

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24192 of 2013

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Ashok Das S/O Sri Jugeshwar Das, Resident of Village- Maninda, Police Station-
Sheikhpura And District- Sheikhpura.

.... Petitioner/s

Versus

1. The State Of Bihar through the District Magistrate, Sheikhpura.
2. The Sub Divisional Officer, Sheikhpura.
3. The President Officer the Bihar Waqf Tribunal, Old Secretariat, Patna.
4. The Bihar State Sunni Waqf Board, 34 Haj Bhawan, Harding Road, Ali Imam Path, Patna through Its Chief Executive Officer.
5. The Chief Executive Officer, The Bihar State Sunni Waqf Board, 34 Haj Bhawan, Harding Road, Patna.
6. Ifranul Haque S/O Late Nijiamul Haque Resident of Village and P.O- Maninda, Police Station- Sheikhpura, District- Sheikhpura, At Present Mutawalli, Sunni Waqf Board, Patna.
7. Syed Khalilur Rahman S/O Syed Azizur Rahman Resident Of Village+ P.O- Maninda, Police Station- Sheikhpura, District- Sheikhpura At Present Mutawalli of Bibi Rayeesun Nissa Wafq Estate No. 956

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Sinha, Advocate
For the State	:	Mr. Rishi Raj Singh, SC-19
		Mr. Akhilesh Kumar Singh, AC to SC-19
For the Waqf Board	:	Mr. Md. Halal Ahamad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 25-08-2017

Heard learned counsel for the petitioner, State and the
Bihar State Sunni Wakf Board (hereinafter referred to as the



‘Board’).

2. The petitioner has moved the Court for the following reliefs:

“That, this is an application for issuance of appropriate writ or writs, order or orders, direction or directions to the Respondent No. 3 that he has no jurisdiction to hear T.S. No. 129/08 filed by the Respondent No. 7, 4 and 5 in view of the letter dated 22/08/2013 vide No. 538 passed by the Anchal Adhikari, Sheikhpura, the information sought under the R.T.I. Act that the suit land involved in T.S. No. 129/08 is not a Waqf property and further direction to the Respondent No. 3 to transfer T.S. No. 129/08 to the court of Sub-Judge 1st Sheikhpura where T.S. No. 30/09 filed by the Respondent No. 6 is pending and/or issuance of appropriate consequential writ or writs under the facts and circumstances of the case since no order of this court has complied with.”

3. The issue involved is as to whether the property in question is a Wakf property or non Wakf property so as to confer jurisdiction on the Civil Court to adjudicate on any *lis* connected with the said property.

4. The petitioner claims to be in possession of a property, which in the official records is a registered Wakf right from the year 1915. However, his claim that in the revenue record i.e., the *Khaitayan*, the same has been recorded as *Gairmazarua Aam* land. Respondents no. 4, 5 and 7 filed Title Suit No. 129 of 2009, before the Bihar Wakf Tribunal (hereinafter referred to as the ‘Tribunal’)



against the petitioner and twenty other persons for declaring the lands in Schedule-1, to be the Wakf property and connected ancillary reliefs. The maintainability of the same was assailed before this Court earlier by the petitioner and others in C.W.J.C. No. 1114 of 2010, which was disposed off by order dated 18.03.2011, in which the Court did not interfere and permitted the Tribunal to hear all concerned and dispose off the preliminary objection as to whether such suit was maintainable before the Tribunal or was required to be filed before the Civil Court of competent jurisdiction. In terms thereof, the Tribunal has passed the order dated 21.10.2011, holding the land to be Wakf land. The same is impugned in the present writ application.

5. Learned counsel for the petitioner submitted that only after passing of the impugned order, the petitioner could get information under the Right to Information Act with regard to the land in question being recorded in the *Khatiyan* as *Gairmazarua Aam*. It was, thus, submitted that when the revenue record shows the land to be *Gairmazarua Aam*, it cannot be said that the same is Wakf property and therefore, the title suit before the Tribunal is not maintainable and the order passed is without jurisdiction. For such proposition, learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **Ramesh Gobindram v. Sugra**



Humayun Mirza Wakf reported as **(2010) 8 SCC 726**, the relevant being at paragraphs no. 22, 32, 33 and 34.

