

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.163 of 2014

Mostt. Kishwar

.... Petitioner/s

Versus

1. Bihar State Sunni Wakf Board through its Secretary, 34, Harding Road, Haj Bhawan, Patna
2. The Chief Executive Officer, Bihar State Sunni Wakf Board through its Secretary, 34, Harding Road, Haj Bhawan, Patna
3. Md. Masudur Rahman
4. Imteyazur Rahman

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Mohammed Abu Haidar

For the Respondent/s : Mr. Khatim Raza

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

8 03-10-2018

Heard both sides.

The petitioner has filed this petition against the order dated 29.08.2014 passed by the learned Presiding Officer, Bihar Waqf Tribunal, Patna in Waqf Appeal No. 18 of 2013 whereby the appeal of the petitioner has been dismissed.

The facts which are relevant for disposal of this petition can be summarized as follows:-

The petitioner is widow of Late Mohibul Hasan Nadvi, Motwalli of Waqf estate No. 675, but the Chief Executive Officer, Bihar State Waqf Board, removed the husband of the petitioner and appointed Imteyazur Rahman as Motawalli. Against the aforesaid order the husband of the petitioner preferred Waqf Appeal No. 4 of 2012. During the pendency of Waqf Appeal No. 4 of 2012 the husband of petitioner died and petitioner, her sons and



daughters filed substitution petition. During the pendency of Waqf Appeal No. 4 of 2012, the Chief Executive Officer appointed Masudur Rahman as Motawalli of Waqf estate No. 675 in place of Imteyazur Rahman. The petitioner has challenged the aforesaid order in the present case. After hearing the petitioner the Presiding Officer, Bihar Waqf Tribunal, Patna dismissed Waqf Appeal No. 4 of 2012 on the ground that wife, sons and daughters have got no right to purse the appeal filed by the former Motawalli of Waqf estate as the post of Motawalli is not inheritable. Against the order of dismissal the petitioner filed C. R. No. 171 of 2014 which has already been allowed and the matter is remitted to Presiding Officer, Bihar Waqf Tribunal, Patna for passing order afresh on merit.

It is submitted that the present appeal, i.e., Waqf Appeal No. 18 of 2013, has been dismissed on the ground that in view of Section 64(4) of the Waqf Act only aggrieved persons can challenge the order of appointment of Motawalli and legal heirs of Motawalli cannot challenge the appointment of another Motawalli. It is submitted that without looking into the contents of Waqfnama the appeal of the petitioner has been dismissed and she has been unsuited without hearing the appeal on merit.

On the other hand the learned counsel for the opposite parties submits that post of Motawalli is not inheritable



and the wife, daughters and sons of former Motawalli are not entitled to manage the Waqf property. Husband of the petitioner was removed from the post of Motawalli on the allegation of mismanagement of Waqf property.

Having heard the submission of both sides and on perusal of the impugned order, I find that the Presiding Officer, Bihar Waqf Tribunal, Patna unsuited the petitioner on the ground that petitioner is not necessary and aggrieved party. The legal heirs of Motawalli cannot agitate or file appeal against the removal of Motawalli. Only the Motawalli, who is aggrieved by his own removal, can file appeal but the learned Presiding Officer has not perused the Waqfinama. Therefore, I find that the order suffers from material illegality.

Accordingly, the dated 29.08.2014 passed by the Presiding Officer, Bihar Waqf Tribunal, Patna in Waqf Appeal No. 18 of 2013 is set aside and the matter is remitted to the Presiding Officer, Bihar Waqf Tribunal, Patna to decide the matter afresh in accordance with law after hearing both the parties.

(Prabhat Kumar Jha, J)

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