

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12357 of 2017

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Ozair Ahmad Khan, Son of Akhyar Hussain Khan, Resident of Village Pali, P.O. Bhadeya, P.S. Barachatti, District- Gaya, presently residing at Mohalla- Aligang, P.S. Chandauti, District- Gaya.

.... Petitioner/s

Versus

1. The Bihar State Sunni Waqf Board through its Chief Executive officer, Haj Bhawan, 34 Ali Imam Path, Patna.
2. The Chief Executive Officer, The Bihar State Sunni Waqf Board, Haj Bhawan, 34, Ali Imam Path, Patna.
3. Maqubool Ahmad, Son of Late Haji Reyasat Hussain, resident of Mohalla- New Karim Ganj, P.S. Civil Lines, District- Gaya.
4. Sunil Prasad Gupta, son of Late Sarjoo Prasad, resident of Muararpur, G.B. Road, Gaya.
5. Rajesh Kumar Daheja, Son of Late Kasturi Lal, resident of Pappu Niwas, Nai Godam, Punjabi Colony, P.S. Kotwali, Gaya.
6. Fakre Alam, Son of Late Md. Shahid, Resident of Village Bhadeja, P.S. Mofassil, Gaya.
7. Saddam Hussain, Son of Md. Jahangir, resident of Mohalla Aabgila, P.S. Moffasil, Gaya.
8. Md. Iqbal, Son of Late Haji Reyasat Hussain, Resident of Mohalla New Karim Ganj, P.S.- Civil Lines, Gaya.
9. Manoj Kumar, Son of Late Kasturi Lal, Resident of Pappu Niwas, Nai Godam, Punjabi Colony, P.S. Kotwali, Gaya.
10. Md. Arif Khan @ Khurram Khan, Son of Late Abdul Jabbar Khan, Mutawalli, Irshad Ali Khan Wakf Estate No. 99, Gaya Resident of Village Karam, P.S. Barachatti, Dist.- Gaya.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10579 of 2017

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Ozair Ahmad Khan, Son of Akhyaiaad Hussain Khan, Resident of Village-Paily, P.O. Bhadeya, P.S. Barachatti, District-Gaya.

.... Petitioner/s

Versus

1. The Sunni Waqf Board through its Chief Executive Officer, Haj Bhawan, 34, Ali Imam Path, Patna.
2. The Chief Executive Officer, Bihar State Sunni Qaqf Board, Haj Bhawan, 34, Ali Imam Path, Patna.
3. Md. Arif Khan @ Khurram Khan Son of Late Abdul Habar Khan, Mutawallai, Irshhad Ali Khan, Waqf Estate, No. 94, Gaya, Resident of Village-Karma, P.S. Barachatti, District-Gaya.
4. Anup Kumar Gupta, Son of Late Sonu Lal, Shop No. 17 (in the name and Style of Sonu Lal and Sons) Pharma Karket G.B. Road, P.S. Civil LInes, Resident of Sri



Makhlautganj, P.S. Kotwali, District-Gaya.
5. Md. Mansur Alam Son of Late Md. Siddique Ansari, Shop No. 15 (in the name of Style of M/s Electrics), Plaza Market, G.B. Road, P.S. Civil Line, District Gaya Resident of Mohalla Old Karimzang, Gali no. 9, P.S., Civil Line, District-Gaya.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 7838 of 2015

Qzair Ahmad Khan @ Ojair Ahmad Khan. S/o Akhyar Hussain Khan, R/o village - Paili, Post Office - Bhadeya, P.S.- Barachatti, District - Gaya, Presently residing at Mohalla - Aliganj, P.S.- Chandauti, District - Gaya.

