

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14153 of 2017

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1. Md. Munir Ahsan @ Md. Munir Hasan, S/o Late Shahzadu Hussain,
Pathar Ki Masjid, Chaudhary Tola More, P.S.- Sultanganj, District- Patna.

.... Petitioner/s

Versus

1. The Chief Executive Officer, Bihar State Shia Waqf Board, 2nd Floor,
Haj Bhawan, 34 Ali Imam Path, Harding Road, Patna, P.S.- Sachivalaya,
District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lakmesh Marvind

For the Respondent/s : Mr. Syed Asgher Najmi

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

5 03-05-2018 In the instant writ petition filed under Article 226 of the

Constitution of India, the petitioner has prayed for quashing the

order dated 11.09.2017 passed by the Bihar Waqf Tribunal, Patna

in Eviction Application No. 3 of 2016.

Learned counsel for the petitioner submitted that the

impugned order passed by the Tribunal is illegal and

unsustainable in the eye of law.

Mr. Syed Asgher Nazmi, learned counsel appearing for

the Bihar State Shia Waqf Board raised a preliminary objection

with regard to maintainability of the writ petition under Article

226 of the Constitution of India before this Court against the order

passed by the Tribunal in view of statutory provisions prescribed

under Section 83 of the Waqf Act, 1995 and the judgment of this

Court dated 25.04.2018 passed in *Md. Wasiur Rahman & Anr.*



Vs. The State of Bihar & Ors. (CWJC No. 14622 of 2017).

The preliminary objection raised by the learned counsel for the Waqf Board is well founded. The relevant discussions made in the matter of ***Md. Wasiur Rahman*** (Supra) are as under :

“21. Sub-section (2) of the Section 83 permits any mutwalli or other person interested in a waqf or any person aggrieved of an order made under the Act or Rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to waqf. Sub-section (5) of the said Section stipulates that the Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908. Sub-section (7) of Section 83 of the Waqf Act, 1995 accords finality to the decision of the Tribunal and makes it binding upon the parties and has been given the force of a decree made by a civil court. Sub-Section (9) of Section 83 provides that no appeal shall lie against any decision or order made by the Tribunal.

22. However, the proviso to sub-section (9) of Section 83 of the Waqf Act, 1995 not only gives jurisdiction to the High Court on its own motion or on the application of the Board or any person aggrieved, to call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination but also provides for remedy to the Board or any person aggrieved by any determination made by the Tribunal to question the correctness, legality or propriety of such determination and the High Court after satisfying itself may confirm, reverse or modify such determination or pass such other order as it may think fit. The said proviso has been couched in such term that it leaves no room for doubt that the High Court has been vested with the revisional jurisdiction against the order or decision of the Tribunal.



23. In the matter of *Sadhana Lodh* (Supra) on which reliance has been placed by the respondent no.10, a three-Judge Bench of the Supreme Court was dealing with a case in which the insurer had filed a writ petition against the order of the Motor Accidents Claims Tribunal, which had awarded a sum of Rs.3,50,000/- for the death of appellant's son. The said order was challenged by the insurer by way of filing a writ petition under Article 226 and 227 of the Constitution of India before the High Court, which was dismissed by the Single Judge. Being aggrieved, the insurer preferred a letters patent appeal before the Division Bench of the High Court. The claimant took an objection before the Division Bench that since petition under Articles 226/227 is not maintainable, the appeal is totally misconceived. However, the Division Bench overruling the objection allowed the appeal preferred by the insurer and reduced the compensation from Rs. 3,50,000/- to Rs.3,00,000/-. The same was challenged before the Supreme Court in appeal. The appellant urged before the Apex Court that in view of Section 173 of the Motor Vehicles Act, 1988 a remedy by way of appeal to the High Court is available to the insurer against an award given by the Tribunal, therefore, the filing of a petition under Article 227 of the Constitution was misconceived and deserved dismissal and the High Court ought not to have entertained and decided the writ petition on merit. However, an argument was advanced on behalf of the respondents that since an insurer has limited grounds available under Section 173 of the Motor Vehicles Act, it is open to an insurer to file a petition under Articles 226/227 of the Constitution.

