

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8992 of 2008

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Amar Nath @ Bunti, son of Late Jagannath Prasad resident of Mohalla-
Pahal Gola, Chapra, P.O. Sahebganj, P.S. Chapra, District Saran.

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Saran.
2. Sub Divisional Magistrate, Chapra, Saran.
3. Bihar State Sunni Waqf Board through its Chairman, Haz Bhawan, 34, Ali Imam Path, Patna.
4. Chief Executive Officer, Bihar State Sunni Waqf Board, Haz Bhawan, 34, Ali Imam Path, Patna.
5. The Chairman, Bihar State Sunni Waqf Board, Haz Bhawan, 34, Ali Imam Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Srinandan Prasad Singh, Adv.
Mr. Ashok Kumar, Adv.
Mr. Manish Kumar, Adv.
Mr. Surendra Pd. Singh, Adv.

For the Respondent/s : Mr. Rashid Izhar, Adv.
Mr. Sharad Shekhar, Adv.
Mr. Ambrish Kumar, Adv.

For the State : Mr. Sanjay Kumar, AC to SC-10.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

C.A.V. ORDER

15 08-01-2015

1. This petition under Article 226 of the Constitution of India has been filed for quashing the letter dated 05.04.2007 issued by the Chief Executive Officer, Bihar State Sunni Wakf Board, Patna directing the petitioner and others under Section 54 of Wakf Act, 1995 read with Rule 46(3) of Wakf Rules 2002 to remove the encroachment from Wakf property and hand over possession to Muttawalli of Wakf Estate No. 373, Mohalla-



Sarkari Bazar, Karim Chak, Post-Chapra, District Saran and by the aforesaid letter, the Chief Executive Officer, Bihar State Sunni Wakf Board, Patna also informed the petitioner and others that the Wakf Board has already cancelled vide its orders dated 14.09.2004 as well as 30.09.2004 the permission granted to make permanent settlement of Wakf Estate No. 373 vide letter no. 53 dated 13.11.1953 and, accordingly, petitioner also prayed for quashing the orders dated 14.09.2004 and 30.09.2004 and furthermore, petitioner has prayed to issue appropriate order for restraining the respondents from forcibly dispossessing him from the land in question.

2. The present case relates to land and house in Holding No. 85(Old) corresponding to Holding No. 87(New) of Ward No 1, Circle No. 10, area 15 kattha of Mohalla Sahebganj, Chapra, P.S. Chapra Town, District Saran. The above stated land, originally, belonged to Sheikh Abdul Razzak who executed a deed of Wakf-Alal-Aulad in respect of above stated land and other lands on 28.06.1935 and appointed his wife Bibi Chanda as Muttawalli of the said Wakf. The above stated Muttawalli Bibi Chanda executed a deed of permanent settlement of the lands in question in favour of Ram Gulam Ram, who happened to be grand father of the petitioner, on 17.09.1938 on yearly rental of Rs. 34/-



and having accepted Nazrana of Rs. 300/- put the above stated Ram Gulam Ram in possession over the lands in question. The above stated settlee Ram Gulam Ram got constructed of house, gola, well etc. on the disputed land. After death of settlee, Ram Gulam Ram, his three sons, namely, Jitu Lal, Bishwanath Prasad, and Jagannath Prasad came in possession of the lands in question. After passage of time, Bibi Kaniz Fatima became Muttawalli of the above stated Wakf and she filed Title Suit No. 119 of 1950 in the court of 1st Munsif, Chapra against the sons of settlee, Ram Gulam Ram for cancellation of settlement deed dated 17.09.1938 and for delivery of possession of the lands in question but later on, the aforesaid suit was compromised between the parties on 28.07.1954 and the then Muttawalli, Bibi Kaniz Fatima agreed to execute a fresh permanent settlement deed. The above stated compromise had taken place after obtaining permission from the Majlis-e-Wakf. The then Muttawalli, Bibi Kaniz Fatima obtained sanction from the Majlis-E-Waqf for making permanent settlement with sons of original settlee, Ram Gulam Ram and subsequently, she executed deed of permanent settlement on 24.04.1958 in favour of three sons of original settlee, Ram Gulam Ram. Subsequently, a family partition took place between three sons of original settlee Ram Gulam Ram and according to the above stated



