

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.171 of 2014

Mostt. Kishwar Widow of Late Mohibul Hasan Nadvi Resident of Mohalla-Dahiyawan, N.C.Gali, P.S.-Chapra town and District-Saran (Chapra).

... ..Appellant... ..Petitioner

Versus

1. Bihar State Sunni Wakf Board, through its Secretary, 34, Harding Road, Haj Bhawan, P.S.-Gardanibagh and Distt.-Patna.
2. Chief Executive Officer, Bihar State Sunni Wakf Board, 34, Harding Road, Haj Bhawan, P.S.-Gardanibagh and District-Patna.
3. Md. Masudur Rahman Son of not known Resident of Mohalla-Dahiyawan, N.C.C.Gali, P.O. and P.S.-Chapra town and Distt.-Chapra (Saran).
4. Imteyazur Rahman Son of Late Wabidur Rahman Resident of Mohalla-Dahiyawan, N.C.C.Gali, near Pankaj Cinema, P.O. and P.S.-Chapra town and District-Chapra (Saran).

... .. Respondents... ..Opposite Parties

Appearance :

For the Petitioner/s : Mr. Mohammed Abu Haidar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

12 03-10-2018

Heard both sides.

The petitioner has filed this civil revision against the order dated 29.04.2014, passed by the Presiding Officer, Bihar Waqf Tribunal, Patna by which the appeal preferred by the husband of the petitioner has been dismissed.

The learned counsel for the petitioner submits that the Executive Officer of the Waqf Board removed the husband of the petitioner from the post of Mutwalli on 01.01.2005. The husband of the petitioner filed Waqf Appeal No.04 of 2012 against the order of his removal but during the pendency of the Waqf Appeal, the husband of the petitioner died. Petitioner filed petition for substitution but without passing the order on the substitution petition filed by the petitioner, the learned Tribunal dismissed the appeal



holding that the appeal on account of death of the appellant became infructuous.

The learned counsel for the opposite parties submits that the office of Mutwalli is not inheritable if the order of succession on the post of Mutwalli is not described in the Waqfnama.

Having considered the submissions of both sides and on perusal of the order impugned, I find that the learned Tribunal has dismissed the appeal on the ground that it has become infructuous on account of death of the appellant but the learned Tribunal did not record any finding on the petition for substitution filed by the petitioner, the wife of the appellant. If the Waqfnama does not contain the order of succession of the Mutwalli and the wife of former Mutwalli is not entitled to succeed her husband, the Tribunal should have passed order on the substitution petition instead of dismissing the appeal itself holding that the same is infructuous, therefore, I find that the order is illegal and not sustainable and thus the order dated 29.04.2014 is set aside. The matter is remitted to the Tribunal to hear both sides afresh and pass order in accordance with law.

The civil revision petition is allowed.

(Prabhat Kumar Jha, J)

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