

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16449 of 2010

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Anjani Kumar Sinha S/O Late Awadh Prasad R/O Vill.- Ishapur, P.S.- Khusrupur, Distt.- Patna, At Present Residing At Mohalla- Rajendra Nagar, Road No. 6a, P.S.- Kadamkuan, Town And Distt.- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Patna.
3. The Additional Collector, Patna
4. The Deputy Collector, Land Reforms, Patna City, Distt.- Patna
5. Sub-Divisional Officer, Patna City, Distt.- Patna.
6. Circle Officer, Khusrupur, Khusrupur Block, Khusrupur, Distt.- Patna
7. Officer-In-Charge, Khusrupur Police Station, Distt.- Patna
8. Circle Inspector, Khusrupur Circle Office, Distt.- Patna
9. Chairman, Bihar State Sunni Wakf Board 2nd Floor, Haj Bhawan, 34, Ali Imam Path, Harding Road, Patna-1
10. Chief Executive Officer, Bihar State Sunni Wakf Board 2nd Floor, Haj Bhawan, 34, Ali Imam Path, Harding Road, Patna-1
11. Shamimul Haque S/O Not Known R/O Vill.- Khirodharpur, P.S.- Khusrupur, Post- Fathua, Distt.- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. KUMAR HARSHBARDHAN
For the Respondent/s : Mr. (AAG8)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 20-06-2017

Heard learned counsel for the petitioner, learned counsel for the respondent nos.9 and 10, learned counsel for the respondent no. 11 and the learned counsel for the State.

2. At the very outset, learned counsel appearing for the petitioner confines his submission only with regard to relief no.2 as well as relief no.4 and so far as the rest reliefs are concerned, learned



counsel for the petitioner does not want to press the aforesaid reliefs.

3. By relief no.2, the petitioner has sought for quashing of the order of handing over the charge of the land of the petitioner to respondent no. 11 Shamimul Haque on 25.08.2010 and so far as relief no.4 is concerned, the petitioner has sought for restoration of his possession over disputed land..

4. It would appear from perusal of Annexure-12 to the writ petition that on 24.08.2010, the S.D.O Patna City, Patna, talked with Circle Officer, Khusrupur, who directed the Circle Officer, Khusrupur, to go alongwith the Officer Incharge to the disputed lands and to stop the construction work, which was being done by the petitioner on the disputed lands, and to appoint the Chowkidar on the disputed lands. Thereafter, on 25.08.2010, the concerned respondents took the possession over the aforesaid lands and handed over the same to the respondent no. 11.

5. Submission on behalf of the petitioner is that the petitioner was ejected by the concerned respondents without adopting the legal procedure as prescribed under the law and, as a matter of fact, petitioner was forcibly dispossessed from the lands in question he further submits that even a trespasser cannot be ejected without adopting the legal procedure. Learned counsel for the petitioner relied upon the decision of the Apex Court, **reported in AIR 1989**



Supreme Court 997, wherein it has been held that even after expiry of lease period, lessee can resume the possession and the possession can be resumed by the Government only in a manner known to or recognized by law. He also relied upon the decision of **Krishna Ram Mahale (dead) by his L.Rs. Vs. Mr. Shobha Venkat Rao, reported in AIR 1989 Supreme Court 2097** in which it has been held that even if a person has no right to remain in possession of the property, he can only be removed after adopting due procedure of law. Relying on the above stated decisions, learned counsel for the petitioner seeks help of this Court for restoration of his possession over the disputed lands.

6. On the other hand, learned counsel appearing for the respondent no.11 refuted the above stated submissions arguing that the disputed lands are a Waqf property as the said disputed lands, in cadastral survey, were recorded in the name of Mosque but the mother of the petitioner having played fraud got opened Jamabandi of the aforesaid disputed plots in her name. Subsequently, when it came to the notice of Waqf Board, the Waqf Board sent a requisition to the competent authority for cancellation of the aforesaid Jamabandi and restoration of possession of the Waqf Board over the disputed lands and, thereafter, the competent authority instituted a miscellaneous case in which the recommendation for cancellation of Jamabandi