partition, father of the petitioner got 8 katthas out of 15 katthas of land whereas Bishwanath Prasad, the another son of original settlee Ram Gulam Ram got 7 katthas out of 15 katthas of the land. However, on 05.04.2007, petitioner received notice issued by the respondent no. 3 declaring the petitioner to be encroacher over the land in question and in the aforesaid notice, it had been mentioned by respondent no. 3 that an opportunity to file show cause had already been given to the petitioner by issuance of letter no. 1298 dated 08.09.2006. Having got the aforesaid notice dated 05.04.2007, petitioner sent a legal notice to respondent nos. 3 and 4 on 15.09.2007 denying service of notice dated 08.09.2006 upon him and challenged the jurisdiction of Sunni Wakf Board to pass order for vacating the lands in question. The claim of the petitioner is that the orders dated 14.09.2004 and 30.09.2004, by which the settlement made in favour of the ancestor of the petitioner was cancelled, were passed behind his back without giving any notice to him and the respondent no. 4 also refused to give certified copy of the order dated 14.09.2004 and 30.09.2004. Further claim of the petitioner is that respondents no. 3 and 4 have got no jurisdiction to cancel the permanent settlement as well as to issue notice against the petitioner under Section 54 of the Wakf Act, 1995. Since respondents no. 3 and 4 are adamant to forcibly

dispossess the petitioner from the lands in question, the petitioner filed the instant writ petition.

3. Counter affidavit has been filed on behalf of the respondents no. 3 to 5 pleading therein that Wakf Board rightly cancelled the sanctioned order dated 17.07.1955 by which sanction was granted for compromise of Title Suit No. 119 of 1950 as well as for grant of permanent settlement to the father of the petitioner in respect of the lands in question because no muttawalli was entitled to create permanent settlement in respect of Wakf property and against the spirit of Wakfnama. Furthermore, it has been pleaded in the counter affidavit that family members of original settlee Ram Gulam Ram including ancestor of the petitioner deliberately sold some part of Wakf land which was against the spirit of Wakfnama. Furthermore, it has been pleaded in the counter affidavit that Wakf Board vide its memo no. 788 dated 18.07.2007 directed the Collector, Saran to take possession of the Wakf properties alienated illegally and accordingly, the Wakf Board initiated proceeding under Section 52 of the Wakf Act, 1955 for recovery of the Wakf property. Furthermore, it has been pleaded that no suit or other legal proceeding is maintainable in any civil or revenue court or before any other authority in respect of any dispute, question or other



matter relating to any Wakf property and the only Wakf Tribunal has got jurisdiction to decide the aforesaid disputes. It has also been pleaded that some of the legal heirs of settlee Ram Gulam Ram filed Title Suit No. 81 of 2009 in respect of the settled land before the Wakf Tribunal and the said Title Suit No. 81 of 2009 is still pending before the Wakf Tribunal. Accordingly, it has been prayed on behalf of respondents no. 3 to 5 to dismiss the instant writ petition being not maintainable.

4. No counter affidavit has been filed on behalf of respondents no. 1 and 2.

5. Certain facts are admitted in this writ petition. It is an admitted position that Holding No. 85(Old) area 15 kattha of Mohalla Sahebganj, Chapra Thana, Chapra Town, District Saran was originally belonged to Sheikh Abdul Razzak who created Wakf- Alal-Aulad in respect of the above stated property as well as other properties by executing registered deed of Wakf- Alal-Aulad on 28.06.1935 and appointed Bibi Chanda as Muttawalli to the above stated Wakf. It is also an admitted position that Muttawalli, Bibi Chanda executed a deed of permanent settlement on 17.09.1938 in favour of Ram Gulam Ram by which she permanently settled the lands of Holding No. 85(Old) on yearly rental of Rs. 34/- accepting Nazrana of Rs. 300/- and thereafter,



