

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17092 of 2012

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Shahida Khanam, widow of Late Peer Murshid Hazarat Israul Haque Khan Saheb
of Mohalla - Asifganj, P.O. & P.S. and District - Azamgarh (U.P.), presently
Mohalla - Banaulia Ward No. 11, within Bihar Sharif Municipal Corporation, Bihar
Sahrif Town, District - Nalanda

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Urban Development Department,
Government of Bihar, New Secretariat, Patna
2. The Bihar Sharif Municipal Corporation through Its Major
3. The Municipal Commissioner (Nagar Ayukta), Bihar Sharif Municipal
Corporation at Bihar Sharif Town, P.S. & District - Nalanda
4. Md. Khalid Father's name not known to the Petitioner Of Banaulia, Ward No.
11 Within Bihar Sharif Municipal Corporation At Bihar Sharif Town, District
Nalanda

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shabbir Ahmad, Advocate
Mr. Anil Kumar Saxena, Advocate
For Municipal Corporation: Mr. Gyan Prakash Ojha, Advocate
For respondent no. 4: : Mr. Abdul Mannan Khan, Advocate
Mr. Binay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-04-2018

Heard Mr. Shabbir Ahmad, learned counsel for the
petitioner, Mr. Gyan Prakash Ojha, learned counsel for the
Municipal Corporation and Mr. Abdul Mannan Khan, learned



counsel for respondent no. 4.

2. In the instant writ petition, the petitioner has prayed for quashing of the order dated 19.04.2012 passed in Case No. 149/B/07 by the Municipal Commissioner, Biharsharif whereby he has dismissed the said case with observation that if so advised, the applicant may seek a remedy before the competent court. The petitioner has further prayed that a direction be issued to the respondents to mutate his name over Holding No. 231-A situated in Ward No.11 of Biharsharif Municipal Corporation.

3. Earlier, on 14.09.2012, while disposing of the writ petition this Court had directed the Municipal Commissioner, Biharsharif to record the holding in question in the name of the petitioner within a reasonable time, not exceeding two months from the date of receipt/production of a copy of the order. By the said order dated 14.09.2012, this Court had also granted liberty to the objectors to seek a declaration in the competent civil court that Holding No. 231-A is a public religious place. The aforesaid order dated 14.09.2004 was challenged in appeal before the Division Bench vide LPA No.170 of 2013 and the Division Bench vide its order dated 19.06.2013 while allowing the appeal remanded the matter back for fresh consideration as the writ petition was allowed in absence of any counter-affidavit on behalf of respondent no. 1.



4. Mr. Shabbir Ahmad, learned counsel appearing for the petitioner submitted that the petitioner's husband Peer Murshid Hazrat Israrul Haque Khan Saheb owned a piece of land partly by purchase through registered sale deed and partly through waqf deed executed by his followers. He was the spiritual teacher of religious doctrine of Sunni sect. In Bihar Sharif too, he purchased 9 decimals of land bearing plot nos. 269 and 272 and adjacent to it 9 decimals of land was dedicated to him by his followers in Tauzi No. 10646, Thana No. 113, Khata No. 73, Survey Plot No. 272 (part) situated at Wazidpur Banaulia, Bihar Sharif, District- Nalanda through a registered wakf deed. After acquiring altogether 18 decimals of land, the said Peer Murshid Hazrat Israrul Haque Khan Saheb constructed a Khankah upon Holding No. 231-A which is known as Khankah Asaria Sajjadanashin and remained spiritual head of the Khankah till his last breath. After his death, the petitioner moved before the respondent Municipal Commissioner, Bihar Sharif for getting the land of Holding No. 231-A, Ward No. 11, Banaulia, Bihar Sharif mutated in her name. Accordingly, a mutation case no. 149-B of 2007 was registered. Respondent No. 4, Md. Khalid filed an objection petition claiming himself to be the Secretary of Khankah Committee and raised objection over mutation of the property in question in favour of the petitioner. He submitted that



respondent no. 4 has been set up by people having vested interest with ulterior motive to grab Khankah property. According to him, it is well-settled that a private Khankah is managed by founder, who has absolute right to nominate his successor. Since the founder Peer Murshid Hazrat Israrul Haque Khan Saheb had nominated his younger son Fafiz Misbahul Asrar as successor Sajjadanashin of the Khankah and he has attained majority and is empowered to manage affairs of Khankah under the guidance of her mother, the property ought to have been mutated in the name of the petitioner by the Municipal Commissioner, Bihar Sharif vide order dated 19.04.2012 but the same has illegally been rejected by the Municipal Commissioner. He submitted that the order of Municipal Commissioner is arbitrary and bad in law and is liable to be quashed.

5. On the other hand, learned counsel appearing for respondent Municipal Commissioner submitted that on the objection petition filed by respondent no. 4, the appellant sought for spot inspection on 19.04.2012 of Holding No. 231-A. In course of spot inspection, it was found that Holding No. 231-A is in the name of Peer Murshid Hazrat Israrul Haque Khan Saheb and it is a public place for offering *Ibadat* and, hence, it would not be proper to enter the holding in the name of any other person. He submitted



that it also revealed during spot inspection that after the death of husband of the petitioner Peer Murshid Hazrat Israrul Haque Khan Saheb, public place was managed by disciples of late Peer Murshid Hazrat Israrul Haque Khan Saheb and the property has been mutated in the name of Md. Ahsanurul Haque Saheb in land revenue record, which would be apparent from receipt no. 221231 dated 26.09.2006. The petitioner while making application on 20.08.2007 for mutation of holding in question had filed a forged death certificate in which the death of her husband had been shown to be 20.08.2007 whereas he had died on 20.03.1997 itself and date of registration had been shown to be 11.09.2007 so that no question as to delay of 15 years in filing application for mutation could be raised. He submitted that in the waqf deed in favour of Peer Murshid Hazrat Israrul Haque Khan Saheb, it is clearly mentioned that the waqf property shall be used for the construction of mosque, khankah, etc. and the income of waqf property should be used specially or generally for the same mosque, khankah, which shall be used by and for the public at large.

6. On the basis of the aforesaid statements, learned counsel for appearing for the respondent nos. 1 and 2 submitted that the writ petition is devoid of any merit and the same is fit to be dismissed.



7. Learned counsel appearing for the respondent no. 4 adopted the submissions made by the learned counsel appearing for respondent nos. 1 and 2. He submitted that waqf property cannot be mutated in the name of any private individual.

8. Having heard learned counsel for the parties and perused the record, I find substance in the submission made by the learned counsel for the respondents.

9. The impugned order dated 19.04.2012 has been passed by the Municipal Commissioner on the basis of an inquiry conducted in presence of both the parties in which it was found that property in question is a public place for offering prayer (*Ibadat*). Hence, the Municipal Commissioner refused to mutate the same in the name of an individual. While disposing of the application for mutation, the Municipal Commissioner observed that if the petitioner, so desire, she may move before the competent court for redressal of her grievance.

10. It is not the case of the petitioner that the Municipal Commissioner had no authority to pass order in a mutation proceeding. It is also not the case of the petitioner that the principle of natural justice has been violated while deciding the mutation proceeding. The contention of the petitioner is that the Municipal Commissioner committed error in deciding the proceeding. In such



view of the matter, the instant writ petition challenging the order passed in the mutation proceeding cannot be entertained despite availability of alternative remedy. The petitioner may approach the court of competent jurisdiction for the redressal of her grievance raised in the instant writ petition.

11. In view of the above discussion, the writ petition is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2018
Transmission Date	NA

