

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9143 of 2014

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1. Md. Shamim son of Late Md. Abdul Rajjak resident of Mohalla - Raja Bazar, Khajpura, Police Station - Airport, District - Patna.
 2. Jahan Ara Khatoon widow of Late Asghar Ali, resident of Adalatganj, Police Station - Kotwali, District - Patna.
 3. Mokhtar Alam Saquib @ Md. Mokhtar son of Md. Mustafa resident of High Court Mazar Campus, Police Station - Kotwali, District - Patna.
 4. Naushad Alam @ Md. Naushad Alam son of Late Md. Rafique resident of Mohalla - Choudhary Tola, Raja Bazar, Near Petrol Pump, Police Station - Shastri Nagar, District - Patna.

.... Petitioners

Versus

1. The Presiding officer, Bihar Waqf Tribunal, Patna
2. The Bihar State Sunni Waqf Board , Haj Bhawan, 34, Ali Imam Path, Patna.
3. The Bihar State Sunni Waqf Board through its Chairman, Haj Bhawan, 34, Ali Imam Path, Patna.
4. The Chief Executive Officer, Bihar State Sunni Waqf Board, Haj Bhawan, 34, Ali Imam, Patna.
5. The Principal Secretary, Minority Welfare Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Md. Shamimul Hoda, Advocate

For the State : Mr. Manoj Kumar Sinha, AC to GA-9

For respondent nos. 1 to 4 : Mr. Helal Ahmad, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-11-2017



This writ petition has been filed by the petitioners for setting aside the order dated 31.03.2014 dismissing the appeal against the order passed by the Bihar Waqf Tribunal, Patna (for short 'the Tribunal') in Waqf Appeal N0. 03 of 2013 filed by the petitioners against the order dated 04.10.2012 passed by the Chief Executive Officer, Bihar State Sunni Waqf Board, Patna (for short 'the Board') whereby the petitioners were held encroachers and were ordered to remove their shops from the Waqf land within 15 days from the date of the order.

2. The matter relates to Waqf Estate No. 663 named as Hazrat Syed Shaheed Ghulam Safdar Peer Murad Shah, High Court Mazar Sharif, Patna, popularly known as High Court Mazar Sharif.

3. Initially, the petitioners had filed a writ petition bearing CWJC No. 6416 of 2008 for quashing the letter dated 04.04.2008 issued by the Chief Executive Officer of the Board whereby the petitioners were treated as encroachers and were directed to restore the possession of the shop and land of the Waqf Estate to the Board. The aforesaid CWJC No. 6416 of 2008 was finally disposed of on 04.09.2012 with following observations:-

“The Court will not be inclined to interfere in the Writ Application at this stage, as petitioners must first go and show-cause before the Waqf Board their bona fide and their right to



continue in the property in the circumstances they were inducted. The Board shall after hearing the parties within a fixed time-frame take a final decision on their status.

It goes without saying that if the order passed by the Waqf Board goes against their interest, they will have option available to exercise within the frame-work of law.

The Court expects that all these petitioners will appear within a week with a copy of this Order and the Board after hearing the parties will take a decision preferably within four weeks thereof.

The petitioners would not be disturbed in the meanwhile till the final order is passed by the Waqf Board.”

4. In compliance of the aforesaid order dated 04.09.2012 passed in CWJC No. 6416 of 2008, the petitioners filed their show-cause on 10.09.2012 before the Board. After taking into consideration the show-cause filed by the petitioners and after hearing the parties, the Board, vide order dated 04.10.2012, held the petitioners to be encroachers and their claim of tenancy was not accepted.

5. Being aggrieved by the order dated 04.10.2012 passed by the Board, the petitioners filed Waqf Appeal No. 3 of 2013 before



the Tribunal. The Presiding Officer of the Tribunal, vide order dated 13.03.2013, called for the inquiry report related to the order dated 04.10.2012. The Board submitted its inquiry report and after appreciating the arguments put forth on behalf of the parties and after going through the record, the Tribunal dismissed the appeal and upheld the order passed by the Board, vide its order dated 31.03.2014.

6. The aforesaid order dated 31.03.2014 is under challenge in the present writ petition.

7. Learned counsel for the petitioners submitted that the impugned order has been passed by the Tribunal without application of judicial mind. He submitted that there are serious errors on record and the petitioners have wrongly been declared to be the encroachers. He submitted that there is no correct appreciation of facts and the documentary evidences led before the Board and the Tribunal. They failed to appreciate that the petitioners were *bona fide* tenants of the Waqf property and had produced various rent receipts issued by the competent persons. The order passed by the Chief Executive Officer of the Board is in violation of the provisions prescribed under Section 54 of the Waqf Act and the Tribunal also failed to appreciate that the Board did pass an absolutely illegal order.



8. On the other hand, learned counsel appearing for the Board submitted that there are concurrent findings on fact both by the Board and the Tribunal and the rent receipts produced by the petitioners were not issued by the competent persons. He submitted that the petitioners got allotted different shops under Waqf Estate No. 663 for sufficiently long time in an illegal and arbitrary manner. He submitted that a lease or sub-lease for any period exceeding three years of immovable property, which is a Waqf property, is to be treated to be void and of no effect in view of the provisions of Section 56 of the Waqf Act, 1995. He contended that in case, it is found that the Waqf property has been encroached or mismanaged, the Board has jurisdiction to pass an appropriate order for removal of encroachment from Waqf property and in terms of the aforesaid provisions, the petitioners have rightly been held to be encroachers.