original settlee Ram Gulam Ram came in possession over the settled land. It is not in dispute that original settlee, Ram Gulam Ram had three sons and father of the petitioner being son of settlee, Ram Gulam Ram got 8 katha land out of the above stated settled land in family partition and came in possession over the above stated land. It is also an admitted position that after passage of time, Bibi Kaniz Fatima, who happened to be grand daughter of Sheikh Abdul Razzak, became Muttawalli of the above stated Wakf properties and she filed Title Suit No. 119 of 1950 against the sons of original settlee, Ram Gulam Ram but subsequently, the aforesaid suit was decreed in terms of compromise arrived at between the parties of the aforesaid suit. The above stated copy of decree passed in Title Suit No. 119 of 1950 has been annexed as Annexure-1 to this writ petition. It is also an admitted position that at the time of passing of the aforesaid decree, sanction of Bihar State Sunni Majlis E Wakf was obtained but the aforesaid sanction was given by only six members of above stated Majlis-E-Waqf whereas sanction granted by, at least, nine members of the aforesaid Majlis-E-Waqf was required and accordingly, it was agreed between the then Muttawalli, Bibi Kaniz Fatima as well as sons of original settlee, Ram Gulam Ram that the deed would be executed after obtaining necessary sanction from the Majlis-E-



Waqf. Prior to above stated compromise, admittedly, six members of Bihar State Sunni Majlis-E-Waqf granted sanction for compromise of Title Suit No. 119 of 1950 and the aforesaid sanction order has been annexed as Annexure-2. Subsequently, the aforesaid sanction order was reaffirmed by nine members of the Majlis-E-Waqf vide order dated 10.08.1955. Having got reaffirmation of the sanction order, the then Bibi Kaniz Fatima executed deed of permanent settlement in favour of sons of original settlee, Ram Gulam Ram on 24.04.1958. It is also an admitted position that respondent no. 4 issued notice under Section 54 of Wakf Act, 1995 and Rule 46(3) of the Wakf Rules, 2002 directing the petitioner and others to hand over the vacant possession of the above stated settled land to the Wakf Board and in the aforesaid notice, it had been mentioned that vide order dated 14.09.2004 Wakf Board had cancelled the sanction order dated 17.07.1955 by which the Majlis-E-Waqf had granted sanction to the Bibi Kaniz Fatima to make permanent settlement in respect of Wakf properties. There is nothing on the record to show that order dated 14.09.2004 as well as subsequent order dated 30.09.2004 of the Wakf Board were ever communicated to the petitioner or certified copies of the aforesaid orders were issued in favour of the petitioner.



6. Learned counsel appearing for the petitioner submits that Bihar State Sunni Wakf Board had got no right to cancel the sanction order nor the above stated Board had got any jurisdiction to issue notice under Section 54 of Bihar Wakf Act, 1995. He further submitted that so-called orders dated 14.09.2004 and 30.09.2004 were passed behind the back of the petitioner and prior to passing of the above stated orders, no opportunity of hearing was given to the petitioner. He further submitted that admittedly, the lands in question were originally settled to Ram Gulam Ram in the year 1938 and after that Title Suit No. 119 of 1950 was filed by the then Muttawalli, Bibi Kaniz Fatima but later on, the aforesaid suit was compromised after obtaining sanction from the Majlis-E-Waqf and after taking sanction of Majlis-E-Waqf, the permanent settlement of the lands in question was made in favour of sons of original settlee, Ram Gulam Ram in the year 1958. He further submitted that admittedly, at the time of fresh settlement, the Wakf Act, 1954 was applicable and in the Wakf Act, 1954, there was a provision which authorized the Board to take steps and to pass orders with respect to the Wakf properties in accordance with the provisions of that Act. He further submitted that according to Section 36 A of the Wakf Act, 1954, the Board had authority to allow a Muttawalli to sell any part of Wakf



properties as it deems fit for the welfare of the Estate. He further submitted that the then Wakf Board by exercising the power vested under Section 36 A of the Wakf Act, 1954 granted sanction to the then Muttawalli to make permanent settlement and, therefore, grant of sanction by the then Board was neither illegal nor without jurisdiction and, therefore, the respondent no. 3 has got no authority to recall/cancel the grant of sanction by the then Board, that is too, without giving any opportunity of hearing to the petitioner. In support of this contention, he referred decision of **Baijnath Prasad @ Baiju Prasad vs. Rajesh Kumar and another reported in 2008(2) PLJR, 305** in which a coordinate bench of this court has held at para 11 as follows:-

“Hence, when after the approval of the Board the Chairman vide order dated 29.09.2003 granted sanction of such sale, there was no illegality or irregularity therein and the Motawalli, namely, Md. Zahiruddin was fully entitled and justified to execute the sale-deed dated 15.04.1994 with respect to the dilapidated suit premises in favour of the plaintiffs-opposite parties.”