.... Petitioner/s

Versus

1. The Bihar State Sunni Wakf Board through its Chief Executive Officer, Haj Bhawan, 34 Ali Imam Path, Patna.
2. The Chief Executive Officer, Bihar State Sunni Wakf Board, Haj Bhawan, 34 Ali Imam Path, Patna.
3. Md. Arif Khan @ Khurram Khan. S/o Late Abdul Jabbar Khan, Mutawalli Irshad Ali Khan Wakf Estate No. 99, Gaya. R/o village - Karma, P.S.- Barachatti, District - Gaya.
4. Anup Gupta. S/o Late Sonu Lal, Shop no. 17 (in the name & styled as Sonu Lal & sons), Plaza Market, G.B. Road, P.S.- Civil Line, District - Gaya. R/o 3 Makhlantganj, P.S.- Kotwali, District - Gaya.
5. Md. Mansoor Alam. S/o Late Md. Siddique Ansari, Shop no. 15 (in the name and styled as M.S. Electronics) Plaza Market G.B. Road, Police Station - Civil Line, District - Gaya. R/o Mohalla - Old Karimganj, Gali no. 3, P.S.- Civil Line, District - Gaya.

.... Respondent/s

Appearance :
(In CWJC No.12357 of 2017)
For the Petitioner/s :
For the Respondent/s :
(In CWJC No.10579 of 2017)
For the Petitioner/s :
For the Respondent/s :
(In CWJC No.7838 of 2015)
For the Petitioner/s :
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 06-10-2017

Heard learned counsel for the petitioner and the Bihar



State Sunni Wakf Board (hereinafter referred to as the 'Board').

2. The petitioner in C.W.J.C. No. 12357 of 2017 has moved the Court for the following reliefs:

“ i. For issuance of an order, direction or writ of Certiorari for quashing and setting aside the order dated 30.06.2017 passed by the learned Bihar Waqf Tribunal Patna, whereby and where under the learned Tribunal has been pleased to allow the application filed under order 39 rule 1 and 2 filed on behalf of the Plaintiffs and has further directed the defendant to maintain status quo till the disposal of the suit and defendants have further directed not to make any obstruction in covering the shops of the Plaintiff No. 3 to 10 by means of Tripal or plstic to cover the roofs of the Shop of the Plaintiffs by opening the lock of the stair leading to the roof of the shop and has also directed the defendant to facilitate the Plaintiff in covering the roofs of the shops of the plaintiffs.

ii. For issuance of an order, direction or an appropriate writ for directing the learned Tribunal to stay the further proceeding in T.S. No. 07/16 in view of section 10 of the C.P.C. in view of the pendency of Title Suit No. 10/14 pending before the Learned Tribunal with respect tot eh same suit property between parties litigating under the same title.

iii. For issuance of an order, direction or an



appropriate writ for staying the further proceeding in T.S. No. 07/16 during the pendency of the present writ application.”

3. The petitioner in C.W.J.C. No. 10579 of 2017 has moved the Court for the following reliefs:

“ i. For issuance of an order, direction or writ of Certiorari for quashing and setting aside the order dated 15.02.2017 passed by the Bihar Waqf Tribunal Patna in T.S. No. 10/14 whereby and where under the learned Tribunal has allow the application filed under order 39 rule 1 and 2 filed and has been pleased to direct the parties to maintain status quo with respect to the suit property.

ii. For issuance of an order, direction or an appropriate writ for staying the operation of the aforesaid order dated 15.02.2017 passed by the Bihar Wakf Tribunal, Patna in T.S. No. 10/14 during the pendency of the present writ application.”

4. The petitioner in C.W.J.C. No. 7838 of 2015 has moved the Court for the following reliefs:

“a). To set aside the order dated- 13.3.015 passed T.S. no. 10/2014 by Sri M. J. I. Mallick the learned Presiding Officer, Bihar Wakf Tribunal, Patna whereby and whereunder, the objection petition filed under order 7 rule 11 (D) of C.P.C.



challenging the maintainability of suit by the petitioner/defendant no. 4 has been rejected.

b). To stay the order dated-13-3-2015 passed in T.S. No. 10/2014 by learned Bihar Wakf Tribunal Patna till the disposal of the present writ application.

c). Any other relief/reliefs for which the petitioner is entitled under the facts and circumstances of the case.”

5. At the very outset, learned counsel for the Board raised a preliminary objection and submitted that the matter is still pending before the Bihar Wakf Tribunal (hereinafter referred to as the ‘Tribunal’) and the petitioners being only aggrieved by an interim order of *status quo*, the Court may direct for early disposal of their suit pending before the Tribunal itself. He further submitted that in view of the recent decision of the Hon’ble Supreme Court in the case of **Rajasthan Wakf Board vs. Devki Nandan Pathak** reported as **2017 (2) PLJR (SC) 463**, all these issues are now within the jurisdiction of the Tribunal and have to be decided by it.

