

Letters Patent Appeal No.304 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 18690 of 2009

.... Appellant/s

1. The State of Bihar

4. Syed Khalilur Rahman S/O Late Axizur Rahman, Resident of village and P.O- Mariyanda, P.S and Distt- Sheikhpura.

.... Respondent/s

For the Appellant/s	:	Mr. Pankaj Kumar, Advocate.
For the State	:	Mr. Satyendra Rai, AC to SC 30
For the Board	:	Mr. Rashid Izhar, Advocate.
For the Resp. No. 4	:	Mr. Rashid Rais, Advocate
		Mr. Sharad Shekhar, Advocate.

**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

Date: 21-07-2016

Heard learned counsel for the parties.

2. The present Appeal under Clause X of the Letters Patent of Patna High Court is to an order dated 11.09.2013 passed by the learned Single Bench by which CWJC No. 18690 of 2009 filed by the appellant has been dismissed.

3. A Wakf was created and registered under the Bihar State



Sunni Wakf Board (hereinafter referred to as the 'Board') as Maninda Wakf Estate No. 956 in the District of Sheikhpura on 13.03.1959. The same consisted of a Mosque, pond and some agricultural land. One Syed Hasibur Rahman was appointed its first *Mutawalli*. Later on, under the Board's Memo No. 11 dated 28.03.2000, a Committee, consisting of 11 members, for management of the said Wakf, was created, of which Md. Younus was appointed as President and Irfanul Haque (appellant) as Secretary. The said Committee was allowed to continue from time to time and lastly in 2007, the Committee of the appellant deposited the required cess to the Board for approving the Committee, which was already in existence. The respondent no. 4 also filed an application for approval of another committee before the Board on 06.09.2007. The claim of respondent no. 4 was on the basis of registered *Wakfnama* (Wakf Deed) dedicating to the properties in question, as *Wakf-Fisabilillah Alal-Aulad*. In fact, Syed Hasibur Rahman had got the Wakf property registered with the Board under Registration No. 956 dated 13.03.1959. Syed Hasibur Rahman is the descendant of Haji Abdur Rahman, *Wakif* (executor of the Wakf Deed). Finally, the District Awquaf Committee, Sheikhpura sent its inquiry report dated 21.01.2008 with recommendation that respondent no. 4 be appointed as *Mutawalli*, upon which, the Chief Executive Officer of the Board, after hearing the parties, appointed respondent no. 4 as *Mutawalli* by order dated 28.03.2008 of the Maninda Wakf Estate No. 956 on the basis of Wakf Deeds dated 01.11.1915 and 03.08.1921 holding that the Wakf land is *Wakf Fisabilillah Alal-Aulad*.

4. The appellant being aggrieved by the same, moved before the Bihar Wakf Tribunal, Patna (hereinafter referred to as the 'Tribunal') in Wakf Appeal No. 1 of 2008/20 of 2009, which was dismissed by order dated 06.10.2009. The same was impugned in CWJC No. 18690 of 2009 by the appellant and the order dated 11.09.2013 dismissing the writ petition is under challenge in the present Letters Patent Appeal.

5. Learned counsel for the appellant submits that there was an allegation with regard to Wakf Deeds of the years 1915 and 1921, on the basis of which respondent no. 4 had maintained his claim, of being forged, fabricated and manufactured. It is further submitted that the Tribunal had not gone into the said issue and since the Committee of the appellant was functioning, the same ought to have been approved/extended and a fresh Committee of respondent no. 4 was unwarranted. It is submitted that the lands in question, did not belong to the executor of the deeds of the years 1915 and 1921 and further that the Chief Executive Officer of the Board had no jurisdiction to decide the question of title.

6. Learned counsel for the respondents submits that the Chief Executive Officer, on the basis of the report of the District Awquaf Committee, Sheikhpura, after hearing the parties, had passed the order appointing respondent no. 4 as *Mutawalli*, which is based on established facts and does not suffer from any infirmity. It is submitted that the claim of the appellant has, in fact, been found to be forged on the basis of manipulation in the register of the Board for which the Tribunal has directed the Board to enquire into the matter and fix responsibility.



7. Having considered the rival contentions, we find no merit in the present Appeal. The challenge to the Wakf Deeds on the ground that the lands in question, did not belong to the *Wakif* (executor of the Wakf Deeds), cannot be sustained because even as per the case of the appellant, it was Syed Hasibur Rahman, who was the descendant of the original *Wakif*, was appointed as the first *Mutawalli*, upon the Board registering the properties as Maninda Wakf Estate No. 956 on 13.03.1959. The Board, taking into consideration the nature of Wakf being *Wakf Fisabilillah Alal-Aulad*, thus, has rightly respected the Will of the *Wakif* since *Wakf Fisabilillah Alal-Aulad* entails that the property was dedicated for the benefit of mankind as well as the future generation of the *Wakif*, which clearly gives the right to the descendant of the *Wakif* to be the *Mutawalli*, which in the present has been done. Further, the Tribunal, comparing the documents with the original records of the Board, has come to a finding that the registration by the Board of the properties, as Wakf property, was on the basis of the deeds of the year 1915 and 1921. The Tribunal had also noticed that the certified copy of the original register of the Board produced by the appellant, relating to the Wakf in question, did not tally with the original register and were, in fact, forged and manufactured one.

8. The learned Single Judge has also perused the original records of the Board and has rightly come to the conclusion that the Chief Executive Officer, at the relevant time, being the Administrator, had the authority to pass an order in favour of respondent no. 4 and that there was no change in the nature of the Wakf as only the original claimant had been

made the *Mutawalli* as per the Will of the executor of the Wakf Deeds. Moreover, as per the Wakf Act, 1955, the Board (the then Chief Executive Officer in the capacity of Administrator), has only constituted the Committee as per the desire of the *Wakif*, as noted in the Wakf Deeds of the years 1915 and 1921, without changing the nature of the Wakf in question, which is well within its jurisdiction. Therefore, the challenge to the jurisdiction of the Board to decide the issue involved in the present case cannot be sustained and is rejected.

9. For the reasons aforesaid, the appeal, being devoid of merit, stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	27.07.2016
Transmission Date	