He further submitted that as a matter of fact, the lands in question was not a Wakf property because no doubt, Sheikh Abdul Razzak created Wakf-Alal-Aulad in respect of the



lands in question as well as some other properties but he made provision in the Wakf deed for the benefit of his descendants and very small portion of income of the aforesaid properties was given for charitable purposes and, therefore, it cannot be said that the property in question was Wakf property. Learned counsel for the petitioner relied upon decision of **Begum Asma Jafar Imam and another vs. State of Bihar and others reported in AIR 1975, Patna 48** in which Division Bench of this Court held that in a Wakf-Alal-Aulad if there is specific dedication of any property for any purpose recognized by the Muslim law as religious or charitable, to that extent it will be deemed to be a 'Wakf' within the meaning of the 1954 Act and the provisions of that Act will apply to that extent. He submitted that since the property in question was not the Wakf property, the Wakf Tribunal has got no jurisdiction to adjudicate the dispute and, therefore, this court has got jurisdiction to entertain this petition.

7. On the other hand, learned counsel appearing for the respondents no. 3 to 5 refuted the above stated submissions arguing that Section 85 of the Wakf Act, 1995 bars the jurisdiction of civil court to entertain the suit or other legal proceeding in respect of any dispute, question or other matter relating to any Wakf or Wakf property and the aforesaid questions can only be



determined by a Wakf Tribunal. He submitted that only Wakf Tribunal is competent to decide as to whether the land in question is Wakf property or not and, therefore, this writ petition is not maintainable. He also submitted that Wakf has been defined under Section 3 (r) of the Wakf Act, 1995 and includes the Wakf-Alal-Aulad also and it is admitted case of the petitioner that Sheikh Abdul Razzak created Wakf-Alal-Aulad in respect of the lands in question and other properties and, therefore, petitioner has no right to say that the lands in question was not Wakf property. He also submitted that Section 51 of the Wakf Act 1995 makes provision that if any Wakf property is alienated without sanction of the Board, the said transaction shall be void and according to Section 52 of the above stated Act, the Board has right to recover the Wakf property, if the same has been transferred in contravention of Section 51 of the above stated Act. He further submitted that Section 54 of the aforesaid Act empowers the Chief Executive Officer of the Board to take step to recover any Wakf property over which an encroachment has been made and furthermore, Section 54(4) gives right to aggrieved persons to institute suit in a Tribunal to establish his right, title and interest in the property in respect of which the Chief Executive Officer has passed order of removal under Section 54 (3) of the aforesaid Act and, therefore,



in view of the aforesaid provisions also, the present writ is not maintainable because the petitioner has alternative remedy to file suit before the Wakf Tribunal. Continuing his submission, he pointed out that in the year 2006, notice under Section 54 of the Wakf Act was given not only to petitioner but also to his other agnates and in response to the aforesaid notice, the agnates of the petitioner filed title suit before the Wakf Tribunal and the said title suit is still pending before the Wakf Tribunal and, therefore, the petitioner may file suit before the Wakf Tribunal as per the above stated provision of law and in any case, this writ petition is not maintainable.

8. Admittedly, Sheikh Abdul Razzak created Wakf-Alal-Aulad in the year 1935 in respect of his properties including the lands in question and later on, a permanent settlement on 17.09.1938 was made in favour of Ram Gulam Ram by the then Muttawalli, Bibi Chanda but when Bibi Kaniz Fatima became Muttawalli of the above stated Wakf, she filed title suit for cancellation of above stated permanent settlement and the aforesaid suit was decreed in terms of compromise. It is not in dispute that the then Majlis-E-Waqf granted sanction to the then Muttawalli to compromise the suit and to make a fresh permanent settlement in favour of heirs of said Ram Gulam Ram. The