6. The property in question is said to have been a Wakf till the year 1973, as claimed by the petitioner, and thereafter pursuant to a deed of absolute sale, it has changed its nature and has become an exclusive private property of the petitioner and thus, according to him, the proceeding before the Tribunal itself not being maintainable, the



interim order is equally misconceived.

7. Learned counsel for the petitioner submitted that the proceeding before the Tribunal in Title Suit No. 7 of 2016 in which the said interim order has been passed itself is not maintainable for the reason that the nature of the property being a Wakf property is not in dispute. It was submitted that if at all the Board was aggrieved by any alienation of Wakf property, it had to invoke the jurisdiction under Section 51 of the Wakf Act, 1995 (hereinafter referred to as the 'Act') and declare the same to be void and thereafter it was required to move under Section 52 of the Act for recovery of possession of the said transferred property. It was submitted that straightaway moving to the Tribunal is not contemplated under law. Learned counsel tried to distinguish the decision of the Hon'ble Supreme Court in the case of **Rajasthan Wakf Board** (supra) by submitting that only when the nature of the suit property is disputed of being a Wakf property, then only subsequent issues based upon the same come within the jurisdiction of the Tribunal. He further submitted that in one of the cases referred to in the aforesaid judgment i.e., **Bhanwar Lal & Anr.vs. Rajasthan Board of Muslim Wakf & Ors.** reported as **(2014) 16 SCC 51**, various exceptions are carved out where the issue can be gone into only by a civil court of competent jurisdiction and the present case also stands covered by such exception. However, on a



specific query of the Court as to how the issue as to whether property in question was Wakf property or not is not under consideration before the Tribunal, learned counsel for the petitioner had no reply to the same.

8. Having considered the facts and circumstances and submissions of learned counsel for the parties, the Court does not find any merit in the present writ petitions. First and foremost, the judgment of the Hon'ble Supreme Court in the case of **Rajasthan Wakf Board** (supra) squarely covers the issue before this Court as the facts of the said case which have been stated in paragraphs no. 6, 7 and 8 of the judgment are similar to the facts of the present case. Moreover and more importantly, just because the petitioner has not denied the fact that till 1973 the property was Wakf property would not mean that the property being a Wakf property is not in dispute. The Court is surprised at the interpretation given by learned counsel for the petitioner that since it is admitted that in the year 1973 the property was Wakf property would mean that the nature of the property being Wakf property is not in dispute. Nothing can be more erroneous, misconceived, misplaced and fallacious in such understanding, for the simple reason that, in the years 2014 and 2016 when Title Suits No. 10 of 2014 and 7 of 2016 were filed before the Tribunal, the central and moot question was that the property was



disputed to be Wakf property as the claim was that it had become a purely private property owned by the petitioner and that too from the year 1973 itself. Thus, clearly as on day the Title Suits were filed, the dispute started with the issue as to whether the property in question was Wakf property, which obviously is denied by the petitioner as he claims that it is not so and it is his private property right from the year 1973. The attempt of learned counsel for the petitioner to take the Court to the facts of **Bhanwar Lal** (supra) of the Hon'ble Supreme Court is equally misplaced for the reason that after considering the said decision and another decision of the Hon'ble Supreme Court, the judgment has been passed in the case of **Rajasthan Wakf Board** (supra). The same categorically states that the question as to whether the property was Wakf property or not can be decided only by the Tribunal and not by the Civil Court, the relevant being at paragraph no. 27 of the aforesaid judgment, and is the direct answer to the submissions made by learned counsel for the petitioner, and thus, has rightly relied upon by learned counsel for the Board.

9. For the reasons aforesaid, the writ petitions stand dismissed.

10. However, it shall be open to the petitioner to raise all the points available to him before the Tribunal itself, which shall be decided by the Tribunal, in accordance with law while finally



deciding the suits.

11. Further, as both the Title Suits are pending before the Tribunal between the Board and petitioner and other similarly situated persons, it would be appropriate that they are heard and disposed off together.

(Ahsanuddin Amanullah, J)

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