recorded in the name of the mother of the petitioner was made to the concerned authority but, in the meantime, petitioner started construction over the disputed lands and, thereafter, at the direction of S.D.O., Patna City, the Circle Officer along with police officials went to the disputed lands and stopped the petitioner from making any construction over the disputed lands and, subsequently, the possession of the disputed lands was taken with an object to preserve the property of the Waqf Board. Learned counsel appearing for the respondent no.11 further submits that it is not in dispute that in the cadastral survey, entry of Mosque was made in the C.S. Khatian of disputed lands and, subsequently, the Jamabandi of the disputed lands was opened in the name of mother of the petitioner. However, in course of inquiry, it was found that the Jamabandi of the disputed lands was illegally opened in the name of the mother of the petitioner and, moreover, it is an admitted position that on the basis of recommendation sent by the Waqf Board, the miscellaneous case was instituted and the petitioner was noticed but he avoided to response the said notice and, lastly, the recommendation for cancellation of Jamabandi recorded in the name of the mother of the petitioner was made.

7. Learned counsel appearing for the State as well as learned counsel appearing for the Waqf Board conceded the above



stated submission of learned counsel of the respondent no.11.

8. It is not in dispute that the learned counsel for the petitioner has confined his submission only with regard to relief nos. 2 and 4, that is, for illegal ejectment of the petitioner as well as for restoration of his possession over the disputed lands and, therefore, this Court is not going to decide this fact as to whether the disputed property is a waqf property or not and, therefore, in my view, there is only question before this court as to whether the petitioner has legally been ejected from the disputed lands or not and, furthermore, as to whether petitioner is entitled to get restoration of his possession over the disputed lands or not.

9. Section 52 of the Waqf Act 1995 says that if after inquiry, the Waqf Board comes to the conclusion that any immovable property of a wakf entered as such in the register of wakf has been transferred without previous sanction of the Board, the concerned Board may send a requisition to the Collector to obtain and deliver possession of the aforesaid property to it. Furthermore, the sub section(2)of aforesaid Section 52 of the Act says that on the receipt of the requisition, the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of 30 days from the date of service of the order. Sub section(3) of the aforesaid Section 52 of the Act describes the



procedure by which the aforesaid order of the Collector shall be served upon the concerned person. Sub Section(3) of the aforesaid Section 52 of the Act says that the order passed by the Collector shall be served to the person by giving or tendering the order, or by sending it by post to the person for whom it is intended and if such person is not found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates.

10. Admittedly, in this case, the miscellaneous case was instituted for cancellation of Jamabandi which had been opened in the name of the mother of the petitioner and, after inquiry, the Circle Officer recommended for cancellation of the aforesaid Jamabandi but the petitioner does not want to challenge the order of circle officer in this writ petition and, therefore, the finding of C.O is not subject matter of this writ petition.

11. Learned counsel for the respondent no. 11 drew my attention towards Annexures, annexed with supplementary counter affidavit, and submits that in miscellaneous case, notice was given to the petitioner and the ejectment of the petitioner has been made in pursuant to the order passed in miscellaneous case but I am not at all convinced with the aforesaid submission because in the present



matter, the procedure, as prescribed under section 52 of Waqf Act 1995, has not been complied with and the order dated 25.08.2010 itself goes to show that the concerned Circle Officer proceeded only on the oral direction of concerned S.D.O. which is not in accordance with law. It has already been set at rest by the Apex Court in several decisions, that even trespasser cannot be deprived of his possession without adopting the established legal procedure and, therefore, in my view, the concerned authorities, that is, circle officer and others committed illegal act in ejecting the petitioner from the disputed lands without adopting the established legal procedures as prescribed in the Waqf Act 1995 and, therefore, in the aforesaid circumstance, this Court has no option except to direct the respondent no.11 to hand over possession of the disputed lands to the petitioner within two weeks from today, failing which the petitioner may take legal recourse in accordance with law.

12. In the aforesaid manner, this writ petition stands disposed of on admission stage itself.

13. It is made clear that the petitioner may challenge the recommendation of cancellation of Jamabandi in accordance with law and if petitioner does so, this order shall not cause any prejudice to the petitioner. The Circle Officer, Khusrupur, respondent no. 6, shall ensure the compliance of order of this Court within the above stated



period, failing which this Court shall take serious view against him. It is also made clear that the concerned authorities may proceed in accordance with law against the petitioner and if they do so, this order shall not cause any prejudice to them also.

(Hemant Kumar Srivastava, J)

N.K/-

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