aforesaid sanction was granted on 21.03.1953 and subsequently, the same was reaffirmed by the Majlis-E-Waqf on 10.08.1955 which is evident from perusal of Annexure-2 series. It is also an admitted position that in pursuant to the above stated compromise, the then Muttawalli, Bibi Kaniz Fatima executed fresh permanent settlement in favour of heirs of original settlee, Ram Gulam Ram on 24.04.1958. The above stated sanction order was cancelled by the Chairman, Sunni Wakf Board on 14.09.2004 which was affirmed by respondent no. 3 on 30.09.2004. The aforesaid two orders of the Chairman and Board respectively, have been challenged by the petitioner in this writ petition. It is also an admitted position that after cancellation of sanction order given by the then Majlis-E-Waqf, the Chief Executive Officer of the Board issued notice to petitioner and others on 08.09.2006 under Section 54 of the Wakf Act, 1995 having found encroachment on the Wakf land directing them to file their show cause but admittedly, petitioner did not file any show cause and it has been pleaded in this writ petition that no notice dated 08.09.2006 was served upon him. Furthermore, when the petitioner failed to file any show cause, the Chief Executive Officer having satisfied about the encroachment of the petitioner on the lands in question directed him to remove his encroachment from Muttawalli Wakf No. 373

by issuance of notice no. 354 dated 05.04.2007 which has also been challenged by the petitioner before this court.

9. Here, I would like to refer Section 54 of the Wakf Act, 1995 which runs as follows :-

54. Removal of encroachment from wakf property-(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied



that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property;

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorized by him in this behalf.

10. From bare perusal of the aforesaid section, it is obvious that Chief Executive Officer has power to make enquiry regarding any encroachment made on Wakf property and having completed the enquiry he may direct the concerned person to remove the encroachment from the Wakf properties but before passing the order of removal of encroachment from the Wakf



property, it is incumbent duty of the Chief Executive Officer to give notice to the concerned person. In the instant case, there is nothing on the record to show that any notice issued under Section 54 of the Wakf Act, 1995 was ever served upon the petitioner. Furthermore, it would appear from perusal of above stated Section 54 (4) of the Wakf Act, 1995 that if a person is aggrieved by the order passed by the Chief Executive Officer under Section 54 (3) of the Act, the said person may institute a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property. Therefore, it is apparent from the aforesaid provision that the petitioner has alternative remedy to institute suit against the notice dated 05.04.2007, if he wants to establish his right, title or interest in respect of the lands in question.

11. Admittedly, the Board cancelled the sanction granted by the Majlis-E-Waqf under Bihar Wakf Act, 1947 to make permanent settlement in favour of heirs of original settlee, Ram Gulam Ram but there is nothing on the record to show that any opportunity of being heard was given to petitioner before cancellation of the aforesaid sanction orders. The aforesaid cancellation orders have not been passed under Section 54 of the Wakf Act, 1995. Admittedly, under the provision of Wakf Act,



1995, Wakf Tribunals have been constituted to adjudicate the dispute relating to Wakf and Section 83 of Wakf Act, 1995 makes a provision for constitution of Wakf Tribunals. Similarly, sub clause 2 of Section 83 of the Wakf Act, 1995 says that any Muttawalli interested in a Wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf. Furthermore, Section 85 of the Wakf Act, 1995 says that no suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under the aforesaid Act to determine by a Tribunal.

12. In the instant case, Board cancelled the sanction order granted by the then Majlis-E-Waqf in the year 1955 exercising the power vested under the Board by virtue of this Act and, therefore, admittedly, impugned orders dated 14.09.2004 and 30.09.2004 have been passed by the Board exercising the powers vested in it under the provisions of this Act. Therefore, in my view, it has rightly been submitted on behalf of the respondents

no. 3 to 5 that petitioner may seek his remedy before the Wakf Tribunal and the instant writ petition is not maintainable before this Court, particularly, in the circumstance, when the alternative remedy is available to the petitioner.

13. On the basis of aforesaid discussions, this writ petition stands dismissed being not maintainable giving liberty to petitioner that he may institute a suit before the Wakf Tribunal against the orders impugned within a month from the date of passing of this order and if petitioner does so, the concerned Wakf Tribunal shall consider to condone the delay in filing the suit keeping in mind that petitioner was knocking wrong forum till the date of passing of this order and the tribunal shall decide the suit on its own merit without being prejudiced by this order.

(Hemant Kumar Srivastava, J)

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