6. Learned counsel for the Board submitted that the contention of learned counsel for the petitioner that only on account of subsequent information received by him on 22.08.2013, showing the land to be *Gairmazarua Aam*, the order passed by the Tribunal shall not become infirm or without jurisdiction for the reason that such contention was already taken before this Court in C.W.J.C. No. 1114 of 2010, filed by the petitioner, and the same has been recorded at internal page 3 of the order passed by the Court on 18.03.2011. It was submitted that a categorical stand was taken that the properties were *Gairmazarua Aam*. Learned counsel submitted that noticing such submission, the Court had required the Tribunal to pass a reasoned and speaking order on such preliminary question as to whether the land was Wakf land and whether the suit was maintainable before the Tribunal. Learned counsel submitted that every fact placed by the petitioner and others before the Tribunal has been considered and on the basis of documentary evidence, both on facts as well as in law, a finding has been arrived. Learned counsel drew the attention of the Court to various portions of the impugned order, especially where it has been held that the Wakf deed is of the year 1915. He submitted that even otherwise, in terms of the existing



law, especially the provisions of the Wakf Act, 1995, the lands are to be considered as Wakf land on the principle of Wakf by user. He submitted that the impugned order has taken into consideration all the points raised in the present writ petition and has also dealt with the facts. Learned counsel also relied upon a 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**, the relevant being at paragraph no. 21 onwards and specifically at paragraph no. 27, for the proposition that even if there was dispute between the party whether the property is Wakf property or not, the question can be decided only by the Tribunal and not by the Civil Court.

7. Having considered the matter, the Court does not find any merit in the writ petition, both on facts as well as in law. The petitioner has not raised any dispute or brought any material on record to dispute the finding of facts recorded in the impugned order. The same not having been done, the finding arrived at, based on such facts, cannot be assailed for the same are logical and flow directly from such facts. It has also not been disputed that there is a Wakf deed dated 01.11.1915, which includes the land involved in the present writ application as well other lands pertaining to Plots No. 1224, 1225, 1003 and 1004, which was also registered on 13.03.1959 with the erstwhile Board as Wakf Estate No. 956. Once the same is



there, the presumption is that the lands are Wakf lands. Mere recording as *Gairmazarua Aam* under the *Khatiyan*, which was of a later date than 01.11.1995, would not change the nature of the land and would not make the property *Gairmazarua Aam*. Further, even with regard to a portion of the land, which has been written as *Kabristan* (Graveyard), as per the provisions of the Act, any graveyard or mosque would automatically become a Wakf and in the present case, admittedly there is a *Masjid* attached to the Graveyard.

8. Moreover, in the instant case, it is peculiar that the person who has approached the Court has relied upon the entry in the *Khatiyan* which shows the land to be *Gairmazarua Aam* but he has neither asserted nor brought on record nor it is his case that he has legally and validly acquired title to such land nor is there any order of mutation or grant of rent receipt by the State of Bihar in his favour. On this principle also, that a person who has a legal right can only come forward to assert the same, that too, before the writ Court, being absolutely not satisfied in the present case, as the petitioner has never asserted or brought any document that he has a legal right and title over the land in question, the writ Court, on this score alone, would not interfere.

9. The relevance by learned counsel for the petitioner on the decision of the Hon'ble Supreme Court in the case of **Ramesh**



Gobindram (supra) is misplaced for the reason, that in the said case, the person asserted that the land which was included in the schedule of the Wakf deed was his private land and that he had right and title over the said land. In such background, the Hon'ble Supreme Court had held that mere inclusion of the land of any other person would not make the suit land a Wakf property and that the Civil Court had jurisdiction to adjudicate. In the present case, at the cost of repetition, the petitioner does not claim any legal right, much less, has brought any material to show how he acquired the right over the land and thus, he cannot have any grievance with regard to the forum, as only the person who can show that he has a legal and valid title to the land in question and that his private land has been included in the schedule of Wakf, can approach the Civil Court of competent jurisdiction. On the other hand, the reliance placed by the learned counsel for the Board on the judgment of the Hon'ble Supreme Court in the case of **Rajasthan Wakf Board** (supra) is apt, for the reason that at paragraph no. 27 of the said judgment the Hon'ble Supreme Court has clearly held " In the first place, the main question involved in the suit was whether the suit land is a Wakf property or not. Plaintiff says that it is Wakf property whereas the defendants say that it is not the Wakf property but it is their self-property. This question, in our opinion, can be decided only by the Tribunal and not by the



Civil Court as has been decided by this Court consistently in **Ramesh Gobindram vs. Sugra Hamayun Mirza Waqf, (2010) 8 SCC 726** and **Bhanwar Lal & Anr. vs Rajasthan Board of Muslim Wakf & Ors., (2014) 16 SCC 51.....”**

10. Accordingly, for reasons aforesaid, the writ petition stands dismissed.

11. However, the petitioner shall be at liberty to contest the suit before the Tribunal.

(Ahsanuddin Amanullah, J)

P. Kumar

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