

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.890 of 2016**

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S. M. Sharaf

.... Appellant/s

Versus

Md. Syed Ghulam Murtuza

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Anis Akhtar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 25-10-2016

Heard the learned counsel, Md. Anis Akhtar for the
petitioner.

Perused the impugned order dated 29.07.2016 passed
by the learned Munsif, Biharsharif, Nalanda in Title Suit No.15 of
2015 whereby the learned Court below rejected the application
filed by the petitioner under Order VII Rule 11 C.P.C.

The plaintiff-respondent filed the aforesaid suit praying
for declaration that the defendant-petitioner has got no right to
evict the defendant from shop No.15 without taking recourse of
law and further for the grant of injunction restraining the
defendant-petitioner from forcefully evicting the plaintiff-
respondent.

The defendant-petitioner appeared and filed the
application under Order VII Rule 11 C.P.C. for dismissal of the
suit on the ground that the jurisdiction of the Civil Court is barred

under Section 85 of the Waqf Act, 1995.

The Court below after hearing the parties relying on the decision of the Supreme Court, AIR 2010 Supreme Court 2897 rejected the application holding that the Civil Court has the jurisdiction to grant the relief claimed by the plaintiff in the plaint.

The learned counsel, Mr. Anis Akhtar for the petitioner relying on the decision of the Supreme Court in the case of **Lal Shah Baba Dargah Trust v. Magnum Developers and others, AIR 2016 Supreme Court 381** and submitted that by the amendment of the year 2013 in Section 85 of the Act, the jurisdiction of revenue court or any other authorities along with Civil Court has been ousted. Meaning thereby the legislatures wanted to make sure that no authorities apart from the Tribunal constituted under Section 83 of the Act shall determine any dispute, question or other matter relating to a waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property under this Act.

The plaint of the suit has been annexed as Annexure 1 to this civil miscellaneous application. From perusal of the relief of the plaint, it appears that the plaintiff claimed primarily two reliefs, the first relief is for declaration that the defendant has no right to evict the petitioner without adopting the recourse of law

and the second relief is for injunction.

Section 7 of the Waqf Act, 1995 defines the power of Tribunal to determine dispute regarding waqf. From perusal of this provision, it appears that nowhere the Tribunal has been given power for the grant of injunction. So far the decision relied upon by the learned counsel for the petitioner is concerned, it may be mentioned here that the question before the Supreme Court was with respect to functioning of one member of the Tribunal constituted under Section 83 of the Waqf Act, 1995. In that decision, the jurisdiction of the single member Waqf Tribunal was in question. Therefore, while considering that aspect of the matter, the Hon'ble Supreme Court did not even notice the decision of the Supreme Court, AIR 2010 Supreme Court 2897.

The Supreme Court in the case of **Ramesh Gobindram(deceased by LRs.) v. Sugra Humayun Mirza Waqf, AIR 2010 Supreme Court 2897** has considered the jurisdiction of the Civil Court vis-à-vis the jurisdiction of the Tribunal constituted under Section 83 of the Waqf Act, 1995 and held that “the jurisdiction of Civil Courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by Civil Court. Any such exception cannot be readily

inferred by the Courts. The Court would, lean in favour of a construction that would uphold the retention of jurisdiction of the Civil Courts and shifts the onus of proof to the party that asserts that Civil Court's jurisdiction is ousted."

In the present case, according to the learned counsel for the petitioner, Section 83(1) provides that the rights of the parties relating to eviction suit and lessor and lessee can also be decided by the Tribunal constituted under the Waqf Act, 1995.

Section 83(1) of Waqf Act reads as follows:

"(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals."

In view of this provision, it appears prima facie that those provisions of Section 83 empowers the State Government to issue notifications constituting as many Tribunal as they may think fit for performing the duties and powers by the Tribunals. The powers have been defined under Section 7 of the Waqf Act.

As stated above, the power of the Tribunal constituted

under Section 83 has not been specifically mentioned as to whether the Tribunal has the power to grant the relief claimed by the plaintiff. Likewise, there is no mention regarding the power of the Tribunal to grant the relief of injunction.

The Hon'ble Supreme Court in the case of **Bhanwar Lal and another v. Rajasthan Board of Muslim Waqf and others, (2014) 16 Supreme Court Cases 51** has held that the Civil Courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the Civil Courts to try suits of civil nature is very extensive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a Civil Court. Any such exception cannot be readily inferred by the Courts. The Supreme Court also held that it is Civil Court which gets jurisdiction to try such a matter even though some of the items come under Section 7 of the Waqf Act, 1995 and the other items come under the jurisdiction of the Civil Court then also the Civil Court has the jurisdiction to try the suit.

It may be mentioned here that the Supreme Court while delivering the judgment considered the power of the Tribunal conferred on it under Section 7 and the bar by jurisdiction of Civil

Court under Section 85 of the Waqf Act.

In view of the above facts and circumstances of the case, in my opinion, the decision relied upon by the learned counsel for the petitioner in the present case is not applicable. The learned Court below has rightly relied upon the decision of the Supreme Court AIR 2010 Supreme Court 2987 which is upheld by reasoned decision of the Supreme Court in (2014) 16 Supreme Court Cases 51.

Thus, I find no reason to interfere with the impugned order and accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-A.F.R.

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