

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 14379 of 2015

Along with

Interlocutory Application No. 510 of 2016

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Farhat Bano Wife of Late Akbar Ali, Resident of Digha, Bans Kothi, Masjid Lane
No. 96, P.S. Digha, District Patna.

.... Petitioner/s

Versus

1. The Principal Secretary, Minority Welfare Department, Haj Bhawan, 34 Ali
Imam Path, Patna.

2. The Chief Executive Officer, Bihar State Sunni Wakf Board, Patna.

3. Md. Jameel, son of late Abdul Rahim @ Lallak Mian (since deceased)

(i) Md. Chand

(ii) Md. Islam

(iii) Matin @ Aashique

(iv) Irfan @ Phuddi

Nos. (i) to (iv) sons of late Md. Jameel

(v) Roshan Ara

(vi) Kausar Jahan

Nos. (v) to (vi) daughters of late Md. Jameel

All are resident of Gate No. 96, Bahs Kothi, Digha Ghat, Masjid Lane, P.O. and
P.S. Digha, Distt Patna-800011

4. District Magistrate-cum- Collector, Patna

5. Senior Superintendent of Police, Patna

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Syed Firoz Raza, Advocate

For the Respondent : Mr. Nirmal Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 02-03-2017

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 510 of 2016



The present Interlocutory Application has been filed by the petitioner for restoration of possession of Shop No. 13 of Aranda Wakf Estate No. 482 near Kotwali Junction in the city of Patna.

Learned counsel for the petitioner submitted that pursuant to the order impugned in the writ petition by which the shop, which was in the tenancy of the petitioner from 1989 onwards, was forcibly evicted by the district administration at the request of the Bihar State Sunni Wakf Board, Patna (hereinafter referred to as the 'Board') and the same has been carried out on 13.01.2016. As the matter is directly connected with the relief sought for in the main writ application, Interlocutory Application No. 510 of 2016 stands allowed.

The prayer of the petitioner for restoration of possession of his shop shall form part of the relief sought for in the main writ application.

Re.: Civil Writ Jurisdiction Case No. 14379 of 2015

The challenge in the present writ application was to the judgment dated 28.08.2014 passed by the Bihar Wakf Tribunal, Patna (hereinafter referred to as the 'Tribunal') in Case No. Wakf Appeal No. 16 of 2011 as well as the order passed pursuant to the same dated 22.05.2015 by the Chief Executive Officer of the Board



by which the petitioner has been directed to hand over vacant possession of the shop in question to the Board.

The respondent no. 3 was originally a tenant of the shop in question from the year 1966 but in the year 1979 a notice was issued by the Board dated 16.10.1979 calling for clearance of arrears of rent for the period August, 1975 to October, 1979. The same was not done and finally the husband of the petitioner was inducted as a tenant in the year 1989, after clearing all the past arrears of the respondent no. 3 with regard to the said shop, and thereafter the Board has been granting him rent receipt regularly and he has also got electric connection in his name. In the year 2008, the respondent no. 3 filed Title Suit No. 347 of 2008 before the Sub Judge-I, Patna which was dismissed by order dated 12.07.2011 on account of want of jurisdiction in light of the Wakf Act, 1995 (hereinafter referred to as the 'Act'). The respondent no. 3 then moved the Board and by order dated 19.05.2008, his request for being accepted as tenant in place of the petitioner's husband was rejected. The respondent no. 3 preferred Case No. Wakf Appeal No. 16 of 2011 challenging the said order and, by order dated 28.08.2014, the Tribunal has set aside the order dated 19.05.2008 observing in favour of the respondent no. 3 and has remanded the matter to the Board. Pursuant to such remand, the Board has passed order in favour of the respondent no. 3 directing the



petitioner to hand over the possession of the shop to the respondent no. 3. The said two orders are under challenge in the present writ application.

Learned counsel for the petitioner submitted that the original order of the Board dated 19.05.2008 was just and fair and the interference by the Tribunal is unwarranted. Learned counsel submitted that the Tribunal has only gone on the premise that because the shop was originally given to the respondent no. 3 and the petitioner's husband had committed breach of trust due to the circumstances and situation faced by the respondent no. 3 where he had to give the shop for running to the husband of the petitioner due to him having met with an accident in the year 1988-89 and his two sons, being mentally challenged, the tenancy in favour of the respondent no. 3 was upheld, which is contrary to the facts and circumstances of the case. Learned counsel submitted that the respondent no. 3 had himself admitted that after meeting with an accident in the year 1989, he had entrusted the shop to the husband of the petitioner, which clearly implicates that the handing over of possession was voluntary. Learned counsel further submitted that once the possession was handed over by the respondent no. 3 and the husband of the petitioner having been accepted as a tenant by the Board and monthly rent receipt having been granted in his favour and



also electric supply having been installed in the premises in his name, he has perfected his right to remain as a tenant, till otherwise evicted after following the due procedure in law. Learned counsel submitted that this aspect has not been taken note of by the Tribunal, which has gone on the presumption that after 1989, the original tenant was the respondent no. 3, on the ground that the husband of the petitioner committed breach of trust. Learned counsel submitted that there is neither a finding of any breach of trust nor the Tribunal has the jurisdiction to arrive at such finding. Learned counsel submitted that subsequently the Board has passed an order in favour of the respondent no. 3 only in view of the order passed by the Tribunal. Learned counsel further submitted that the direction given by the Board requesting the district administration for getting the shop vacated by force is unsustainable as no such power is vested in the Board under the Act. Learned counsel submitted that due to the erroneous order passed by the Tribunal followed by the consequential order of the Board and the illegal act of the district administration, he has been evicted and his possession deserves to be restored.

