

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1054 of 2015

In
Civil Writ Jurisdiction Case No.8992 of 2008

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Amar Nath @ Bunti son of Late Jagannath Prasad resident of Mohalla -
Pahal Gola, Chapra, P.O. Sahebganj, P.S. Chapra, District Saran.

... .. Appellant/s

Versus

1. The State of Bihar through District Magistrate , Saran
2. Sub Divisional Magistrate, Chapra, Saran.
3. Bihar State Sunni Waqf Board through its Chairman, Haz Bhawan, 34, Ali Imam Path, Patna.
4. Chief Executive Officer, Bihar State Sunni Waqf Board, Haz Bhawan, 34, Ali Imam Path, Patna.
5. The Chairman, Bihar State Sunni Waqf Board, Haz Bhawan, 34, Ali Imam Path, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Siyaram Sahi Advocate Mr. Ashok Kumar Advocate Mr. Harsh Roy Advocate
For the Respondent/s	:	Mr. Anil Kumar AC to SC-8
For the Wakf Board	:	Mr. Md. Helal Ahmad Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 16-01-2018

Heard learned counsel for the parties.

Appellant was the petitioner before the writ Court. He assailed the decision or the order, dated 05.04.2007, issued by the Chief Executive Officer, Bihar State Sunni Wakf Board, Patna, directing the appellant and others to remove encroachment from the Wakf property and hand-over possession thereof to the



Muttawalli of Wakf Estate No. 373, Mohalla – Sarkari Bazar, Karim Chak, Post – Chapra, District – Saran. The communication, dated 05.04.2007 was issued under the purported exercise of power under Section 54 of the Wakf Act, 1995, read with Rule 46 (3) of the Wakf Rules, 2002.

Since the Learned Single Judge dismissed the writ application and permitted the appellant to move the Wakf Tribunal against the said decision, the appeal has been preferred against the said order.

Submission of the counsel for the appellant is that there are enough materials and evidence on record to show that the Wakf property was settled in favour of the appellant or their ancestors by a conscious decision taken under the provisions of 1947 Wakf Act. The conscious decision was taken by the Majlis on the recommendation of the Mutawalli and alienation of immovable property was permissible under the 1947 Act and in this regard attention of the Court has been drawn to Section 27(2)(j).

The decision of the Majlis is available on record. Even a civil dispute arising out of such a decision culminated in favour of the appellant or his fore-fathers. If that be so, then by no argument can it be said that the appellant happens to be an encroacher of the Wakf property. His continuance or occupation is under a settlement, which has been in existence since 1938.



Another matter of significance is that the Bihar Wakf Act, 1947 was followed by Bihar Wakf (Amending and Validating) Act, 1950, wherein the validation of the establishment of Majlis and all acts and decisions taken by them under the previous enactment and provision was deemed to be as good and effectual as if such orders, bye-laws, powers, duties, acts or things had been issued, made, exercised, performed or done by a Majlis, validly established under the said Act.

Obviously, this aspect of law seems to have been missed out by the Learned Single Judge and, therefore, holding that the Chief Executive Officer had due powers to throw out any person or every person in occupation of Wakf property seems to be a misplaced reasoning.

The Court reaffirms that the status of the present petitioner is not that of an encroacher, therefore, the decision and the order impugned in the writ application, dated 05.04.2007, issued by the Chief Executive Officer of the Sunni Wakf Board, deserves to be quashed and is quashed. As a consequence thereof, the order of the Learned Single Judge, dated 08.01.2015, dismissing the writ application and relegating the appellant to the Wakf Board Tribunal is also set aside and the appeal is allowed.



Before parting, however, the Court is of the opinion that the Chief Executive Officer, does not, obviously, seem to be well versed with law and he has enough powers under the Statute, but then a wrong exercise of power can never be given indulgence to.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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