

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16732 of 2015

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Md. Abdullah Ansari & Ors

.... Petitioner/s

Versus

Md. Ghaysuddin & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mohammed Abu Haidar

For the Respondent/s : Mr. Rashid Izhar

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 16-02-2016

Heard learned counsel for the petitioners and learned counsel for the Bihar State Sunni Wakf Board, respondent nos.5 to 7.

2. By the impugned order dated 22.05.2015 the learned Subordinate Judge-II, Chapra refused to transfer Title Suit No.217 of 2014 to the Wakf Tribunal.

3. The learned counsel for the petitioners submitted that all the disputes are to be decided by the Wakf Tribunal in view of the Bihar Amendment of the Wakf Act whereby Section 85A has been inserted by amendment which provides that the suit must be transferred to the Wakf Tribunal. The learned counsel submitted that Section 85 clearly bars the jurisdiction of the Civil Court.

4. On the other hand, the learned counsel appearing on behalf of the Wakf Board submitted that the property is registered

in the Wakf Register.

5. Admittedly Section 85 of the Wakf Act provides 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 this Act to be determined by a Tribunal. The Bihar Amendment Act, 2006 whereby Section 85A has been inserted provides that any suit or other proceeding pending before any Court immediately before the date of constitution of a Tribunal under this Act and after the date of commencement of the Act, the cause of action of which is based on such facts that if the Tribunal would have been constituted it would be within the jurisdiction of such Tribunal deemed to be transferred to such Tribunal on the date of constitution of the Tribunal.

6. From the above position, it becomes clear that the dispute or question or other matter relating to any other wakf or wakf property can be decided by the Wakf Tribunal. There is no provision in Wakf Act that the Wakf Tribunal has the jurisdiction to decide the question of title also. In the present case the plaintiff has prayed for declaration of his title and that the property is not the wakf property. The Hon'ble Supreme Court in the case of case of **Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf,**

A.I.R. 2010 SC 2897 has 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 Court and shifts the onus of proof to the party that asserts that Civil Court's jurisdiction is ousted.

7. In the present case, the question raised by the plaintiff i.e. declaration of title and that the property is not the wakf property, that is the question which cannot be decided by the Wakf Tribunal and, therefore, the court below has rightly refused to transfer the suit. Thus, no case for interference in supervisory jurisdiction is made out.

8. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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