Learned counsel for the respondents no. 3 (i) to (vi) submitted that the petitioner's husband is the nephew of the respondent no. 3 and because of having met with an accident and not in a position to run the shop and both his sons not being mentally fit,



he had given the shop to the husband of the petitioner for running the same. He submitted that there was no intention of the respondent no. 3 to transfer the tenancy of the shop in favour of the husband of the petitioner and when he became aware of the activities of the husband of the petitioner, by which he had managed to get his name registered as tenant with the Board and also get electric connection in his name, he had filed Title Suit No. 347 of 2008 before the Civil Court but because of the provisions of the Act, the same was dismissed on 12.07.2011 and thereafter he had moved the Board and the Tribunal. Learned counsel submitted that the admitted position is that the respondent no. 3 was a tenant and without him having been removed, the husband of the petitioner could not have become a tenant. Learned counsel further submitted that this Court may not interfere in the matter as the conduct of the husband of the petitioner is dishonest as he has cheated the respondent no. 3 by surreptitiously getting his name registered with the Board as a tenant and getting the electric connection and, thus, the Court may not intervene in the matter as the petitioner has not come with clean hands.

Upon being called, learned counsel for the State was not in a position to assist the Court. The Court, thus, has not got any assistance from the learned State Counsel.

Nobody appears on behalf of the Board despite copy



of the application having been served on learned counsel appearing for the Board in August, 2015 and name of learned counsel appearing in the cause list. The Court, thus, has also not got the opportunity of being assisted by learned counsel appearing for the Board.

Having considered the rival contentions, the Court is of the opinion that the orders impugned as well as the eviction of the petitioner from the shop in question cannot be sustained. The petitioner admittedly was in peaceful possession of the shop in question at least from the year 1989. Even the respondent no. 3 admitted before the Board as well as the Tribunal that the husband of the petitioner was given the shop for running it as he had met with an accident in the year 1989. Thus, to that extent, the petitioner's husband coming into possession of the shop was valid to the extent that at least the respondent no. 3 is precluded from challenging such occupation as he himself had given possession of the shop, may be for running it. Secondly, the Board also accepted the petitioner's husband as a tenant and was regularly issuing rent receipt to him and he had also taken electric connection in his name. Finding recorded in the order of the Tribunal that there was a receipt in favour of the respondent no. 3 of the year 1974 would not be of much consequence as the husband of the petitioner never claimed that he was in possession prior to 1989. The electric bill of the year 1987 in the



name of the respondent no. 3 is likewise of no consequence for the reason that it is much prior to 1989 when the husband of the petitioner came in possession of the shop and was running it which is even admitted by the respondent no. 3 himself. Once, by conduct, the respondent no. 3 had himself voluntarily, without any pressure, handed over the possession of the shop to the husband of the petitioner and since then him having run the shop with due rent receipt granted by the Board, and also there being electric connection in his name, the respondent no. 3 could not have challenged such position after nineteen years, in the year 2008 and could not have asserted his right in the manner he has chosen. The respondent no. 3, thus, by his own conduct, has waived his rights with regard to being a tenant under the Board of the shop in question. This is one aspect of the matter. The other more serious aspect of the matter is that after remand by the Tribunal and passing of order in favour of the respondent no. 3, the shop in question has been got vacated by evicting the petitioner through use of force by the district administration. Under the Act, the Board has power under Section 52 to recover the wakf property transferred in contravention of Section 51 by sending requisition to the Collector within whose jurisdiction the property is situated to obtain and deliver possession of the property to it. Section 51 of the Act clearly restricts such transactions



to properties which are subject matter of gift, sale, exchange or mortgage. In the present case, the matter does not relate to gift, sale, exchange or mortgage and is purely a tenancy matter. Thus, in the considered opinion of the Court, the requisition of the Collector for getting the shop evicted is not available to the Board and clearly such requisition is bad in law and the subsequent action of the Collector in getting the shop evicted is unsustainable.

Learned counsel for the respondents no. 3 (i) to (vi) has not been able to show to the Court any provision with regard to the Board having any power to request the Collector for getting any tenant removed.

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In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in the case of **Ramksh Gobindram vs. Sugar Humayun Mirza Wakf** reported as (2010) **SCCR 919** where at paragraph no. 22 it has been held as under:

“22. In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a Wakf



property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly Wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed.”

Similarly, the Hon’ble Supreme Court in the case of **Faseela M. v. Munnerul Islam Madrasa Committee** reported as **AIR 2014 SC 2064** has also taken a similar view where at paragraph no. 17 it has been held as under:

“17. The matter before us is wholly and squarely covered by Ramesh Gobindram (AIR 2010 SC 2897 : 2010 AIR SCW 5185). The suit for eviction against the tenant relating to a waqf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act.”



From the aforesaid decisions of the Hon’ble Supreme Court it is clear that even if the tenancy in favour of the late husband of the petitioner was cancelled by the Board, the actual and physical eviction could only be through the Civil Court of competent jurisdiction.

For the reasons aforesaid, the writ petition stands allowed. The order dated 28.08.2014 passed by the Presiding Officer of the Tribunal as well as the consequential order dated 22.05.2015 of the Chief Executive Officer of the Board are set aside. The action of the petitioner being evicted from the shop in question forcibly by use of police force on 13.01.2016 is also held to be illegal. The District Magistrate-cum-Collector and Senior Superintendent of Police, Patna as well as the respondent no. 2 are directed to restore the possession of the shop in question to the petitioner within one week from the date of copy of this order being produced before them.

Learned counsel for the petitioner is permitted to implead the District Magistrate-cum-Collector, Patna and the Senior Superintendent of Police, Patna as respondents no. 4 and 5. Let necessary correction be made during the course of the day.

(Ahsanuddin Amanullah, J)

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