24. Repelling the argument advanced on behalf of respondents in *Sadhana Lodh* (Supra), the Supreme Court held as under:-

“The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer



has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see National Insurance Co. Ltd, v. Nicolletta Rohtagi 2002(7) SCC 456). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. **Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution.** As a matter of an illustration, where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 C.P.C., in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court under Section 115 C.P.C., no petition under Article 226 of the Constitution would lie for the reason that a mere wrong



decision without anything more is not enough to attract jurisdiction of High Court under Article 226 of the Constitution.”

(emphasis mine)

25. Thus, in *Sadhana Lodh* (Supra), the Supreme Court has held that where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for, the remedy against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision is expressly barred, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution.

26. As has been set out in the above binding precedent, I find force in the submission of Mr. Ashhar Mustafa, learned advocate for respondent no.10 that where the legislature has provided for a remedy of revision before the High Court against any decision or order of Tribunal, only such jurisdiction can be invoked and a petition under Article 226/227 of the Constitution of India under such circumstances would be impermissible. Even a wrong decision would not be enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

27. Hence, in view of the binding precedent of the Supreme Court in *Sadhana Lodh* (Supra), when a statutory right to file a revision has been given to the person aggrieved under the proviso to sub-section (9) of Section 83 of the Waqf Act, 1995, it would not be open to this Court to entertain a petition under Article 226 or 227 of the Constitution of India. Merely because petitions under Articles 226/227 of the Constitution of India have been entertained in past, such petition cannot be held to be maintainable in law. It has not been brought to my notice by the petitioner or on behalf of the Board that the issue of maintainability of a petition under Articles 226/227 of the Constitution of India against



the decision or order of Tribunal has ever been considered and decided by this Court. If the objection regarding maintainability of such petition has not been raised and the relevant provisions of the Act have not been considered while entertaining the petition, it will always be open for the Court to examine the issue of maintainability of such petition. Moreover, while examining such issue of maintainability, this Court cannot ignore the terms of statute and the binding precedent of the Supreme Court. Thus, I find no merit in the submissions of the learned counsel for the petitioner and the Board that since such petitions are being entertained before this Court and several decisions have been given in past which have attained finality, a petition under Article 226/227 of the Constitution of India would be maintainable against the decision or order of the Tribunal.

28. In ***Md. Abdul Kareem*** (Supra), the High Court of Andhra Pradesh held : “...*the jurisdiction of the High Court in disputes relating to Waqfs can be invoked only when an aggrieved party files a revision petition under Sub-section (9) of Section 83 of the Act and a writ petition would not be maintainable*”.

29. In ***Syed Asadulla Hussaini*** (Supra) a Division Bench of Karnataka High Court in writ appeal set aside the impugned order passed by the Single Judge in writ petition filed against the decision of the Tribunal with liberty to the aggrieved party to take remedy available under sub-section (9) of Section 83 of the Waqf Act, 1995.

30. In ***Zubedaben Mohammedmiya*** (Supra), the High Court of Gujarat held as under :-

“6. From the provision in Section 83(9) itself and from what is laid down in the decisions considered hereinabove, it has to be ruled that when against any determination or order by the Waqf Tribunal, the statutory prescription of remedy is revisional power and revisional jurisdiction, only revisional jurisdiction of the High Court could be invoked. The proceedings ought to have



been registered as a Revision Application. When the nature of two jurisdictions, namely revision jurisdiction and writ jurisdiction are quite different in their width and sweep, the submission could be countenanced that the petition under Article 227 of the Constitution could not have been filed. There is a substance when it is contended that permitting filing of a petition under Article 227 would amount to enlarging the jurisdiction against the statutory provision under Section 83(9) of the Waqf Act, 1995. Therefore it may not be a mere question of different nomenclature as sought to be suggested by learned advocate for the petitioner. In the present case the position is admitted that the order impugned is under Section 83 and what is invoked for challenge the said order is sub-section (9) of Section 83, which is the remedy as per the provision.”