9. I have heard learned counsel for the parties and carefully perused the record.

10. There is no dispute to the fact that the petitioners own shops at Waqf Estate No. 663. It would be evident from the order impugned that a self styled Managing Committee was constituted in 1984, which allotted shops to several persons. The Board and the Tribunal have recorded that one Mustafa and one Israfil Anwar were two persons, who were controlling the Managing Committee. The



petitioner no. 2 Jahan Ara Khatoon is the mother of said Israfil Anwar whereas the petitioner no. 3 Mukhtar Alam Saquib @ Md. Mokhtar is the son of said Mustafa, who was the Secretary of the Managing Committee. The petitioner no. 4 Naushad Alam @ Md. Naushad Alam is brother-in-law of aforesaid Mustafa. The office bearers of the Managing Committee got allotted shops to their kin and kith and realized rent for the name sake as per their own whims and convenience. Having noticed these facts and taking into consideration, the provisions of Section 56 of the Waqf Act, 1995, the Board declared the petitioners to be encroachers.

11. Section 56 of the Waqf Act, 1995 reads as under :-

“56. Restriction on power to grant lease of wakf property.—

(1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction



of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.”

12. A perusal of Section 56 of the Waqf Act, 1995 would make it manifest that any lease or sub-lease for any period exceeding three years of any immovable property, which is Waqf property shall, notwithstanding anything contained in the deed or instrument of Waqf or in any other law for the time being in force, be void and of no effect. It further states that a lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property, which is Waqf property shall, notwithstanding anything contained in the deed or instrument of Waqf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

13. It is the case of the Board that no such sanction was ever accorded for tenancy of the petitioners. The fact that there is no previous sanction of the Board in respect of lease of Waqf property to the petitioners has not been disputed by the petitioners.



14. At this stage, it would also be relevant to extract the provisions prescribed under Rule 49 of the Bihar Wakf Rules, 2002, which reads as under :-

“49. Procedure for leasing out the Wakf property, shops, buildings vacant land or space under Sub-Section (3) of sections 56 of the Wakf Act –

(1) Where any *Mutawalli*/ an official authorized/ Secretary of Managing Committee intends to develop or let out any Wakf property under sub-section (3) of Section 56 of the Wakf Act the *Mutawalli*/ an Official authorized/ Secretary of the Managing Committee shall take permission from the Board and shall proclaim publicity and affix notices on conspicuous part of the Wakf Board, Mosque, Dargah or Imambara as well as at some conspicuous place of the Wakf property where it is situated and shall also publish the notice of this effect at least in one Urdu daily paper of having circulation relating to the proposed project for development project or proposed Wakf property to be let out inviting public tenders on a fixed date and time in sealed cover regarding their offer of Salami or advance money or donation for religious purpose or monthly rent of the property.

(2) On receipt of the sealed cover public tenders along with earnest money fixed by the



Board, it would be opened on the same day in presence of the Chief Executive Officer or in presence of any person authorized by him and the tenderer or their representatives.

(3) The *Mutawalli*/an Official authorized/ Secretary of Managing Committee in the presence of Office bearers of District Wakf Committee authorized officer and the authorized officer shall prepare a list of all tenders received in order of tenders offering more benefits to the Wakf and shall submit a report to the Chief Executive Officer or the Board as the case may be along with his recommendation.

(4) The Board shall consider the recommendation received under Sub-Rule (3). The priority shall be given to the person or institution offering to the highest tender. While granting sanction U/s 56(3) of the Act for lease or sub-lease or renewal thereof, the Board may review terms and conditions on which the lease or sub-lease or tenancy is proposed to be granted.

Provided that the Board shall have all right to accept or reject any or all the tenders without assigning any reason.”

15. A perusal of Rule 49 of the Bihar Waqf Rules, 2002 would make it evident that if any Motawalli official authorized/ Secretary of the Managing Committee intends to develop or let out



any Waqf property under sub-section (3) of Section 56 of the Waqf Act, the Motawalli/ an official authorized/ Secretary of the Managing Committee would be required to take permission from the Board and would proclaim publicity and affix notices on conspicuous part of the Waqf Board, Mosque, Dargah or Imambara as well as at some conspicuous place of the Waqf property where it is situated and would also be required to publish notice of this effect at least in one Urdu daily paper of having circulation relating to the proposed project for development project or proposed Waqf property to be let out inviting public tenders on a fixed date and time in sealed cover regarding their offer of salami or advance money or donation for religious purpose or monthly rent of the property.

16. It is not the case of the petitioners that any steps, as provided under Rule 49 of the Bihar Waqf Rule, 2002, were ever taken before inducting the petitioners as tenants of the Waqf property.

17. I find that the Board and the Tribunal have rightly taken into consideration the aforesaid provisions of the Waqf Act, 1995 and Bihar Waqf Rule, 2002 before coming to the conclusion that the petitioners are encroachers. I also find that the facts and law invoked in the case have been appreciated both by the Board and the Tribunal. No illegality could be pointed out by the petitioners in



order to show that there is any error on appreciation of facts or law.

18. Resultantly, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2017
Transmission Date	NA

