

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1733 of 2017
IN
Civil Writ Jurisdiction Case No. 2590 of 2014**

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1. Md. Adil son of Late Ibrahim, resident of Village- Mahabali Chak, P.O. and P.S. Habibpur, District- Bhagalpur.
 2. Md. Mojeebur Rahman Khan, son of Late Moinur Rahman Khan, resident of Village- Mohiuddinpur, P.O.+ P.S.- Habibpur, District- Bhagalpur.
 3. Shah Azam, son of Md. Manzoor Khan, resident of Village- Rashalabag, P.O.+ P.S.- Habibpur, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar through the District Collector-cum- District Magistrate, Bhagalpur.
2. The D.C.L.R., Bhagalpur.
3. The Anchal Adhikari, C.D. Block Jagdishpur, District- Bhagalpur.
4. The Bihar State Sunni Wakf Board, Patna through its Chairman.
5. The Chief Executive Officer, Bihar State Sunni Wakf Board, Patna.
6. The Secretary, Bihar State Sunni Wakf Board, Patna.
7. Dr. Haji Mazhar Shakeel, President District Wakf Committee, Tatarpur, Bhagalpur.
8. Janab Md. Ghulam Shabbir, Secretary of the Managing Committee, Wakf Estate No. 2550/13, Resident of Mohalla- Shahganj, P.O.+ P.S.- Habibpur, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binay Kumar, Advocate
For the Respondent/s : Mr. Md.Khurshid Alam -AAG12

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**



(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 09-04-2018

Challenging the judgment dated 6.11.2017 passed in Civil Writ Jurisdiction Case No.2590 of 2014, the petitioners are in appeal before us. The writ application was preferred for a find of declaration from the Writ Court that the appellants have derived title in respect of the land in question by virtue of judgment and decree dated 12.7.1961 in Title Suit No.97/1959/26/1961 passed by learned Munsif 1st Court, Bhagalpur. Even though the contention of the petitioner before the learned Writ Court was with regard to a challenge made to the registration certificate contained in Memo No.236 dated 21.2.2013 issued by the Chief Executive Officer, Bihar State Sunni Waqf Board registering the land in question as Waqf property, in some and substance the ground for such challenge is the contention of the appellants that they are the decree holders in Title Suit No.97 of 1959.

The writ application preferred by the petitioners-appellants were contested by and on behalf of respondent nos.8 and 9, who contended that the property registered as Waqf have been though recorded in the name of State of Bihar as Gair Mazrui Sarv Sadharan but they are Waqf by user as either they are graveyard (Kabristan), Tomb (Mazar) Purbi Karbala, Masjid, Madarsa Moharram Mile,



Dargah. It was also brought to the notice of the learned Writ Court that under Section 7 of the Waqf Act, the Waqf Tribunal is vested with power to determine as to whether any property included in the list of Waqf is a Waqf or not. It was, thus submitted that the petitioners have a statutory alternative remedy to file a suit under the Bihar Waqf Tribunal for cancellation of registration of properties as Waqf property.

In the aforesaid view of the matter, the learned Writ Court refused to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India and held that the petitioners may avail the statutory remedy of appeal.

Learned counsel representing the appellants has assailed the impugned judgment of the learned Writ Court once again contending before us that the learned Writ Court could not appreciate that the properties which have been registered as Waqf properties were subject matter of title suit and there is an adjudication of competent Civil Court holding that these properties are of the petitioners-appellants.

Learned counsel submits that once they have got a judgment and decree of a competent Civil Court, relegating them to the remedy of statutory appeal would not be just and proper.



On the other hand, learned counsel representing the respondents would submit that the claim of the petitioners-appellants that they have acquired the land in question by virtue of a decree of a Civil Court may be examined by the Tribunal and any finding which will have an effect of deciding the question of title or possession need not be adjudicated by a Writ Court. It is submitted that the learned Writ Court has rightly dismissed the writ application on finding that the petitioners have got an alternative statutory remedy of appeal before the Waqf Tribunal.

Having heard learned counsel for the parties and on perusal of the records, we find that for purpose of setting aside Annexure-‘1’ to the writ application which is the registration certificate under challenge in the writ application, the contention of the petitioners as to their claim of title and possession may be required to be considered and gone into.

In our considered opinion, a Writ Court under Article 226 cannot and should not assume role of a fact finding body that too where a statutory remedy of appeal is provided under Section 7 of the Waqf Act. The Tribunal, being an appellate forum, will be competent to decide all issues including the question of fact. We express no merit on the contention of the appellants. There is no illegality or infirmity



in the judgment of the learned Writ Court.

The Letters Patent Appeal, being devoid of merit is,
thus, hereby dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
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