused the materials on record.

There is a complete procedure provided under Section 54 of 'the Act' for removal of encroachment from a Waqf property. It is on receipt of any complaint in this regard or the Chief Executive Officer on his own motion, may initiate such proceedings by serving notice on alleged encroacher with details of encroachment and asking him show cause against the same. Sub section (3) of Section 54 further obliges the Chief Executive Officer to consider the objections so received and to hold an enquiry in the manner prescribed and it is only thereafter and if the Chief Executive Officer is satisfied that the property in question is a Waqf property and that it has been encroached that he has to make an application to the Tribunal for order for removing such encroachment and for delivery of possession of the land to the Mutawalli of the Waqf Board. Section 54(4) further provides that the Tribunal on receipt of such application shall make an order of eviction but before passing such order the Tribunal is statutorily required to give an opportunity of hearing to the person concerned. It is only where the alleged encroacher refuses to comply with the order so passed

by the Tribunal that under Sub section (5) of Section 54, the Chief Executive Officer or any person duly authorized may evict the person from such possession.

Section 55 of 'the Act' provides for enforcement of order made under Section 54 and mandates that upon failure of the encroacher to remove the encroachment, the Chief Executive Officer may refer the order of the Tribunal to the Executive Magistrate of the area and who shall take all steps for removal of the encroachment and for delivery of possession of the land in question to the concerned Mutawalli.

There is thus a complete procedure provided under the Wakf Act 1995 for removal of encroachment from Wakf property. The petitioner has specifically alleged that the Chief Executive Officer has violated this procedure by directly seeking assistance from the Sub Divisional Magistrate and which averment has neither been responded to by the Waqf Board nor there is any thing on record which would justify the request made by the Chief Executive Officer to the Sub Divisional Magistrate charging the petitioner with encroachment and requesting the Sub Divisional Magistrate for removal thereof. Manifestly, the application filed by the Chief Executive Officer dated 28.11.2013 present at Annexure-5 and the proceedings drawn thereon by the Sub

Divisional Magistrate giving rise to Case No. 1637(M) of 2013 are per se illegal and unsustainable in law for it has been drawn in complete violation of the statutory procedure provided under Section 54 and 55 of 'the Act'

For the reasons aforementioned, the entire proceedings arising from Case No. 1637(M) of 2013 pending before the Sub Divisional Magistrate including the notice issued thereunder present at Annexure-6 along with the application filed by the Chief Executive Officer, Bihar State Sunni Waqf Board, Patna bearing letter No. 3025 dated 28.11.2013 as contained in Annexure-5 cannot be upheld and are accordingly set aside. The writ petition is allowed.

This order would not preclude the Waqf Board to proceed in the matter afresh but in accordance with law.

(Jyoti Saran, J)

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