31. In ***Mumtaz Ahmed*** (Supra), a Division Bench of the High Court of Himachal Pradesh while considering a bunch of petitions framed the following question for determination - “*Whether regular First Appeal or Civil Revision or petition under Article 227 of the Constitution of India would lie against the order passed by the Waqf Tribunal.*” After examining the issue in detail, the Division Bench held that writ petition or appeal is not maintainable against the order of a Tribunal since sub-section (9) of Section 83 of the Waqf Act, 1995 provides an efficacious alternative remedy to the aggrieved party to invoke the revisional jurisdiction of the High Court.

32. The following passages from the decision in ***Mumtaz Ahmed*** (Supra) in this regard are apposite:-

“30. Sub Section 9 of Section 83 of the Act provides that no appeal shall lie against any decision or order whether interim or otherwise, passed by the Tribunal established under the Act. Still, it is astonishing that Writ Petitions and Regular First Appeals are being preferred by the



aggrieved parties before this Court challenging the decisions rendered by the Tribunals constituted under the Act. It is also not understandable how such appeals or writ petitions are being entertained once there is specific bar in terms of Section 83(9) of the Act that no appeal will lie against the order of the Tribunal. We were told that it is a practice in this Court and the decisions have been made and such decisions have attained finality.

31. We may make it clear that we are not giving findings viz. a viz. those judgments which have attained finality. It is also made clear that this judgment is prospective in nature and will not, in any way, have retrospective effect.

32. In terms of proviso to Sub Section (9) of Section 83 of the Act, any person aggrieved by the orders of the Tribunals can invoke the revisional jurisdiction of the High Court. Thus, remedy is provided to the aggrieved person by way of filing revision petition and not by the medium of appeal. The Act contains the mechanism for filing revision petition, thus, providing efficacious alternative remedy to the aggrieved party, rendering the writ petition not maintainable against the orders passed by the Tribunal. This view has been taken by this Court in case titled as **M/s Indian Technomac Company Ltd. versus State of H.P. & others**, being CWP No.4779 of 2014, decided on 4th August, 2014, and restated in plethora of judgments. In a similar case, the High Court of Andhra Pradesh in case titled as **Mohd. Abdul Kareem And Anr. vs. Andhra Pradesh State Wakf Board**, 2004(2) ALD 345, held that the jurisdiction of the High Court in disputes pertaining to Wakfs can be invoked by way of filing revision petition and not by the medium of a writ petition. It is apt to reproduce paragraph 13 of the said decision hereunder:

“13. As seen from the above, the jurisdiction of the High Court in disputes relating to Wakfs can be invoked only when an aggrieved party files a revision petition under Sub-section (9) of Section 83 of the Act and a



writ petition would not be maintainable. In view of the binding precedents, this Court is not inclined to go into the merits of the contentions on other two questions raised by the learned Counsel for respective parties. These are left open to be decided at an appropriate stage in appropriate proceedings”.”

33. This Court finds itself in complete agreement with the views expressed by the High Courts of Andhra Pradesh, Karnataka,

Gujarat and Himachal Pradesh in the decisions noted above.

34. In the result, this Court is of the considered opinion that a petition under Article 226/227 of the Constitution of India against the judgment or order passed by a Tribunal constituted under the Waqf Act, 1995 is not maintainable.”

For the reasons assigned and discussions made in *Md.*

Wasiur Rahman & Anr. (Supra), this Court is of the considered opinion that this petition preferred under Article 226 of the Constitution of India against the order of the Tribunal dated 11.09.2017 is not maintainable. It is accordingly dismissed. However, the petitioner would be at liberty to invoke the proviso to sub-section (9) of Section 83 of the Waqf Act, 1995 for redressal of his grievance.

(Ashwani Kumar Singh, J)

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